



The Federal Democratic Republic of Ethiopia

Assessment of the Public Procurement system 2021

Volume II.2

Indicator Matrix for the Addis Ababa City Administration



MAPS assessment in: Ethiopia

Name/organization: The World Bank in cooperation with the Ministry of Finance and the Public Procurement and Property Administration Agency of the Government of Ethiopia

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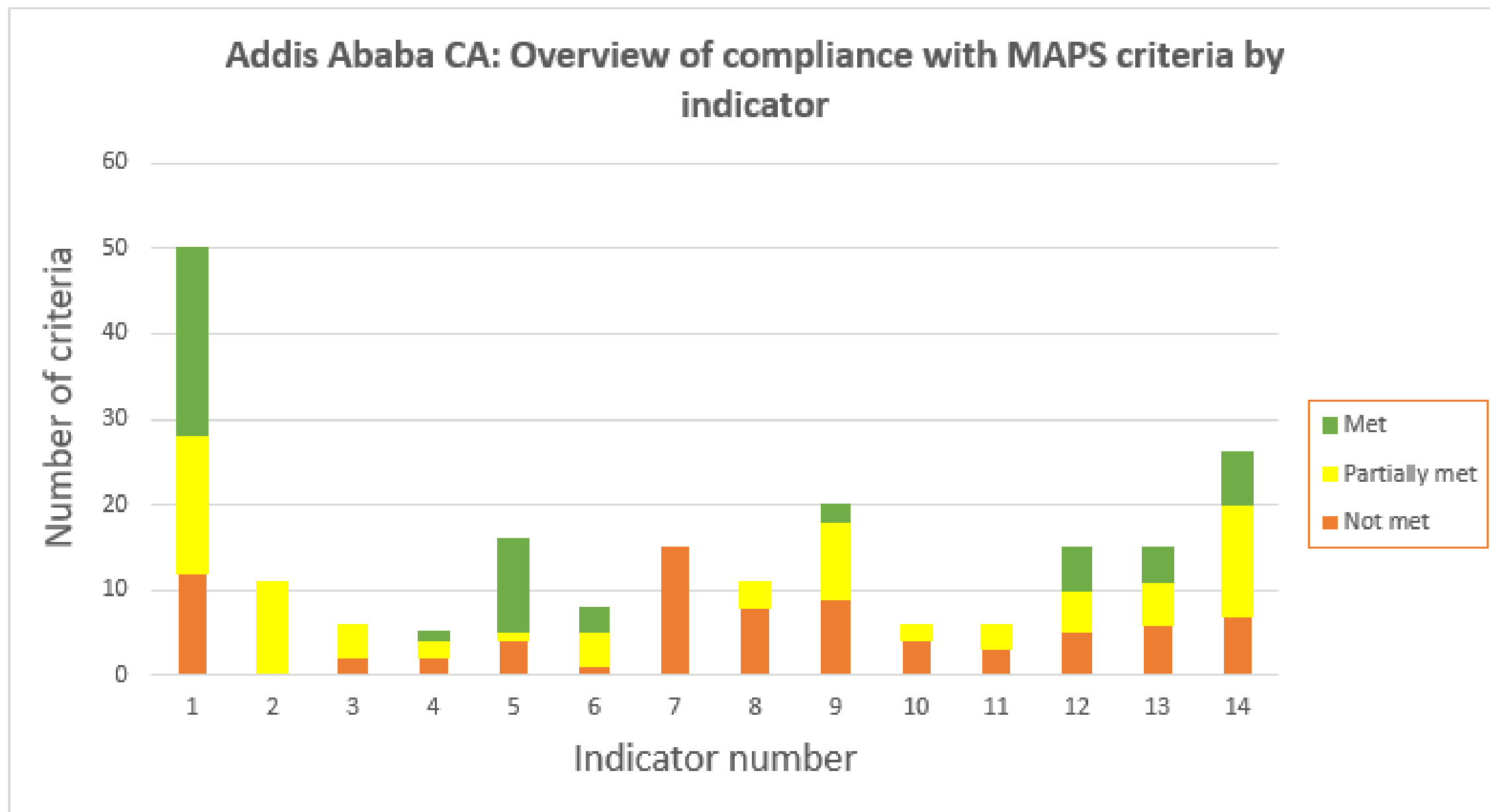
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The public procurement system in Addis Ababa, Ethiopia: Overview of compliance with MAPS indicators

Red flags raised ✓	Non-compliance	Partial compliance	Compliance
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Indicators are assessed against several criteria. Non-compliance for an indicator is considered if at least one criterion is not met. Partial compliance is considered if at least one criterion is partially met. Compliance is considered if all criteria are met.

	Pillar I	Pillar II	Pillar III	Pillar IV			
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	✓ 1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well-integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring	
	1(b) Procurement methods		✓ 4(b) Financial procedures and the procurement cycle			✓ 9(a) Planning	11(b) Adequate and timely access to information by the public
	✓ 1(c) Advertising rules and time limits	5. The country has an institution in charge of the normative / regulatory function.	5(a) Status and legal basis of the normative / regulatory institution function			✓ 9(b) Selection and contracting	11(c) Direct engagement of civil society
	1(d) Rules on participation		5(b) Responsibilities of the normative / regulatory function	✓ 9(c) Contract management			
	1(e) Procurement documentation and technical specifications	6. Procuring entities and their mandates are clearly defined.	✓ 5(c) Organisation, funding, staffing, and level of independence and authority	10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	✓ 12(a) Legal framework, organisation and procedures of the control system
	1(f) Evaluation and award criteria		5(d) Avoiding conflict of interest				✓ 10(b) Private sector's organisation and access to the public procurement market
	1(g) Submission, receipt, and opening of tenders		7. Public procurement is embedded in an effective information system.	6(a) Definition, responsibilities, and formal powers of procuring entities	10(c) Key sectors and sector strategies	12(c) Enforcement and follow-up on findings and rec.	✓ 12(d) Qualification and training to conduct procurement audits
	1(h) Right to challenge and appeal			6(b) Centralized procurement body			
	1(i) Contract management	8. The public procurement system has a strong capacity to develop and improve.	7(a) Publication of public procurement information supported by information technology	13. Procurement appeals mechanisms are effective and efficient.	14. The country has ethics and anticorruption measures in place.	13(a) Process for challenges and appeals	
	1(j) Electronic Procurement		7(b) Use of e-Procurement				13(b) Independence and capacity of the appeals body
	1(k) Norms for safekeeping of records, documents, and electronic data.		7(c) Strategies to manage procurement data				13(c) Decisions of the appeals body
	1(l) Public procurement principles in specialized legislation	2. Implementing regulations and tools support the legal framework.	8(a) Training, advice, and assistance		14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties	✓ 14(b) Provisions on prohibited practices in procurement documents	
	2(a) Implementing regulations to define processes and procedures		✓ 8(b) Recognition of procurement as a profession				✓ 14(c) Effective sanctions and enforcement systems
2(b) Model procurement documents for goods, works, and services	8(c) Monitoring performance to improve the system		✓ 14(d) Anti-corruption framework and integrity training				
3. The legal framework reflects the country's secondary policy objectives and international obligations	2(c) Standard contract conditions	3. The legal framework reflects the country's secondary policy objectives and international obligations	✓ 3(a) Sustainable Public Procurement (SPP)		✓ 14(e) Stakeholder support to strengthen integrity in procurement		
	2(d) User's guide or manual for procuring entities					3(b) Obligations deriving from international agreements	14(f) Secure mechanism for reporting prohibited practices or unethical behaviour
					✓ 14(g) Codes of conduct / codes of ethics and financial disclosure rules		



Explanation for the Matrix:

PPL – the Addis Ababa City Government Procurement and Property Administration Proclamation No. 17/2009 dated November 9, 2009 (or the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 dated 9 September 2009 if so indicated or relevant in the context); PPD – the Addis Ababa City Administration Procurement Directive No. 3/2002

Procuring entity (PE) = public body (PB)

1. In accordance with the MAPS methodology, “red flags” are factors likely to prevent appropriate action to improve the public procurement system. These are used to highlight any element that could significantly impede the main goals of public procurement and that cannot be mitigated directly or indirectly. They can be factors that lie outside the sphere of public procurement.
2. The MAPS methodology defines the minimum requirements for all criteria under its indicators. The Assessment Team assessed whether the public procurement system in Ethiopia meets the required minimum and based on the results concludes on each criterion that “Criterion is met”, “Criterion is not met” or “Criterion is partially met”. There are criteria which meet the required minimum and are indicated as “Criterion is met”. However, in some cases, the Team sees the possibility of improving the aspect of the public procurement covered by such criterion. In such cases, the Team offered a recommendation for such improvement proposed in addition to the conclusion that “Criterion is met”.

Pillar I. Legal, Regulatory, and Policy Framework

1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.

1(a) Scope of application and coverage of the legal and regulatory framework

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
[1(a) Scope of application and coverage of the legal and regulatory framework]					
(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	<p>Summary: The legal and regulatory framework is adequately recorded and is organized hierarchically with precedence clearly established.</p> <p>Constitution: Addis Ababa is constituted by way of Charter and the City Government is a component part of the Federal Government. The City Government has the power to make laws specifically conferred on it by this Charter as well as executive powers and functions over matters that have not specifically been included in the details of the powers and functions of the executive organs of the Federal Government.</p> <p>International agreements: The City Charter of Addis Ababa does not refer to the negotiation and conclusion of international agreements. This falls within the jurisdiction of the Federal Government under the Federal Constitution since the power is not expressly given to the Regions or to the City of Addis Ababa and all powers given to the City are subject to the powers explicitly granted to the Federal Government. In this respect, the Federal Government is given explicit powers to formulate and implement the country's foreign investment policies, foreign policy and ratify international agreements. All international agreements ratified by Ethiopia are an integral part of the law of the land (1995 Constitution A.9(4)).</p> <p>Nevertheless, in respect of applicable international obligations, the Addis Ababa Procurement Proclamation ('the PPL') PPL A.6 states that to the extent that the PPL conflicts with an obligation arising out of an agreement with one or more states or with international organizations and the City Government, the provisions of that agreement shall prevail. This contradicts the Federal Constitution, as explained immediately above. Further, the fate of obligations which derive from an agreement which is entered into by the Federal Government with one or more international organizations is not stated. Given that only the Federal Government has the power to conclude such agreements, it must be assumed that this obligation applies to the City only in so far as the obligation is passed on to the City by the Federal Government when it provides development assistance and loans to the City under its power to administer the Federal budget. There is a general obligation on all governments (Federal, State and Regional) to observe international agreements. The highest legislative authority is vested in the City Council.</p> <p>Primary legislation - Proclamations: The City Council adopts primary legislation consistent with that of the Federation.</p> <p>Secondary legislation – Regulations and Directives: The PPL provides for the adoption of a Procurement Directive by the regional Finance and Economic Development Bureau ('the Bureau').</p> <p>The key primary legislation on public procurement in Addis Ababa is currently: Proclamation No. 17/2009 The Addis Ababa City Government Procurement and Property Administration Proclamation which came into force on 9 November 2009.</p> <p>This is supported by a comprehensive Procurement Directive: the Addis Ababa City Administration Procurement Directive No. 3/2002 ('the PD'). The Bureau is given the task of publishing Standard Bidding Documents (SBD) and other forms and supporting documents as well as any e-GP strategy. No SBDs have been issued as of yet and reliance is placed on the Federal SBDs.</p> <p>In terms of electronic procurement, the process does not yet appear to have begun.</p>	Not applicable	<p>Criterion is partially met.</p> <p>International agreements and PPL A.6 The provisions with regard to international agreements create a good deal of uncertainty in terms of identifying which international obligations are, and how they are, imposed on public bodies in Addis Ababa and it is not clear exactly how they apply in a federal context.</p> <p>1. Despite the exclusive mandate given to the Federal Government to enter into international agreement, it seems that there is an informal 'understanding' (which ostensibly contradicts the Federal constitution) that regional governments, including the City of Addis Ababa may enter into grant (but not credit) agreements with international organizations. The PPL nevertheless foresees the City entering into any agreements itself. Maybe this is limited to grants in accordance with the 'understanding', but that is not explained. If it is limited to grant agreements, this may be consistent with the 'understanding' although it formally contradicts the Federal Constitution and the City Charter. If it applies to credit and loan agreements, then it falls foul both of the Federal Constitution, and the 'understanding'.</p> <p>2. Where the PPL applies only to grant agreements, it establishes how the international obligations apply. However, this does not explain how obligations which derive from an agreement which is entered into by the Federal Government with one or more international organizations, would apply to public bodies in the City. This is critical in the event of donor loans.</p> <p>3. In practice, the obligations attaching to grants and credits obtained by the Federal Government from international organizations are passed on to the regions and Addis Ababa through a 'specific purpose grant' which is given either by way of formal agreement or by way of an attached letter setting out those obligations from the Ministry of Finance. Though these letters are considered legally binding (and always accepted by the regional states and Addis Ababa), the new Federal Administrative Proclamation provides that all such</p>	✓ Yes	<p>International agreements. It would be preferable to have more explicit provisions in this respect:</p> <ol style="list-style-type: none"> 1. Making clear which, if any, international agreements may be entered into by the City (for example, only grants).and setting out the application of the conditions imposed by the grantor 2. Explaining clearly in the PPL that the obligations attaching to grants and credits obtained by the Federal Government from international organizations are passed on to the City and how that is done 3. Possibly by excluding procurement funded through grants and loans by international financing institutions from the PPL altogether.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
	<p>There are provisions on administrative contracts in Proclamation No. 165/1960 (as amended), the Civil Code Proclamation, which entered into force on 5 May 1960 (“the Civil Code”). This was adopted under the old regime but has not yet been replaced. Title XIX contains General Provisions on the formation of administrative contracts, including the procedure for allocation of contracts by tender, as well as on the effects of administrative contracts. It also contains specific provisions on “concession of public service” and contracts for public works and supplies.</p> <p>The extent to which the provisions in Title 19 of the Civil Code are in force and/or applied in practice in public procurement and to contracts awarded under the procurement legal framework is unclear. The interplay between the Civil Code and the specialized public procurement legal framework is ambiguous. This creates legal uncertainty.</p> <p>Even the Federal Constitution is ambiguous. Article 55 gives to the Federal Government the power to enact civil laws deemed necessary to establish and sustain one economic community. In other respects, Regions and Addis Ababa may also adopt their own civil laws. There is another ‘understanding’ (not made legally explicit) that, since contract law is necessary for the maintenance of one economic community, the adoption of laws relating to contract are within the sole remit of the Federal Government and that Regions will not adopt their own provisions. The City Charter of Addis Ababa requires the City Courts to comply with applicable laws.</p> <p>Due to this lack of clarity on the standing of the civil code in the overall procurement framework of Ethiopia, we have not analyzed or commented in detail on the provisions of the Civil Code.</p> <p>See also note at indicator 1(a)(c) on the legal framework for public private partnerships.</p>		<p>conditions will in future be passed on by way of formal agreement.</p> <p>4. As a result, it may be that, in practice, such obligations are in fact passed on to the City’s public bodies, but this is not referred to in the PPL or elsewhere in the legal framework, giving rise to inevitable confusion and potential for misunderstanding and misapplication.</p> <p>At the same time, under A.61 of the Charter, the City is a component part of the Federal Government, and it may be that Federal obligations are automatically passed on. But this is far from clear and not stated anywhere.</p> <p>Alignment between PPL and PPD It is appropriate that the PPD (as secondary legislation) elaborates on the provisions of the PPL. However, in some cases the PPL lacks provisions which we would usually expect to see in primary legislation, such as candidates’/bidders’ rights to clarification and the right to judicial appeal. On other occasions, the PPD introduces a wide interpretation or additional provisions on important issues which are probably better placed in primary legislation, such as a full list of grounds for exclusion. Examples of particular note are highlighted in this assessment.</p> <p>Directives and similar advisory documents For transparency, clarity and legal certainty, it is important to ensure that all documents forming the legal and advisory framework for public procurement are published on a single, central and easily accessible repository. This includes all documents issued by the Bureau but also those issued by any other body. It is also essential that any such documents are consistent and in line with primary legislation. They should not, as a general rule, create exceptions to the application of the public procurement legal framework, which would carry the risk of, at least, fragmentation and the possibility of undermining the operation of the public procurement system as a whole.</p>		<p>Alignment between PPL and PPD Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, ensure that PPD and the circulars do not introduce provisions that materially limit or inappropriately expand the provisions of the PPL.</p> <p>Directives and similar advisory documents Require that all Directives and similar advisory documents are published on a single, central and easily accessible repository. The repository must be kept up to date. Ideally, the repository should also be in electronic form and be easily searchable using a range of search terms so that all users can easily identify advisory and other documents of relevance to them.</p> <p>Ideally, the central repository should be comprehensive and thus also include sectoral specified documents, including on defense and health-related procurement; links to PPP legislation and guidance; and links to relevant websites.</p>

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
			<p>Application of contract law: There is a significant lack of clarity on the applicable contract law. It appears that the 1960s civil code is still in force but its scope of application in the City is unclear. The Federal Government has the power to adopt any new civil laws, including any replacement of the 1960 civil code, but has not yet done so. Even though the City is entitled to adopt its own civil laws, it may not do so if the scope of the civil law in question is one which is necessary for the maintenance of one economic community. Though not made legally explicit, there is an understanding that contract law would be one such law so that the City could not adopt its own contract law and must instead follow that adopted by the Federal Government.</p> <p>One additional issue may be that the PPL is stated to override any inconsistent laws. To the extent that the civil code (if that applies) is inconsistent, then the PPL would prevail.</p>		<p>Application of contract law: Given the importance of contract law to public procurement, the applicable contract law in the City should be made explicit.</p>
<p>(b) It covers goods, works and services, including consulting services for all procurement using public funds.</p>	<p>Summary: The legal and regulatory framework covers the procurement of goods, works and services including consulting services, for procurement using public funds. The definitions of a “public body” and “public fund” are not sufficiently clear and create legal [and practical] uncertainty as to coverage. Defense and security procurement is generally excluded from the coverage of the PPL, as are contracts between public bodies. PPL A.2 (on Definitions): defines “procurement” as “obtaining goods, works, consultancy or other services through purchasing, hiring or obtaining by any other contractual means”. The terms “goods”, “works”, “services” and “consultancy services” are defined. “Public procurement” is defined as “procurement by a public body using public fund”. “Public fund” is quite broadly drafted to mean any monetary resource appropriated to a public body from the City Government treasury, or aid, grants and credits put at the disposal of public bodies by foreign donors through the Government or the internal revenue of the public body. It is not clear whether the second use of the word Government refers to the Federal or City Government. Given the wording of PPL A.6.1, it is more likely to refer to the City Government. PPL A.3(1) states that the PPL applies to “all Addis Ababa City Government procurement and property administration.”</p> <p>Bodies subject to the PPL Public body (procuring entity) is defined by PPL A.2 as “any public body, which is partly or wholly financed by the City Government budget, higher education institutions and public institutions of like nature.”</p> <p>Public enterprises, state owned enterprises (owned by the City) and other enterprises or organizations in which the City has a significant interest or influence are not expressly included or excluded from coverage of the PPL, though from the definition of “public body”, any public enterprises using public funds should be subject to the PPL. However, the general perception and feedback from stakeholders in Ethiopia is that public enterprises are excluded from the scope of the PPL. This requires to be further reviewed in greater detail.</p> <p>Exemptions There is no exclusion for defense as in the Federal, but defense/security is, in any event, within the competence of the Federal Government, not the regions. Reference is made to the Federal matrix for further details.</p> <p>A.3(2)(b)) excludes from the coverage of the PPL “contracts a public body enters into with another public body for the provision of goods, works, services, consultancy or other services at cost”.</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>Public funds: These are apparently defined as covering only City Government funds (and aid and credits). Given the definition of “public procurement”, this might mean that the PPL applies only to procurement using City funds which may sometimes be difficult to isolate and identify. This appears to suggest that the Federal PPL applies to Federally funded procurement, although this should be made explicit.</p> <p>If, on the other hand, the second use of the word Government refers to the Federal Government, then the PPL would define public funds as covering both state funds and federal funds (provided by way of subsidy through a “block grant”). Given the definition of “public procurement”, this means that the PPL would apply also to procurement using Federal funds. There is some debate about whether, when Federal funds are used, it is the Federal PPL that should be applied. There is thus a potential conflict in the Addis Ababa PPL and the scope of application of the PPL is thus unclear: does it apply to both State and Federally funded contracts, or does it apply only to State funded contracts (as the wording of the PPL suggests) with Federally funded contracts subject to the Federal PPL? The apparent anomaly may give rise to disputes over the application of the PPL, and it would be better to clarify the position.</p> <p>Bodies subject to the PPL The definition of “Public Body” appears unclear as it does not define the specific entities subject to the PPL.</p> <p>Public enterprises, state owned enterprises, other enterprises or organizations in which the City has a significant interest or influence are not expressly</p>	<p>✓ Yes</p>	<p>Public funds: The scope of application of the PPL needs to be clarified in respect of the source of public funds. Does it apply to contracts funded by both City and Federal Government or only to those funded by the City. If it only applies to City funding, it should be made clear that the PPL does not apply to contracts funded by the Federal Government and set out how procurement obligations based on the source of funding will be managed on the ground.</p> <p>For legal certainty, it is desirable to list the categories of public bodies in the procurement legislation itself. Additionally, a list of designated public bodies,</p>

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
			<p>included or excluded from coverage of the PPL. The drafting of the definition of a “public body” is not sufficiently clear on the question of whether, or when, these enterprises or organizations are subject to the PPL.</p> <p>In addition, it is not clear whether an organization not generally within the scope of the PPL but in receipt of public funds for a specific project is required to comply with the PPL for the contracts awarded using those public funds.</p> <p>There is, therefore, a general lack of transparency and clarity and significant uncertainty as to the scope of the PPL in terms of which bodies are required to comply with the PPL.</p> <p>Exemptions Contracts between public bodies for the provision of goods, works, consultancy or other services at cost. PPL A.3(2)(b)) is a broadly drafted provision which has the potential to reduce transparency and competition if over-used. The impact of this provision is unclear, particularly as there is a lack of clarity as to which bodies fall within the definition of “public body” (see notes above). It may be advisable to consider more detailed provisions. One possibility is requiring public:public arrangements to be subject to the PPL, save in specified circumstances. Examples of such excluded circumstances could include genuine co-operation between public bodies to deliver public services/tasks at cost; direct award of contracts between public bodies or assignment of tasks/functions where the direct award or assignment of tasks/functions and participating bodies are designated by specific laws. Similarly, it may be appropriate to consider clear provisions dealing with the situation where an entity is wholly owned by a public body, carries out public tasks and is not active on the market. The PPD A 25 provides that “high value procurements” should be carried out following the procurement procedure unless it is instructed by the City Administration to use a different procedure. The different procedure is not specified and the delegation is not consistent with the delegation provided in the PPL for non-standard procedure.</p> <p>The centralized procurement arrangement at local level is not covered in the legislation. More importantly, the arrangement (pool) contradicts the procurement arrangement and delegation stipulated in the procurement legal documents that gives delegation to PBs establish procurement capacity and carry out procurement for their own need.</p>		<p>enterprises owned by the City and other bodies subject to PPL could be put together by the Bureau and published in the Bureau’s website for transparency and certainty.</p> <p>Consider revising the primary legislation to accommodate the centralized procurement arrangement (pool system) at local level.</p>
(c) PPPs, including concessions, are regulated.	The PPL provides for separate PPP legislation by the Bureau, but no such legislation has been identified.	Not applicable	<p>Criterion is not met</p> <p>There is no separate legislation issued for PPP as provided in the PPL</p>		To the extent that PPPs are being initiated in Addis Ababa City, it is imperative

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(d) Current laws, regulations and policies are published and easily accessible to the public at no cost	<p>There is no central portal or website that is used for publication of the procurement documents. The key procurement documents including the proclamations are not electronically accessible.</p> <p>Legislation has been published in the City Gazette, but the assessment team has not been able to identify a website for the Bureau which provides access to procurement legislation.</p>	Not applicable	<p>Criterion is not met No Bureau website providing details of the procurement legal framework can be found, so there is no readily accessible repository of the prevailing primary and secondary legislation.</p> <p>Printed copies, if made available, will be subject to cost and delivery problems so that free access to a website would be preferable.</p>		<p>that a Directive on PPPs be issued.</p> <p>It is important to provide a readily accessible website for procurement documents. Consider publishing the procurement documents on a centralized portal (at least on federal PPA's website as a short-term solution).</p>

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	<p>The PPL provides that public procurement contracts shall be awarded through Open Bidding, unless otherwise provided for in the PPL. The PPL defines situations where alternative procurement methods can be used, with grounds for justification clearly specified.</p> <p>General note: use of terms "candidate" and "bidder". In the English language version of the PPL, both "candidate" and "bidders" are defined terms. A candidate is a person invited or who has applied to take part in public procurement. A "bidder" is a person submitting a bid. However, the use of these defined terms within the PPL is not always complete or correct. For example, PPL A.18 refers to communications between candidates and public bodies being in writing with no reference to bidders and PPL A. 22 (2) refers to informing "candidates" of reasons for rejection of bids.</p> <p>Open Bidding PPL A.25(2) provides that public procurement contracts shall be awarded through open bidding, except as otherwise provided for in the PPL. Open bidding is thus the presumed form of procurement method, at the top of the hierarchy of procurement methods.</p> <p>Other competitive methods: PPL A.25(1) lists a range of other competitive methods and non-competitive award. These methods are permitted only where conditions set out in the PPL are satisfied (PPL A.25(3)). Where a public body uses a method of procurement other than open bidding, PPA.15.1(f) provides that they shall record a statement of the grounds on which it relied to justify use of that method.</p> <p>Other competitive methods laid down in the PPL are Request for Proposals (consultancy services), Two stage Tendering, Restricted Tendering and Request for Quotation.</p> <p>The conditions for use of methods other than the open bidding method are listed in the PPL.</p> <p>Under PPL A.45 Request for Quotations (RFQ) may be used for (1) the purchase of readily available goods, or (2) for procurement of works or services for which there is an established market; so long as the estimated value of the contract does not exceed the specified threshold. (The current maximum thresholds for use of RFQ are Ethiopian Birr: Works 500,000; Goods 200,000; Consultancy Services 120,000; Services 150,000.)</p> <p>Selection of suppliers to whom RFQ is issued: under PPL A.48(1), requests are issued to at least 3 suppliers selected from the supplier list to the extent practicable.</p> <p>Restricted Tendering is permitted where one of three conditions is met: (1) where the required object of the procurement is available only with limited suppliers; (2) where a previous competitive procurement failed; and (3) where the cost of the procurement is below specified</p>	Not applicable	<p>Criterion is met</p> <p>Use of supplier list to select suppliers in a Restricted Tendering (PPL A. 48). The use of the supplier list to select bidders, rather than using a public advertisement, has the potential to reduce competition. Whilst this can be an appropriate way to select suppliers in low value RfQ processes, as it can reduce administration and speed up procurement, this is dependent on the way in which supplier's list operates in practice. It can be a problem if the way in which the supplier list is operated lacks transparency or suppliers have practical problems getting on to the suppliers list. It can also be problematic if it merely creates an additional layer of bureaucracy, with suppliers required to submit information twice, once for inclusion in the Supplier's List and another time as part of the bid. Current provisions of the PPL provide for a wide interpretation and significant (inappropriate) flexibility and variations to be negotiated. This raises serious concerns on the transparency of the procurement process.</p>		<p>Use of supplier list to select suppliers Ensure that operation of and admission to supplier lists is transparent and efficient. Ensure consistency of qualification criteria in the bidding documents with those applied for registration on the supplier's list.</p> <p>Ensure that the use of the Supplier's list does not create an additional layer of bureaucracy, with suppliers required to submit information twice, once for inclusion in the Suppliers List and another time as part of the bid.</p>

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
	<p>thresholds. The thresholds are set out in PPD A.26,4 and are: Birr 6,000,000.00 for construction works; Birr 1,500,000.00 for goods; Birr 900,000.00 for consultancy services; and Birr 1,200,000.00 for any other services.</p> <p>In the case of condition 1, the invitation is sent to all known suppliers. In the case of conditions 2 and 3 the invitation to bid is, so far as possible, sent to suppliers chosen from a suppliers list and to at least 5. This approach has significant potential for favoritism and, may result in less that optimum outcomes if conditions of entry to suppliers list is not sufficiently rigorous.</p> <p>PPL A.45 Requests for Proposals may be used where a public body seeks to obtain consultancy services or contracts for which the component of consultancy services represents more than 50% of the contract.</p> <p>PPL A.49 Two-stage bidding may be used, in summary, (1) where it is not feasible for the public body to formulate detailed specifications to identify the characteristics of the requirements in order to obtain the most satisfactory solutions; (2) for genuine research and development; (3) where there is a failure in a previous bid procedure due to failure to clearly describe the object of the procurement or absence of clear and complete specifications; (4) where technical characteristics or nature of services mean it is necessary for the public body to negotiate with suppliers. The negotiations provisions are quite problematic. Though they are permitted with the successful bidder only (PPL A.50(7)), the wording of the PPL is quite broad (A.37), allowing the public body to (1) negotiate on matters of contract performance not dealt within the bidding document; and (2) except in a single source procurement, the public body may not negotiate on the price offered by the successful bidder and on other issues related to price.</p> <p>PPL A.51 requires international competitive bidding in specified cases including where the value of the contract exceeds specified thresholds. The thresholds are Ethiopian Birr: Works 150,000,000; Goods 50,000,000; Consultancy Services 7,500,000; Services 21,000,000.</p> <p>Non-standard procedures: The Bureau is given power to approve the use of non-standard procedures at the request of public bodies, but no further details are provided PPL A.12(5).</p> <p>Non-competitive method: The non-competitive method is Direct Procurement (single source).</p> <p>PPL A.43 Direct Procurement (without competition)/single source is permitted in eight specified circumstances, listed at PPL A.43(1)(a) to (h), subject to satisfaction of conditions, including in some cases financial caps, set out in PPL A.43.</p> <p>The eight specified circumstances are, in summary: absence of competition for technical reasons; additional supplies of goods which are intended as replacement or extension of existing supplies; additional necessary works required due to unforeseeable circumstances; repetition of similar works; continuation of consultancy services; emergency; special procurement needs of the public body; and purchase in advantageous conditions.</p> <p>PPL A.43(2) Direct procurement is also permitted for small value procurement. In this context, PPD permits direct award for contracts with a value of less than 5000 Birr, subject to aggregated today limit in one fiscal years of 60,000.</p> <p>PPL A.43 does not state that Direct Procurement)/single source is to be used only exceptionally.</p> <p>No contract is required where reliance is placed on the conditions set out in A.43.1(g) and 43.2, i.e., where situations arise in which shopping becomes necessary to meet the special procurement needs of public bodies and for low value purchases below the threshold.</p>		<p>Non-standard procedures: PPL 12 (5) This provision raises two questions: (1) if applications to use non-standard procedures are prevalent does this mean that the standard procedures are not fit for purpose, thus pushing public bodies to resort into non-standard procedures; and (2) how transparent and competitive are the non-standard procedures which are conducted following authorization from the Agency?</p> <p>PPL A.43 does not state that Direct Procurement is to be used only exceptionally. It is recommended that the exceptional nature of direct procurement is made explicit in primary legislation.</p> <p>PPL A.43(3), No contract required in some cases: It is not clear whether the PPD sets out an exhaustive description of the situations where “special procurement needs” arise. Even if it is limited to this one case, it does seem unusual not to require some form of written contract for items purchases, not least for audit purposes. Whilst written contracts for low value travel costs encountered on mission may not be practical, care needs to be taken with low value contracts in general.</p>		<p>Negotiations in bidding Current provisions of the PPL and PPD that provide for a wide interpretation and significant flexibility and variations to be negotiated may be reviewed, as this raises serious concerns on the transparency of the procurement process.</p> <p>In principle, a well-drafted procurement legislation should provide for a wide and fit-for-purpose menu of procurement methods. Accordingly, the possibility for the use of non-standard procedures should be eliminated.</p> <p>Non-standard procedures: Upon review of the procurement legislation whether it provides for a wide and fit-for-purpose menu of procurement methods, reconsider eliminating or restricting the possibility for the use of non-standard procedures.</p> <p>PPL A.48 Direct Procurement (without competition): Add provision stating that Direct Procurement is to be used only exceptionally, and an “emergency” is not created by the lack of planning or dilatory conduct on the part of public body.</p>
<p>(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of</p>	<p>Summary: The PPL sets out conditions for use of procedures other than the open bidding procedure which are generally linked to the nature, complexity or risk involved in the contract which is the subject of the procurement. The PPD sets out thresholds applying to the use of the competitive procedures with the lightest methods of procurement permitted for low-value</p>	<p>Not applicable</p>	<p>Criterion is met</p>		

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
options that ensure value for money, fairness, transparency, proportionality and integrity.	<p>tenders. The procurement methods and processes are proportional to the value and risks of the underlying project activities. The range of options does provide, in theory, for a procurement system in which value for money, fairness, transparency, proportionality and integrity are achieved. Direct award (single-source procurement) is permitted only where specified grounds for justification are satisfied.</p> <p>“Lighter” methods of procurement are available where the benefits of “process-heavier” methods are not evident or necessary.</p> <p>For example, Requests for Quotation, without publication of a notice, is permitted for contracts for (1) the purchase of readily available goods or (2) for procurement of works or services for which there is an established market; so long as the estimated value of the contract does not exceed the specified thresholds of Ethiopian Birr: Works 500,000; Goods 200,000; Consultancy Services 120,000 and Services 150,000.</p> <p>More process-heavy methods are permitted in specified cases, in particular for more complex contracts.</p>				
(c) Fractioning of contracts to limit competition is prohibited.	<p>Summary: Fractioning of contracts to avoid open competition is prohibited when it aims at circumventing competitive rules.</p> <p>PPL A.25(4) provides that Public Bodies shall not split procurement requirements for a given quantity of goods, works or services with the intention of avoiding the preferred procurement procedure.</p>	Not applicable	Criterion is met		
(d) Appropriate standards for competitive procedures are specified.	<p>Summary: The PPL requires use of Open Bidding as the default procedure but permits public bodies to use other competitive procedures subject to meeting conditions set out in the PPL as described in (a)(b)(c) above, which generally reflect the nature and complexity of the contract concerned.</p> <p>Where the procuring entity wishes to use a non-standard procedure, not provided for in the PPL or PPD, prior approval from the Bureau is required (see comments above).</p>	Not applicable	Criterion is met		

1(c) Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criteria [1(c) Advertising rules and time limits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).	<p>Summary: The legal framework requires that procurement opportunities are publicly advertised, at least in one national newspaper and where the public body finds it necessary, on national radio and television. The PPL sets out circumstances where advertisement is not necessary.</p> <p>Publication: PPL A.27 requires advertisements for open to be advertised in at least one national newspaper of general circulation. Where necessary, the public body may, in addition, advertise on national radio and television.</p>	Not applicable	<p>Criterion is partially met</p> <p>It is unclear in the context of the Federal system whether ‘national’ means at the federal level or at the State level. It is assumed that it means country-wide, i.e., at Federal level but this needs to be confirmed.</p> <p>Publication of notices is done primarily through newspapers, which does not provide full transparency of procurement procedures.</p>		<p>It may be inefficient and technically difficult, in absence of an e-procurement platform to publish all notices, but adoption of an e-procurement platform where the procurement information is transparently disclosed, is absolutely critical for increasing the transparency and disclosure of procurement information.</p> <p>Until e-procurement is introduced and in use, consider use of centralized website (federal PPA’s website) for publication of procurement opportunities.</p>

Assessment criteria [1(c) Advertising rules and time limits]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations																																																																								
<p>(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.</p>	<p>Summary: Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of the procurement, for potential bidders to obtain documents and respond to the advertisement.</p> <p>PD A.18.9 requires the Public Body to fix the timetable for the procurement process. In doing so, it must take into consideration matters including the urgency and complexity of the procurement and the identity of the participants (international or otherwise). The minimum time periods are defined in PPD A.18.9(5).</p> <table border="1"> <thead> <tr> <th rowspan="3">No</th> <th rowspan="3">Category</th> <th rowspan="3">Complexity</th> <th colspan="4">Minimum Floating time (# of days)</th> </tr> <tr> <th rowspan="2">ICB</th> <th rowspan="2">NCB</th> <th colspan="2">Restricted Tender</th> </tr> <tr> <th>Involving foreign bidder</th> <th>Only domestic bidders</th> </tr> </thead> <tbody> <tr> <td rowspan="2">1</td> <td rowspan="2">Works</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>21</td> <td>35</td> <td>21</td> </tr> <tr> <td rowspan="2">2</td> <td rowspan="2">Goods</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>15</td> <td>35</td> <td>15</td> </tr> <tr> <td rowspan="4">3</td> <td rowspan="2">Consultancy REOI</td> <td>Complex</td> <td>14</td> <td>10</td> <td></td> <td></td> </tr> <tr> <td>noncomplex</td> <td>10</td> <td>7</td> <td></td> <td></td> </tr> <tr> <td rowspan="2">Consultancy RFP</td> <td>Complex</td> <td>45</td> <td>30</td> <td>35</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>15</td> <td>21</td> <td>15</td> </tr> <tr> <td rowspan="2">4</td> <td rowspan="2">Other services</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>15</td> <td>30</td> <td>15</td> </tr> </tbody> </table> <p>In the case of two-stage bidding, the applicable minimum period for the first stage in the procurement process is the same time as specified for complex procurement either for International Competitive Bidding (ICB) and National Competitive Bidding (NCB), as the case may be. The minimum period for the second stage is the time as specified for complex procurement under Limited International Bidding (LIB) and Limited National Bidding (LNB).</p>	No	Category	Complexity	Minimum Floating time (# of days)				ICB	NCB	Restricted Tender		Involving foreign bidder	Only domestic bidders	1	Works	Complex	45	30	45	30	noncomplex	35	21	35	21	2	Goods	Complex	45	30	45	30	noncomplex	35	15	35	15	3	Consultancy REOI	Complex	14	10			noncomplex	10	7			Consultancy RFP	Complex	45	30	35	30	noncomplex	35	15	21	15	4	Other services	Complex	45	30	45	30	noncomplex	35	15	30	15	Not applicable	Criterion is met.		
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2	Goods	Complex	45	30	45	30																																																																							
		noncomplex	35	15	35	15																																																																							
3	Consultancy REOI	Complex	14	10																																																																									
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4	Other services	Complex	45	30	45	30																																																																							
		noncomplex	35	15	30	15																																																																							
<p>(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).</p>	<p>Publication in national newspaper is mandated as described in (a) above. In the case of international competitive bidding, public bodies are mandated to ensure that the advertisement is published in a newspaper that may attract foreign bidders.</p> <p>Publication on Bureau website The PPD A.14.4(b) mandates public bodies to post procurement opportunities above a specified threshold on the website of the Bureau of Finance (BoF), although this has not yet been done.</p>	Not applicable	Criterion is met.																																																																										
<p>(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.</p>	<p>PPD A.18.2.3 sets out the information to be included in the invitation to bid advertisement. This includes a description of the requirement, qualification criteria, amount of bid security and bid closing time and place. In the case of international competitive bidding, the invitation to bid advertisement and bidding document must be prepared in English (PD para 19.4).</p>	Not applicable	<p>Criterion is partially met.</p> <p>When placing an advertisement of procurement opportunities in the newspaper, public bodies receive no planned date of publishing given. Therefore, the published invitation does not include the exact date for submission of bids. Instead, the period for preparation of bids is included.</p>	✓ Yes	<p>The process of placing an ad in the newspaper should allow agreeing on the publishing date thus enabling the public bodies to calculate and include dates of submission of bids and their opening. Or else the PBs should consider specifying the bid closing/opening date in the bidding documents.</p>																																																																								

1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.</p>	<p>Summary: The legal framework requires candidates to satisfy qualification requirements set out in the bidding documents. A non-exhaustive list of qualification criteria is set out in the PPL. The principles of non-discrimination, transparency and fairness are underlying requirements.</p> <p>Non-discrimination - General principles PPL A.5(2) refers to the principle of non-discrimination among candidates on grounds of nationality or any other criteria not having to do with their qualification, except in case of preference specifically provided for in the PPL. PPL A.5(3) refers to the principles of transparency and fairness on the basis of which decisions are given.</p> <p>Exclusion See comment at 1(d)(c).</p> <p>Qualification PPL A.16 refers to the principle of non-discrimination, providing that, candidates shall not be discriminated against “on the basis of nationality, race or any other criterion not having to do with their qualifications”. This is subject to price preference provisions in PPL A.17.</p> <p>PPL provides that, in order to participate in public procurement, candidates must meet criteria listed in PPL A.20 “and such other criteria, as the public body considers appropriate under the circumstances.”</p> <p>The criteria listed in PPL A.28(1) require candidates to have relevant professional and technical qualifications and competence, financial resources, equipment and other facilities, capability, experience, reputation and personnel. Candidates must have legal capacity to tender the contract, have a bank account and not be insolvent or bankrupt or in analogous situations. They must not be subject to a suspension from participation in public procurement and must have the relevant trade license and have paid taxes according to Ethiopian tax laws. They must have a bank account.</p> <p>However, the PDA.15.21 provides a list for disqualification of the bidders, which is not contained in the PPL and includes the following grounds: when the bidder supplies goods, works or services originating from a country with which Ethiopia has a trade embargo; bidder provides goods, works or services originating from a country that is in the UN Security Council list of sanctions; bidder commits an act violating the provisions of the PPL and PPD; bidder suspended due to previous contractual default; bidder has offered bribe to an official or procurement staff to influence the public body’s decision; bidder has engaged in fraudulent activities or colluded with other bidders.</p> <p>Suppliers list: They must also be registered on the suppliers list A.20(1)(d). There are some references in the PPL to the suppliers list: PPL A.12.6 Bureau function: introduce an efficient system of listing of interested suppliers and receive, review, and record applications by candidates and distribute the suppliers list. PPL A.20(1)(d) Pre-qualification requirements. PPL A.42.2 Restricted tenders - selection of bidders from the suppliers list. PPL A.48(1) RFQ process – selection of bidders from the suppliers list.</p> <p>PLP A.20(5) provides that the public body shall disqualify a candidate who submits a document containing false information for the purposes of qualification or if qualification information is materially inaccurate or materially incomplete.</p> <p>PPL A.20(2) A public body may require candidates to provide appropriate documentary evidence or other information so that the public body may satisfy itself that candidates meet the qualification criteria.</p>		<p>Criterion is not met.</p> <p>Overall, the currently existing procedures and requirement do not offer full fairness with respect to the participation of bidders.</p> <p>Qualification of foreign bidders: The obligations on foreign bidders in terms of qualification requirements is not expressly provided for.</p> <p>PPL A.20 provides that public bodies may use additional qualification criteria “as they consider appropriate under the circumstances.” The general principles in PPLA.5 should apply to the setting of additional qualification criteria. PPL A.20 does, however, provide a potentially wide margin of discretion to public bodies and, if not carefully monitored, it raises the possibility of inappropriate, disproportionate, or discriminatory qualification criteria, which cannot be challenged anyway through the complaints review mechanism.</p> <p>The grounds for eligibility and disqualification of the bidders in the PPL and PPD are very different, creating confusion as to which list applies and or all requirements should be cumulatively met.</p>		<p>Ensure consistency of all levels of legislation with the requirement of the PPL that public procurement will comply with the principle of non-discrimination and remove the provisions that differentiate the qualification criteria depending on the bidder’s nationality. The bidder/candidate should not be denied qualification for reasons unrelated to its capability and resources to successfully perform the contract. The qualification requirements should be defined as skills, experience, and resources necessary to perform the contract.</p>

Assessment criteria [1(d) Rules on participation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>PPL A.20(3) requires qualification requirements to be set out in the bid documents and apply equally to all candidates. Evaluation of qualification must be based on published criteria and procedures (PPL A.20(4)).</p>				
<p>(b) It ensures that there are no barriers to participation in the public procurement market.</p>	<p>Qualification criteria: PPLA.20(1)(f) Qualification requires that candidates have renewed their trade license and have fulfilled their obligations to pay taxes according to Ethiopian laws.</p> <p>Foreign bidders PPLA.20(1)(f) – qualification - requires candidates to demonstrate that they have renewed trade licenses and fulfilled their obligations to pay taxes according to Ethiopian tax laws.</p> <p>Price preference PPL A.17 sets out preference provisions. It allows for a price preference margin, to be determined by a Directive issued by the Bureau, for goods produced in Ethiopia, for works carried out by Ethiopian nationals and for consultancy services rendered by Ethiopian nationals. In addition, further preference margin may be allowed for small and micro-enterprises.</p> <p>Any goods to which more than 35% of the “value added” occurs in Ethiopia shall be deemed to be one which is produced in Ethiopia.</p> <p>PPLA.17.3 also provides that where evaluation of bids results in the award of equal percentage points for bidders offering similar price and quality, preference shall be given to local goods, services, or companies.</p> <p>Preferences must be clearly stated in the bidding documents.</p> <p>In addition, a set aside may be allowed for small and micro-enterprises. Details of these set asides are included in PPD 15.20.</p>	<p>Not applicable</p>	<p>Criterion is not met Please see the gap explained under the criterion 1 (d) (a).</p>		<p>The recommendation proposed under the criterion 1 (d) (a) above applies.</p> <p>Support the different incentives to “MSEs” with adequate study and ensure consistency with other social and economic objectives including the achievement of value for money in procurement.</p>
<p>(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.</p>	<p>PPL A.20 sets out requirements for bidder qualification. See indicator 1 a) above. Grounds for exclusion from qualification include debarment PPL A.20(1)(e), although there is no reference to any debarment procedure or requirement for due process in the PPL.</p> <p>Exclusion for criminal and corrupt activities: There are no provisions in the referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for: participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings, or the equivalent of those offences.</p> <p>PPD A.15.21 Disqualification of bidders: lists additional grounds for disqualification of bidders (not candidates): see (a) above.</p> <p>PPL A.22 Rejection of bids, proposals and quotations: The grounds for rejection of bids, proposals and quotations are numerous and broadly drafted providing ample opportunity for public bodies to reject bids but also abandon procurement processes in both appropriate and inappropriate circumstances public bodies are required to disclose, but not justify, the reasons for rejection and this lacks transparency. Public bodies shall incur no liability for rejection in accordance with PPL A.22(4).</p> <p>PPL A.22.1(f) provides that public bodies may reject bids, proposals, or quotations where there is proof of concerted practices, collusion [connivance] and the bidding is not sufficiently competitive as a result.</p> <p>Suspension (otherwise known in other jurisdictions as “Debarment”)</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>PPL: Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for specified offences.</p> <p>PPL and PPD Alignment It appears that PPL and PPD are not fully aligned in terms of eligibility criteria (PPL A.20) and grounds for disqualification of bidders (PPD A.15.21). More importantly, all grounds for eligibility and qualifications of the bidders should be set out in detail in primary legislation, the PPL.</p> <p>Suspension (debarment) PPL A.65.5 Use in the English language version of the PPL of the term “complaint” in the context of</p>		<p>PPL Exclusion for criminal and corrupt activities: Include specific exclusion provisions in PPL for criminal and corrupt activities.</p> <p>PPL and PPD alignment All grounds for the eligibility and qualifications of the bidders should be set out in detail in the primary legislation, the PPL.</p> <p>Suspension (debarment) Consider use of alternative term to “complaint” in the</p>

Assessment criteria [1(d) Rules on participation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>PPL A.65.5 Review by the Bureau: establishes a process which may lead to a decision by the Bureau to suspend a supplier from participation in public procurement for a definite or indefinite period (debarment). The details of the process are set out in PPD A.12.</p> <p>The process is triggered when the Bureau receives a notification from a public body of alleged misconduct by bidders or suppliers.</p> <p>The Bureau must investigate the complaint within 15 working days of receipt of such complaint. The complaint may result in debarment of a fixed number of years (between 2 and 6 depending on severity). There is the potential in some cases, including fraud, corruption, collusion [connivance), for permanent debarment. Notice of debarment is posted on the Bureau's website.</p>		<p>suspension/debarment is potentially misleading as the term is commonly understood to refer to procurement review and remedies.</p> <p>Suspension (debarment) Right of referral to Bureau: it appears from the PPL A.12.7 that the trigger for investigation leading to possible suspension/debarment is limited to where a public body notifies the Bureau and that other stakeholders are not afforded the right of referral. Whilst procuring entities are generally best placed to identify problems, the right to referral should be widened in the PPL to cover other stakeholders such as auditors, regulatory authorities, private sector and civil society.</p> <p>There is no clarity on what resources and skills the Bureau has for investigating and proving corruption, bribery, fraud, collusion or coercion. Additionally, it is not clear whether debarment extends to affiliates and parents of debarred entities.</p> <p>Reference to a right of appeal against a debarment decision and venue for appeal should be included in the PPL (primary legislation).</p>		<p>context of suspension/debarment.</p> <p>Clarify and distinguish between the two procedures.</p> <p>Right of referral to Bureau: widen right of referral to cover other stakeholders such as auditors, regulatory authorities, anti-corruption commission, private sector and civil society.</p> <p>Include reference to a right of appeal against a debarment decision and venue for appeal in the PPL.</p>
(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.	The legal framework does not establish rules for participation of state-owned enterprises in public procurement.	Not applicable	Criterion is not met. PPL does not establish rules for participation of state-owned enterprises in public procurement.		Amend PPL to include provisions on rules for participation of state-owned enterprises as bidder to promote fair competition.
(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.	<p>Summary: The legal framework details procedures used to determine eligibility and ability to perform a specific contract. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. Multi-stage procedures are permitted for specified types of contracts and circumstances for use are defined.</p> <p>In general, bidders are required to submit qualification information with their bids. The Federal Standard Bidding Documents (SBD), which are used in the City, provide a section for bidders to demonstrate their qualification against the requirement specified in the bidding document.</p> <p>For more complex procurements, Prequalification proceedings may be used, with an initial evaluation stage focused on evaluation of a bidder's suitability and ability to perform a specific contract (PPD A.19). In this case, only prequalified bidders are invited to submit a tender. PPD A.19(2) provides that prequalification proceedings may be used for procurement of high value or complex works, turnkey contract for works, acquisition of machinery or information technology; supply and installation of goods or equipment of considerable importance and where the cost of drawing up bidding documents is so high that only pre-qualified bidders should participate in the bid.</p>	Not applicable	Criterion is met.		

1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.	<p>Summary: The legal framework establishes the minimum content of the procurement documents and requires that the procurement documents must contain sufficient and relevant information to permit suppliers to respond to the requirement.</p> <p>PPL A.28 lists information which must be included in the Invitation to Bid. It requires public bodies to prepare bidding documents using the standard bidding documents (SBD) developed by the Bureau. Reliance is currently placed on the Federal SBDs.</p> <p>PPL A.29 requires that bidding documents shall contain sufficient information to enable competition among bidders on the basis of complete, neutral and objective terms. PPL A.29 goes on to list required minimum content of the bidding documents.</p>		Criterion is met.		
(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.	<p>Summary: The legal framework requires the use of neutral specifications, cites international norms, and provides for the use of functional (performance) specifications as far as possible.</p> <p>PPL A.21(3)(c) requires technical specifications to invite open competition to be devoid of any statement having the effect of restricting competition.</p> <p>PPL A.21(3)(b) requires technical specifications to be based on national standards where such exist or otherwise on internationally recognized standards or building codes.</p> <p>The PPD A.15.5 requires PEs to prepare specifications based on functional or technical or design requirement that does not restrict competition. The PPD further elaborates that the specifications should be based on Ethiopia's standards or any other standards relevant to the subject of procurement. National standards are issued by the Ethiopian Standard Authority and are applicable in all States.</p> <p>PPL A.21(3)(a) provides that technical specifications shall, as far as possible, be in terms of performance rather than design or descriptive characteristics.</p>		Criterion is met.		
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	<p>PPL A.21(4) provides that there shall be no requirement or reference in technical specifications to a particular trademark, name, patent, design or type or a specific producer/provider. Where this is not possible, the words "or equivalent" must be included in the specification.</p> <p>These provisions are expanded upon in PPD A.15., which specifies that the specification should not be skewed towards, or imply, any specific product model or service provider. In case it is impractical to provide adequate specification without mentioning specific product or brand, the specification should include a phrase "or its equivalent."</p>		Criterion is met.		
(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)	<p>Summary: the PPL does not include a specific provision confirming potential bidders that they are entitled to request clarification. The PPD, on the other hand, does in A.15.12 require public bodies to inform bidders of their right to seek clarification of the procurement documents. It sets out details of how and where such clarification may be made, the timescales for providing responses and a requirement to inform all participating bidders in writing.</p> <p>PPL A.31 provides that the public body may modify the bidding documents in response to an inquiry from a candidate by issuing an addendum which must be communicated at the same time to all candidates who purchased the bidding documents. The time limit for submission of bids may be extended where there is not enough time for bidders to take account of the amendments in their bid.</p>		<p>Criterion is partially met.</p> <p>The right of potential candidates/bidders to seek clarification is not set out in the PPL. This is an important right for bidders and so it is advisable to include at least the principle of the right to seek clarification in clear terms in primary legislation.</p>		<p>Include clear provision in the PPL confirming that potential candidates/bidders have the right to seek clarification.</p>

1(f) Evaluation and award criteria

The legal framework mandates that:

Assessment criteria [1(f) Evaluation and award criteria]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.</p>	<p>Summary: The legal framework requires the evaluation to be objective and relevant. There are clear provisions requiring that criteria, and also methodologies and weightings, where used, are disclosed in advance in bidding documents. The award decision must be made only on the basis of pre-disclosed criteria.</p> <p>PPL A.29(i) requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents. PPD para 15.8 requires public bodies to precisely specify the evaluation and qualification criteria in the bidding documents. The evaluation criteria be based on the objective context and quantifiable and should be to the extent feasible translated into monetary values.</p> <p>The PPD A.15.8 mandates public bodies to precisely specify the evaluation and qualification criteria in the bidding documents. The evaluation criteria should allow achievement of value for money and should be based on objective factors and should be as far as practicable translated into monetary values.</p> <p>PPL A.35(6) provides that in selecting the successful bidder, the public body shall only consider substantially responsive bids and shall evaluate on the basis of the criteria set out in the bidding documents. No criterion shall be used that is not set out in the bidding documents.</p>		<p>Criterion is met.</p>		
<p>(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.</p>	<p>Summary: Objectivity is an underlying principle. The use of price and non-price attributes are permitted and value for money is a consideration in the award of contracts.</p> <p>PPD A.15.8 covers the preparation of bid evaluation criteria (see (a) above). In the case of procurement of consultancy services, the relative weighting ascribed to price must be no less than 50% of the total merit points.</p> <p>PPL A.35(8): There are two bases for award of contract: (1) lowest evaluated bid from among bidders meeting technical requirements; and (2) highest scoring bid against ascribed criteria which may include both quality and cost/price.</p>		<p>Criterion is partially met.</p> <p>While there is the possibility of using price and non-price attributes, life cycle costing is focused on property/assets management.</p> <p>In practice, setting a standard minimum weighting for price criteria may not deliver the best value for money outcome. It is also understood that procuring entities are unclear whether the same minimum weighting should be applied to goods and works procurement. This indicates a need for further clarity and also emphasizes that the use of quality criteria, weightings and methodologies including life-cycle costing requires substantive practical guidance and training for public bodies conducting evaluation.</p>		<p>Consider introducing life cycle costing approach for procurement of Goods, Works and services, including substantive practical guidance and provide practical training for public bodies conducting evaluation using quality and other criteria.</p>
<p>(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.</p>	<p>Summary: Quality is a major consideration in evaluating Requests for proposals for consulting services and clear procedures and methodologies are defined.</p> <p>PPL A.45& A.46 concern the use of the Request for Proposals Method. The selection of consultants can be made in a number of ways but, with the exception of contracts for standard, simple requirements, the focus of evaluation is on qualitative factors.</p> <p>The PPD A.20.10 specifies the factors that should be considered in determining the quality of proposals, which are, relative experience of the firm, proposed methodology, transfer of knowledge, key staff and participation of locals. It provides a minimum 70% technical threshold to consider proposals for further evaluation. The PPD determines the relative weight as 80% for technical evaluation and 20% for price.</p> <p>There are clear and detailed procedures as well as methodologies for assessment of technical capacities in the PPD A.20.</p>		<p>Criterion is met.</p>		<p>See comment at 1(f)(b) on need for substantive practical guidance and training for public bodies using quality criteria in evaluation.</p>
<p>(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.</p>	<p>PPL A.29(i) requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents.</p> <p>PPD A.15.8 expands on these requirements and includes reference to disclosure of methodology and weightings.</p> <p>The Federal SBD include separate section on Evaluation Criteria and Methodology</p>		<p>Criterion is met.</p>		

Assessment criteria [1(f) Evaluation and award criteria]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.	<p>Summary: The legal framework provides that information on examination, clarification and evaluation of bids is not disclosed to participants during the evaluation period.</p> <p>PPL A.36 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced.</p>		Criterion is met.		

1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	<p>Summary: Opening of tenders, immediately following the closing date for bid submission, is a proceeding defined and regulated by the legal framework. Information on time limits and the process must be included in the bidding documents.</p> <p>PPL A.28 and A.29 require the Invitation to Bid/Bidding documents to include information on the place and time for opening of bids, along with an announcement that bidders or their representatives may be present.</p> <p>PPL A.34 requires that, at the time stipulated in the bidding document, the public body shall open all bids received before the deadline and specifies the information to be read out at the bid opening.</p> <p>PPD A.15(18) provides further detail on the process of bid opening, including number of representatives from the procurement unit, the presence so far as possible of a representative of internal audit and others.</p> <p>There are special provisions concerning two-stage tendering and requests for proposals.</p>	Not applicable	Criterion is met.		
(b) Records of proceedings for bid openings are retained and available for review.	<p>Summary: The legal framework details the process for bid opening and requires records of the process to be maintained, with copies of those records to be made available to any bidder on request.</p> <p>PPL A.9(c) lists the responsibilities of the procurement unit as including maintaining complete records for each procurement. PPL A.15 sets out a non-exhaustive list of the records required to be kept.</p> <p>PPD A.15(18)(4) specifies information to be included in the bid opening minutes, being the names of bidders, their bid price and any other salient points. A signed attendance sheet is also required.</p> <p>PPL A.34 (2) requires that a copy of the record of the bid opening is made available to any bidder on request.</p>	Not applicable	Criterion is met.		Introduce a provision in the PPL/PPD requiring public bodies to send the minutes of bid opening to all bidders who submitted bids, as opposed to sharing upon request.
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	<p>Summary: Security and confidentiality of bids until after award of contracts is maintained.</p> <p>PPL A.36 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced.</p> <p>PPD (A.15.16) requires public bodies to prepare and receive bids through a secured 'tender box'. In case the bids do not fit in to the tender box, the public body must assign staff to receive bids against receipts. The PPD further elaborates on the safekeeping of the tender box which should be the responsibility of the procurement team until the bid is opened.</p>	Not applicable	Criterion is met.		
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	<p>PPL A.15(2)(a)) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition."</p>	Not applicable	Criterion is partially met. Legitimate commercial interest is not defined in the PPL, and it is not clear how it is applied in practice		Define the commercial interest for the purpose of non-disclosure of

Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>Legitimate commercial interest is not defined in the PPL, and it is not clear how it is applied in practice.</p> <p>PPL A.15(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body).</p> <p>See 1(k)(a) for comment on impact of this provision on overall transparency of the procurement system. The PPD (A.33.6) prohibits employees or officials from disclosing confidential bidder's information, specifically, information that limits competition, allows unfair advantage, harms the PE unless exceptional authorized by the officials; information relevant to contract implementation; and information related to bids and evaluation results before award is notified.</p>				information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition"
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	<p>PPL A.33 sets out basic provisions concerning the submission and receipt of bid proposals. The PPD includes provisions on submission of bids, including rejection of bids submitted late. The Federal SBDs contain detailed instructions and clear rules on bid submission. For example, SBD for procurement of Information Systems under NCB, Section D Submission and Opening of Bids.</p>	Not applicable	Criterion is met.		

1(h) Right to challenge and appeal

The legal framework provides for the following:

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	<p>Summary: Participants in procurement have the right to challenge decisions or actions taken by the procuring entity in the conduct of public procurement, subject to specified exclusions. In the English language version of the PP, the right to challenge is given to "candidates."</p> <p>Standing to make a complaint PPL A.62(1) provides that a "candidate" shall be entitled to submit a complaint to the head of the public body or the Bureau "against an act or omission of the public body in regard to public procurement...where he believes that such act or omission violates this Proclamation or the directives."</p> <p>As noted earlier, the use of terms candidates and bidders is not always used consistently.</p>	Not applicable	<p>Criteria is partially met</p> <p>PPL Standing to make a complaint: PPL A.73(1) refers to "candidates" having standing to make a complaint. Standing to make a complaint should also be expressed to be available to "bidders".</p>		<p>PPL Standing to make a complaint: Amend PPL to provide clarity and certainty on who has standing to make a complaint.</p>
(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.	<p>Summary: The legal framework allows for challenge to be brought before the Bureau which is a body independent of the procuring entity. The Bureau has authority to suspend the award decision and grant a range of remedies. There is a right of judicial review.</p> <p>Venue for complaint: The complaint must, in the first instance, be submitted the head of the public body (the procuring entity). There is a right to file a complaint with the Bureau where the head of the public body does not issue the decision within the specified time period, or if the complainant is not satisfied with the decision.</p> <p>Bureau independent of the procuring entity: Addis Ababa has not created a Review Board despite the volume of budget, and procurement is higher than the other States that established review Boards (like SNNPR). The PPL assigns the responsibility to hear appeal to the BoF following the initial hearing by the public body. Though it is not in the PP, the BoF has set up a separate Committee to review the complaints and to provide recommendations. The Committee is established pursuant to PPD A.49 and is a body which is independent of the procuring entity. It is composed of 5 members with knowledge and experience of procurement activities as follows:</p> <ul style="list-style-type: none"> • Bureau member - Chair • Chamber of Commerce- Member • Procuring Entities- member 	Not applicable	<p>Criteria is not met</p> <p>PPL The appeal system is not fully independent of the government. Since the appeal mechanism plays critical role in determining the integrity and fairness of the procurement system, the arrangement is better reflected in the primary legislation with authority to make decisions.</p> <p>Right of judicial review is set out in the PPD. This is a fundamental right which should be specified in the primary legislation.</p>		<p>PPL Consider establishing independent review mechanism or consider the option of sharing same review arrangement with the federal and Oromia to access competent service at optimal cost.</p> <p>Qualification requirements, procedures for appointment/dismissal of the Committee members, should be reconsidered to enhance independence of the Committee.</p> <p>Right of judicial review: Amend PPL to refer to right</p>

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<ul style="list-style-type: none"> State Owned Enterprise- Member Procurement and Property Administration Agency- Member Regional procurement works unit - member and secretary <p>Remedies: PPL A.64 provides for a range of remedies. The Bureau may, on the recommendation of the Committee: a) prohibit the public body from acting or deciding unlawfully; b) order the public body to proceed in a manner conforming to the PPL (other than a decision to award or conclude a contract); c) annul in whole or in part, an unlawful act or decision by the public body.</p> <p>Right to appeal against decision of the Board: PPD A.57 refers to a right of appeal to the competent court, though it does not specify which court it is.</p>		<p>Composition of the Committee raises, at the minimum, a lot of questions in terms of independence and impartiality of the parties representing the various stakeholders. Their appointment by the Bureau lacks transparency and independence.</p> <p>Detailed criteria and qualifications of the committee members are missing from the PPL or PPD.</p>		of judicial review and venue for judicial review.
(c) Rules establish the matters that are subject to review.	<p>Summary: The PPL establishes the matters that are subject to review. The bidder's right of review is not available in respect of <u>all</u> acts or omissions of the public body in regard to public procurement and the exclusions from coverage are [significant], severely impairing the effectiveness of the review system.</p> <p>Decisions or actions which are the subject matter of review – and exclusions PPL A.62(1) provides for a right to submit a complaint “against an act or omission of the public body in regard to public procurement...”</p> <p>The right of review is not available in respect of <u>all</u> acts or omissions of the public body in regard to public procurement. PPL A.62(2) provides that the right of review is not available in respect of four matters, the most relevant of which for public procurement are: a) the selection of procurement method, and b) rejection of bids, proposals or quotations pursuant to PPL A.22. PPL A.62(3) & (4) provide that complaints may not be brought after a contract has been signed with the successful bidder, subject to specified conditions being satisfied.</p> <p>PD A.43 elaborates on, and adds to, these exclusions from the right to review to cover special conditions given under PPL A.15 (domestic preferences); complaints submitted late, the selection of bidders for procurement in restricted tendering or RFQ or the evaluation criteria in the bidding document.</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPL A.72 Acts or omissions not subject to the right to review: The exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria, mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p> <p>Alignment between the PPL and PD PPD expands on exclusions from the right to review. All exclusions from right to review should be set out in primary legislation and the PPL and PPD should be aligned.</p>		<p>PPL Acts or omissions not subject to the right to review: Reconsider the exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria which mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p> <p>Alignment between the PPL and PPD PPD expands on exclusions from the right to review. All exclusions from right to review should be set out in primary legislation and the PPL and PPD should be aligned.</p>
(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.	<p>Summary: There are rules establishing time frames for the submission of challenges and appeals. There are also rules for issuance of decisions at the initial review stage, by the head of the public body and for issuance of decisions by the Board, the independent appeals body.</p> <p>Time frame for submission of challenges and appeals: PPL A.63((2) requires the candidate to submit the complaint to the head of the public body within five (5) working days from the date he knew, or should have known, the circumstances giving rise to the complaint</p> <p>Time frame for issuance of decision by the head of the public body: PPL A.63(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons. PPD A.46.4 requires the public body to give the complainant a copy of the decision within five (5) working days from the date the decision was made.</p> <p>Time frame for complaint to the Bureau: PPL A.63(4) If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Bureau. The complaint to the Bureau must be</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPL: Time frames for issuance of decisions of the Board are expressed inconsistently. The PPL and PPD should be aligned.</p> <p>It is not clear if the suspension of the procurement process is notified to all bidders and if so, when.</p> <p>In addition, it is not clear what happens to the suspended procurement process when the head of public body does not respond to the complaint within 5 working days as contemplated in the PPL. Is the suspension automatically lifted or public body should inform all bidders of the lifting?</p>		<p>PPL: Time frames for issuance of decisions of the Bureau: Align time frames in PPL and PPD.</p> <p>PPL should make clear that the suspension of the procurement process should be notified immediately to all bidders who submitted bids.</p> <p>Additionally, the PPL should clarify what happens to the suspended procurement</p>

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
	<p>submitted within 5 five working days from the date on which the decision had been or should have been communicated to the candidate.</p> <p>Time frame for issuance of decision by the Bureau: PPL A.64(5) requires the Bureau to issue its decision within 15 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any. The Bureau is given 3 days from receipt of the Committee recommendation to issue its decision with immediate effect – this gives the Committee 12 days to reach its recommendation.</p> <p>The PPD (A.18.27(5) & (6)) provides for maximum days for signature of the contract following notification appears to recognize that there may be delay due to complaints but falls short of establishing a ‘standstill’ period. [PPD (AA 44.1) (AA 46) mandates a standstill period of 7 days after the notification of award within which contract shall not be signed with the winning bidder.]</p>				<p>process when the Head of public body does not respond to the complaint within 5 working days as required by PPL A.74(4).</p>
<p>(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.</p>	<p>Summary: Applications for appeal and full decisions are not published in easily accessible places. There is no time frame for publication in the legal framework.</p> <p>Publication of appeal decisions is not mandatory in the PPL. PPD (para 54.2) requires the Bureau to make sure that its decision is made available to the applicant and the Government.</p>	<p>Not applicable</p>	<p>Criterion is not met.</p> <p>PPL PPL A.5(3) sets out general principles requiring transparency, fairness and accountability for decisions made in procurement. Failure to publish sufficient information on complaints and decisions is in breach of these principles.</p> <p>PPL Publication of applications and decisions: In the interests of transparency, the legal framework (ideally primary legislation) should require applications for appeal and full decisions to be published in easily accessible places. Presumption should be in favor of full transparency, and access to full text of decisions should not be limited to provision to interested parties on request. The legal framework should specify a timeframe for publication.</p> <p>Notification of decisions to parties: In the interests of efficient operation of the system, the legal framework (ideally primary legislation) should require prompt notification of decisions to parties within specified timescales.</p>		<p>PPL Publication of applications and decisions: Include provision requiring applications for appeal and full decisions to be published in easily accessible places and within a specified time period.</p> <p>Notification of decisions to parties: Include provision requiring prompt notification of decisions to parties within specified timescales.</p>
<p>(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).</p>	<p>Judicial review/right of appeal: PPD A.49 specifies the right of the aggrieved bidder to appeal to a judicial body if it is not satisfied with the decision of the public body and the Bureau.</p> <p>First, the clause itself as drafted as problematic as it leapfrogs from a Public Body to the Court - while the highest administrative body is the Bureau. Second, it does not specify competent court who reviews the Bureau’s decision.</p> <p>It is advisable to include provisions concerning right of appeal in primary legislation.</p>		<p>Criterion is partially met.</p> <p>PPL Judicial review/right of appeal: It is advisable to include a provision confirming the right of appeal, venue for appeal and time limits in primary legislation.</p> <p>If PPD at A.49 is intended as is drafted, i.e., to allow filing of appeals of decisions of a public body to court - without going through the Bureau - it creates inconsistency with the PPL, which establishes a two-tier system of complaints with Head of Public Body as first tier and Bureau as the second. Leapfrogging from Public Body to the Court seems to leave out the role of the Bureau as second-tier reviewer. Some countries have adopted this model, but it is not clear if this is the intention.</p>		<p>PPL Judicial review/right of appeal: Include provision confirming right of appeal, venue for appeal and time limits.</p>

1(i) Contract management

The legal framework provides for the following:

Assessment criteria [1(i) Contract management]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,	<p>PPL A.38(4) states that the procedure for administering contract shall be prescribed by a directive issued by the Bureau.</p> <p>PPD A.28 defines the functions for undertaking contract management which includes ensuring fulfilment of responsibilities, ensuring that supplier/contractor or consultant is fulfilling its responsibility, and providing support to supplier/contractor/consultant to fulfil its contractual responsibilities. The PPD further requires the public bodies to assign a dedicated body to administer contracts or, in the event that the contract is to be administered by different parties, the public body should ensure that each party clearly understands its role and responsibility. The PPD para 6.2 assigns the responsibility for contract management to the procurement unit formed within each of the public bodies. The responsibility for performance monitoring lies with the public body (PPD A.6.19) which defines the functions for undertaking contract management.</p>		Criterion is met.		
(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.	<p>PPD A.28.4 provides that a contract may be amended in the course of its performance, but the amendment must not endanger the interests of the public body and not favor the winning bidder compared to prices offered by the other bidders.</p> <p>PPD A.15(14) requires a public body to include in the bidding documents information on whether it is possible to make a price adjustment to the contract and the condition applying if it is allowed (A.15(4)(2)), an indication that the public body has a right to decrease or increase the quantity of goods of services by up to 20% without changing the unit price offered by the bidder or other terms of the contract.</p> <p>There are also price adjustment provisions for consultancy service contracts (A.15(14)(5))</p>	Not applicable	<p>Criterion is met.</p> <p>The provision on contract amendments and price adjustment are broadly drafted and have the potential to be interpreted widely, to the detriment of competition.</p>		Amend the provisions on contract amendments and price adjustment for more precision and avoidance of unjustified discretion in their application.
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	<p>PPD A.15(27)(3)(d) requires that the signed contract provide for the procedure for resolution of disputes that may arise in the performance of the contract.</p> <p>The Civil Procedure Code A.315(2) provides that “No arbitration may take place in relation to administrative contracts of the Civil Code”, i.e., public bodies are not subject to arbitration.</p> <p>The General Conditions of Contract (GCC) in the Federal SBD include dispute provisions. The PPD para 16.3.1 requires public bodies to prepare bidding documents using the SBDs issued by the Agency (though none exist as of yet). The Federal SBDs GCC clause 26 provides provisions on settlement of disputes including preference for amicable settlement.</p>		<p>Criterion is partially met.</p> <p>As noted earlier under Indicator 1 (a), it appears there is a lack of certainty for public bodies and suppliers as to the correct classification of contracts awarded under the PPL and the impact of this on the availability of arbitration. Arbitration is not appropriate in all cases but for contracts where it is appropriate the legality of its use should be clear. We understand that there is a current review of certain aspects of the Civil Code underway and it is possible that this is already being addressed.</p>		<p>The PPL or PPD should clarify when the arbitration shall be used as a forum.</p> <p>Arbitration would enable parties to settle their disputes using professional arbitrators, who are conversant on the matter instead of ordinary judges who have no specialization in the area of the contract subject matter.</p>
(d) The final outcome of a dispute resolution process is enforceable.	<p>The General Conditions of Contract in the Federal SBD, which are used by PBs in the City, include dispute provision and provide that, in the event of a failure to resolve a dispute, it may be referred for resolution through the Courts. There is no specific provision concerning enforceability of the outcome of a dispute resolution process.</p>		<p>Criterion is partially met.</p> <p>There is no specific provision concerning enforceability of the outcome of a dispute resolution process.</p>		Include a provision concerning enforceability of the outcome of a dispute resolution process.

1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria [Electronic Procurement (e-Procurement)]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.	<p>Summary: The legal framework allows for e-Procurement solutions at a general level, but the implementation of e-GP will require substantial amendments and additions to the legal framework.</p>		<p>Criterion is not met.</p> <p>The PPL provides general permissive provisions for the development of an electronic procurement system. However, it stops there and does not contain any</p>		Initial steps need to be taken to establish e-procurement. Once it begins, there will be a

	<p>PPL A.23 allows the Bureau to authorize the use of electronic means as a method of procurement. In order to implement this, the PPL provides for the Bureau to conduct a study and submit proposals; ensure that public bodies, suppliers and supervising entities have capacity to implement, and authorize the implementation of an electronic system in all or certain procurements.</p> <p>PPD A24.10 provides that public bodies may employ electronic exchange of information while processing procurement by means of the RFQ method (as defined in the PPL), provided that:</p> <ul style="list-style-type: none"> - the electronic information exchange system has security and protection from unauthorized access; and - all potential participants have the knowledge and readiness to use the system. <p>Bidders who are not capable of submitting a quotation through the electronic system are provided with an alternative mechanism to submit quotations</p> <p>It is early days in the introduction of e-GP and much work remains. It has not yet begun in Addis Ababa.</p>		<p>further specific provisions, covering areas needed to operationalize an e-procurement system. In reality, no steps have yet been taken to introduce e-procurement. Currently, the PPL includes provisions throughout the procurement cycle that are relevant for manual system only.</p>		<p>need for review and updating of the PPL and corresponding implementing rules that guide the manual procurement process, to reflect the new practices to be followed when conducting procurement electronically.</p>
<p>(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.</p>	<p>See 1 (j) (a)</p>	<p>Not applicable</p>	<p>Criterion is not met. See 1 (j) (a)</p>		<p>See 1 (j) (a).</p>
<p>(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.</p>	<p>See (a) above in respect of PPD A24.10.</p>	<p>Not applicable</p>	<p>Criterion is partially met . See 1 (j) (a)</p>		<p>See 1 (j) (a).</p>

1(k) Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>[1(k) Norms for safekeeping of records, documents and electronic data]</p>					
<p>(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.</p>	<p>Summary: The legal framework includes a list of procurement records and documents related to transactions, including certain aspects of contract management. Procurement records and documents are prepared and maintained at an operational level by the public body's procurement unit. Procurement records and documents are not available for public inspection.</p> <p>PPL A.9(c) requires the procurement department in a public body to maintain a complete record for each procurement in accordance with PPL A.15(2).</p> <p>PPL A.15 Records of Procurement requires the public body to maintain records and documents. It sets out a non-exhaustive list of information to be maintained. The list in the PPL does not specifically refer to contract management information.</p> <p>PPL A.15(2)(a)) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition."</p> <p>PPL A. A.15(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body.</p> <p>This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p> <p>PPL A.34 on Opening of Bids requires the recording of the announcement of names of bidders, total amount of bids, discounts etc., and that a copy of the record shall be made on request to bidders.</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>PPL A.15 Records of procurement The drafting of PPL A.15 is confusing, particularly the interaction between A.15(2)(a) and A.15(2)(b) and what is, or is not, available for public inspection.</p> <p>PPL A.15(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body. This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p>		<p>There is a need for separate guidance on the identification and managing of information of commercial sensitivity/confidentiality during bid evaluation process and after contract award.</p>

Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.	PPL A.15 Records of Procurement requires the public body to maintain records and documents regarding public procurement for a period of time determined by a Directive issued by the Bureau. PPD A.31 states that this period is specified in the finance administration proclamation and regulation relevant to finance records.	Not applicable	Criterion is met.		
(c) There are established security protocols to protect records (physical and/or electronic).	Unable to find established security protocols to protect records.	Not applicable	Criterion is not met. Unable to find established security protocols to protect records.		Consider establishing security protocol to protect records.

1(l) Public procurement principles in specialized legislation

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

Assessment criteria [1(l) Public procurement principles in specialized legislation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.	Summary: There is no specialized legislation that governs procurement by entities operating in specific sectors, and the legal framework applies to procurement carried out by all public bodies.	Not applicable	Criterion is met.		
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	No such provisions exist at the level of the Region.	Not applicable	Criterion is not met. PPP not yet considered in the Region.		To the extent that PPPs are being initiated in Addis Ababa City, it is imperative that a Directive on PPPs be issued.
(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	No such provisions exist at the level of Addis Ababa.	Not applicable	Criterion is not met. PPP not yet considered in the Region.		To the extent that PPPs are being initiated in Addis Ababa City, it is imperative that a Directive on PPPs be issued.

2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria [2(a) Implementing regulations to define processes and procedures]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	There is a comprehensive Procurement Directive adopted in 2002: Procurement Directive 03/2002. The PPD provides details on the issues covered in the PPL. In some cases, however, there are observed contradictions with the PPL, such as issues exempted from complaint differing between the proclamations and PPDs.	Not applicable	Criterion is partially met. The PPD, on occasions, appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PD (see specific comments elsewhere in this assessment).		Alignment between PPL and PD Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, that PPD should not include provisions that materially limit or inappropriately expand the provisions of the PP.
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	The PPD is a document in two parts with the main section and annexes found in separate documents. The annexes provide different templates including reporting templates, bid security etc. It also provides table on bid floating times, a list of common user items, etc.	Not applicable	Criterion is partially met. The Procurement documents including the PPD are not accessible electronically.		Consider using the federal PPA's website for the short term and upload procurement information including the legal documents for public accessibility. Consider

Assessment criteria [2(a) Implementing regulations to define processes and procedures]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	<p>PPL A.67(1) provides that the Addis Ababa City Government Cabinet may, where necessary, issue regulations for the implementation of the PPL.</p> <p>PPL A.67(2) provides that the Bureau may issue directives implementing the provisions of the PPL.</p>	Not applicable	<p>Criterion is partially met.</p> <p>The responsibility for maintenance of the secondary legislation is clearly established. The secondary legislation is updated from time to time. However, as discussed above, the PPD on occasions appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD.</p>		<p>establishing own website for the long term.</p> <p>See recommendation under 2 (a) (a).</p>

2(b) Model procurement documents for goods, works, and services

Assessment criteria [2(b) Model procurement documents for goods, works, and services]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.	<p>Summary: There are model procurement documents for use for a wide range of goods, works and services including consulting services at Federal level which are used in practice. None are provided by the Bureau.</p> <p>Standard Bidding Documents: The PBs in the City Administration use the Federal Standard Bidding Documents (SBD) for goods, works, consultancy services and non-consultancy services. In each case, there are separate SBDs for international competitive bids (ICB) and national competitive bids (NCB). There are also ICB and NCB SBDs for the procurement of goods under framework agreements and for procurement of Information Systems, Textbooks and Health Sector Goods. There is no SBD for procurement of goods where no framework agreement is used.</p> <p>The SBDs include Instructions to Bidders with information on the bidding process including evaluation and award, Statement of Requirements, General and Special Conditions of Contract, and Bidding/Contract Forms including the bid submission sheet.</p> <p>Standard forms for bid opening and evaluation: In addition, there are standard templates covering invitation to bid, bid opening and evaluation. These include a bid opening checklist, minutes of bid opening, report on bid submissions, and bid evaluation report. There is also a sample letter of notification of award.</p> <p>But there is no official instruction issued by the Agency mandating PBs to use the Federal SBD.</p>	Not applicable	<p>Criterion is partially met.</p> <p>There are no SBDs for all categories of procurement. Use of the federal SBDs is not mandatory.</p>		<p>Provide SBDs for all categories of procurement which are proportional to the market in each sector. Consider use of national SBDs in consultation with the federal PPA and other regions to ensure consistency. Provide adequate guidance and official instruction mandating use of SBDs.</p>
(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.	<p>PPL A.29 sets out the mandatory content of the Bidding Documents.</p> <p>PPD A.15.3.2 provides that public bodies must use the standard bidding documents prepared by the Bureau without making any changes in the Instruction to Bidders and General Condition of Contract section of the SBDs (as already stated, reliance is placed on Federal SBDs). Changes to the procurement schedule (equivalent of data sheet) and special conditions of contract are permitted to suit the context.</p> <p>The assessment was not provided with any official authorization issued by the Bureau mandating the use of the federal SBDs.</p>	Not applicable	<p>Criterion is partially met.</p> <p>Please see the gap under 2 (b) (a).</p>		<p>Please see the recommendation under 2 (b) (a).</p>
(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	<p>PPL A.12(4) Functions of the Bureau: provides that the Bureau is responsible for preparing, updating and issuing authorized versions of the Standard Bidding Documents, procedural forms and other attendant documents.</p> <p>The Bureau has not issued SBDs nor official authorization to use the federal SBDs.</p>	Not applicable	<p>Criterion is partially met.</p> <p>Please see the gap under 2 (b) (a).</p>		<p>Please see the recommendation under 2 (b) (a).</p>

2 (c) Standard contract conditions

Assessment criteria [2 (c) Standard contract conditions]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	The Federal SBDs include standard contract conditions for works, goods, consultancy services and non-consultancy services contracts. There are both general conditions of contract and special conditions of contract. PPL A.27 Bidding Documents requires the bidding documents used by public bodies to include the general and specific conditions of contract. PPD 18.7.2 provides that public bodies must include the general conditions of contract in bidding documents without making any changes. But since the Bureau has not officially authorized use of the federal SBDs, the application of this provision is not mandatory.	Not applicable	Criterion is partially met. Please see the gap under 2 (b) (a).		Please see the recommendation under 2 (b) (a).
(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	The Federal standard general contract conditions contain provisions which are consistent with internationally accepted practice including defining the parties to the contract, their respective obligations, assignment and sub-contracting, contract changes, payment provisions, liability, dispute and termination. PPD A.37.4 Contract amendments: The drafting in the procurement Directive is too wide. It has the potential to be interpreted widely to the detriment of competition). The legal documents do not specify the review and approval process for contract amendment.	Not applicable	Criterion is partially met Use of the federal SBDs is not mandatory.		See 2 (b) (b). Specify the procedure and approval authority on contract amendment in the legal documents.
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	The standard contract conditions are an integral part of the Federal SBDs (PPL A.29(e)), which are included in the Bidding Documents issued to candidates. Charge for bidding documents: Public bodies may charge candidates for bidding documents at a price not exceeding the cost of reproduction and delivery of those documents to the candidate (PPL A.30(1) and PPD A.15.10).	Not applicable	Criterion is partially met. Use of the federal SBDs which includes standard conditions of contract is not mandatory.		

2 (d) User's guide or manual for procuring entities

Assessment criteria [2 (d) User's guide or manual for procuring entities]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.	Addis Ababa City Administration published a procurement manual (2011), which is comprehensive.	Not applicable	Criterion is partially met. The Manual elaborates on the procurement procedures process but in some cases, it expands upon provisions in the PPL or PPD or introduces provisions which are properly placed in primary or secondary legislation. Specific examples are identified through this assessment.		The Manual should be aligned with the PPL and the PPD.
(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	PPL A 12.4 assigns the responsibility to issue SBDs, procedural formats, and any other attendant documents to the Bureau.		Criterion is partially met. The responsibility for maintenance of the Manual is clearly established. The Manual has not been updated. The Manual appears to elaborate on the provisions to expand on the PPL and PPD. There is not always full alignment between the Manual, and the PPL and the PPD.		The Manual should be aligned with the PPL and the PPD and should be updated.

3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

3(a) Sustainable Public Procurement (SPP)

Assessment criteria [3(a) Sustainable Public Procurement]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	There is no evidence of a policy/strategy in place to implement SPP in support of broader national policy objectives. There is, however, in place an incentive scheme for the benefit of MSEs.		Criterion is partially met. There is no SPP strategy for promotion of broader national and regional objectives. The MSEs scheme doesn't include all MSEs that fall under the category.	✓ Yes	Develop a policy for promotion of sustainable procurement in accordance

			The detail description is available under sub indicator 9 (a) (c).		with the Transformation and Growth Agenda in the region.
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalize, facilitate and monitor the application of SPP.	There is no evidence of an SPP implementation plan being in place.		Criterion is not met. See gap under 3 (a) (a).	✓ Yes	Develop a policy for promotion of sustainable procurement in accordance with the Transformation and Growth Agenda in the region.
(c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.	Summary: The legal provisions address “lifetime approach” and environmentally friendly procurement only at a high level – see 3(a) below. There is also an incentive to use locally manufactured goods/ local contractors etc. and MSEs, which is intended to provide jobs to young graduates – see 1(d)(b) above. PPD A.15.2 provides preferences to goods manufactured locally, local contractors, Consultants and MSEs as follows: procurement of drugs and medical equipment 25% price preference; other procurement of goods 15%; on works procurement and consultancy services 7.5%. In addition, 3% is added to the preference in respect to MSEs.		Criterion is partially met. Sustainability provisions don’t cover all aspects of sustainable procurement and all stages of the procurement cycle.	✓ Yes	Consider introducing sustainability provisions based on adequate study.
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	Summary: The legal provisions address “lifetime approach” and environmentally friendly procurement only at a high level and does not address the issue of well-balanced application of sustainability criteria to ensure value for money. PPL A.5 provides that one of the principles of procurement is to ensure value for money in the use of public funds. PPL A.57 requires heads of public bodies to adopt a “life-time approach” to the management of public property. This means a system which takes into account all associated activities and costs including acquisition, maintenance, consumption, disposal and deletion. Similar general provisions are not included in the PPL in the context of public procurement. PPD A.11(f) requires a public body to ascertain that the procurement requirement in no way harms public safety and environmental protection.		Criterion is not met.	✓ Yes	Ensure that the incentive scheme to MSEs does not have negative impact on other social objectives and value for money. Consider a life cycle costing approach in the procurement and provide adequate guidance.

3(b) Obligations deriving from international agreements

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

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) clearly established	As explained under Indicator 1(a)(a), the PPL confirms in A.6 that to the extent that the PPL conflicts with an obligation of the Region under, or arising out of, an agreement with one or more states or with international organizations, the provisions of that agreement shall prevail.	Not applicable	Criteria is partially met The PPL is silent in respect to international obligations attaching to funds passed on to the Region by way of an agreement entered into by the Federal Government. Given that it is the federal government that enters into international agreement, it is important to provide clear provision in the primary legislation.		Consider introducing a provision regarding international agreement signed by the federal government.
(b) consistently adopted in laws and regulations and reflected in procurement policies.	Procurement framework does not make mention to any international agreement or obligations arising from such agreements. Similarly, it is not clear from where the thresholds for international competitive bidding are coming. Ethiopia is a member to the Agreement Establishing the African Continental Free Trade Area (AfCFTA). Member States of AfCFTA are working on harmonization of public procurement policies. Accordingly, a continental procurement policy is planned to be developed to ensure that procurement policies are in harmony. AfCFTA will develop a model law that can be adopted by member states. Ethiopia signed the United Nation Convention against Corruption (UNCAC) on 10 December 2003, and through Proclamation no 544/2007 on 26 November 2007. UNCAC calls for: <ul style="list-style-type: none"> Article 9 (1) (a) of UNCAC, calls for the “public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders”. 	Not applicable	Criterion is partially met. The international agreements are adopted into laws through proclamation ratifying the agreements. However, the procurement policies are not updated for consistency. While UNCAC calls for a defined level of transparency, obligations stemming from these laws are not fully reflected in the specific laws and implemented in practice. The procurement legislation requires disclosure of procurement notices and contract award above a specified threshold, however, the procurement framework does not mandate adequate publication and disclosure of procurement related documents, information, and decisions.		Amend the legislation to introduce the level of transparency at a minimum as recommended for different indicators of this assessment and for compliance with UNCAC, also in practice.

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
	<ul style="list-style-type: none"> Article 9 (1) (b) of UNCAC, calls for the “establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication”. <p>The African Union Convention on Preventing and Combating Corruption is another international agreement with impact on procurement. Member states of this Convention undertake to adopt legislative measures to create, maintain and strengthen their procurement system and management of public goods and services. The UN Convention for Anti-Corruption provides that parties undertake to establish appropriate systems of procurement based on transparency, competition, and objective criteria to prevent corruption.</p> <p>In addition, Ethiopia is also a member state of the African Union whose headquarters are hosted by Ethiopia in Addis Ababa. As its member, Ethiopia can benefit from the AU’s work, for example of the New Partnership for Africa’s Development (NEPAD) Agency, which is the implementing arm for the AU’s Agenda 2063 development strategy. NEPAD’s structure includes several committees that are complemented by various panels, such as procurement and recruitment as well as directorate and division level quality assurance task teams.</p>		UNODC carried out a review of the implementation by Ethiopia of the UNCAC Convention. The government is currently preparing a response to the Country Review Report of Ethiopia by UNODC.		

Pillar II. Institutional Framework and Management Capacity

4. The public procurement system is mainstreamed and well-integrated into the public financial management system

4(a) Procurement planning and the budget cycle

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

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	<p>PPL A.14 requires public bodies to prepare an annual procurement plan that must be approved and shared to the Bureau by a specified date.</p> <p>The PPD provides a dedicated section (Section 3) to the preparation of procurement plans, identifying, collecting and arranging needs, selection of procurement methods, scheduling, content of the plan, approval, and update of the plan and its publication. Accordingly, the annual plan must be approved and shared with the relevant work units including the Bureau.</p> <p>In practice, the budget preparation process is informed by the Medium-Term Expenditure and Fiscal Framework (MTEFF), which is prepared in the BoF and approved by the council for 3 years on a rolling basis and updated each year to accommodate changes. Based on the MTEFF, the BoF allocate budget ceilings to PBs, which marks the beginning of the actual budget preparation process. The PBs come up with their priority projects and required budget. The budget estimation depends on historical price data and does not benefit from credible feasibility studies and/or updated information acquired through market research. After the budget is approved, PBs prepare Procurement plans and share them with the regional PPA, which shows that there is no link between the procurement plan and the budget preparation process.</p>	Not applicable	<p>Criterion is partially met.</p> <p>There is no requirement and practice of preparing a typical procurement plan (annual or multi-year) to inform the budget preparation process. To a certain extent, information of a procurement planning nature (e.g., cost estimate, market analysis, scheduling), including project feasibility studies, is considered in the budget preparation process.</p> <p>There is no legal requirement to submit a feasibility study and its independent verification for quality and realism.</p> <p>The annual procurement plan as required by the PPL and prepared by the Procuring entities is shared with the Regional regulatory agency after the budget has been approved and has no influence on the budget decision.</p>		<p>More explicit provisions that demand the integration of budgeting with procurement plan should be considered.</p> <p>Enacting and implementing the Public Project Administration and Management System Proclamation would help to integrate the budgeting and PPL process, at least for major projects.</p>
(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).	<p>The Budget Administration Directive requires public bodies to consider financial requirements for ongoing and new programs while preparing their annual budget requirement. In general, the provisions in the Directive are followed by the public bodies.</p> <p>During budget implementation, the PBs submit three months’ cash flow requirements, which is updated monthly on a rolling basis. The PBs are also required to submit copies of payment documents, including invoices and certificates, to support payments of ETB 1,000,000 and above. This hampers public bodies’ ability to effect payment timely.</p>	Not applicable	<p>Criterion is partially met.</p>		Streamline the budget transfer process from BoF to PBs.

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.	<p>Finance administration proclamation Article 60 (2) and (3) requires public bodies to submit quarter and annual physical and financial execution reports. All of the visited public bodies consistently follow the directive and submit monthly budget utilization report against each expenditure item. They prepare monthly budget utilization reports and submit to the BoF up to the 15th day of the following month. The PBs also submit annual budget utilization reports to BoF. The online IBEX systems implemented by the public bodies provide the BoF access to the budget utilization of the public bodies.</p> <p>After closing of the financial year, the BoF submits reports on the budget execution to the executive council and the state council before the end of the next fiscal year against all budget lines.</p>		Criterion is met.		

4(b) Financial procedures and the procurement cycle

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

Assessment criteria [4(b) Financial procedures and the procurement cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	<p>There is a requirement only to abstain from contract signing, not from solicitation, before funds are available.</p> <p>The Financial Administration Proclamation 16/2009 A.33 Commitments, provides that no contract or other arrangement shall be entered into by any public body unless there is sufficient unencumbered balance from the budget to discharge any debt incurred during the fiscal year in which the contract or other arrangement is made. It goes onto provide that for long-term contracting lasting more than one fiscal year the ascertainment of budget appropriated for the first fiscal year of the project shall be sufficient.</p> <p>This Proclamation does not, on the other hand, provide that no solicitation may take place before funds are certified available.</p> <p>There were cases in which PBs initiated procurement activities for big projects (like roads) before budget was approved.</p>	Not applicable	Criterion is not met. The Proclamation provides that no contract shall be signed before certification of availability of budget and not before solicitation of tenders. The legal requirement should look into, and address, the reputational risk and transaction cost associated with unsuccessful procurement in case of lack of funds at the time of contract signing.	✓ Yes	Consider introducing an explicit provision that provides that the soliciting tenders should not take place without certification of budget availability.
(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.*	<p>PPD (A.36-38) sets out the obligations to pay in a timely fashion and sets out a procedure to be followed in processing payment for long-term works contracts.</p> <p>The City's disbursement directive no. 5/2003 Article 9 provides detailed descriptions including required documentary evidence in processing payment which includes contract/purchase order, inspection report, Supplier invoice, and goods receiving note.</p> <p>The PPD section 8 sets out payment procedures including the opening and administration of Letters of Credit. For works contracts, it specifies that the Engineer shall complete the inspection work within 7 working days after receipt of the payment request form the contractor. And the public body must make payment within 14 working days after the payment is certified and submitted to it. The public body is responsible for payment that is delayed without adequate reason.</p> <p>However, the SBD Article 59 (3) of the SBD – Works (ICB) provides 90 days to effect payment in works contracts, which is not consistent with the timeframe specified in the PPD. Besides, the payment procedures are not publicly available for potential bidders/suppliers except for the provisions included in the SBDs.</p>	Not applicable	Criterion is not met. In most cases, the time for payment in contract documents goes beyond the time specified in the PPD. The payment procedure for processing of invoices and authorization of payments is not publicly available and clear to potential bidders.	✓ Yes	Streamline the payment process to improve the timely payment of invoices. Consider publishing payment procedures on websites for easy access to the bidding community and the public.
// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.		On average, only 16 % of the invoices were paid on time. None of the PEs covered in the assessment paid full invoices on time. Half of the PEs covered in the assessment paid none of the payment invoices on time.			

5. The country has an institution in charge of the normative/regulatory function

5(a) Status and legal basis of the normative/regulatory institution function

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

Assessment criteria [5(a) Status and legal basis of the normative/regulatory institution function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities' formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	Summary: PPL A.11 assigns the normative/regulatory functions to the Bureau. (See 5(b) below). The procurement volume in the AA City Administration is higher than the Regions that have established an independent regulatory body (SNNPR). However, the regulatory function in AA City Administration is organized as a department /Directorate in BoF and lacks dedicated management focus and resource.	Not applicable	Criterion is partially met. The regulatory function in AA City Administration is organized as a department /Directorate in BoF and lacks dedicated management focus and resource.		Consider establishing a dedicated regulatory function.

5(b) Responsibilities of the normative/regulatory function

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


Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) providing advice to procuring entities	PPL A.12(1) Bureau function: to advise the City Government on public procurement policies, principles and implementation, and provide technical assistance to the public bodies of the City Government.	Not applicable	Criterion is met.		
(b) drafting procurement policies	PPL A.12(1) Bureau function: to advise the City Government on public procurement policies, principles and implementation.	Not applicable	Criterion is met.		
(c) proposing changes/drafting amendments to the legal and regulatory framework	PPL A.12(2) Bureau function: monitor and report to the City Government, initiate amendments of laws and implementation of system improvements.	Not applicable	Criterion is met.		
(d) monitoring public procurement	PPL A.12(2) Bureau function: to monitor and report to the Regional Government on the performance of the public procurement system.	Not applicable	Criterion is met.		
(e) providing procurement information	Not specifically provided for in the PPL. However, PPD (A.6.1.23) assigns the responsibility of providing procurement information, except for information restricted by the PP, to the procurement unit in the public bodies.	Not applicable	Criterion is met.		
(f) managing statistical databases	PPL A.12(10) Bureau function: to set up, develop, maintain, and update a database that covers the entire spectrum of public procurement and property administration.	Not applicable	Criterion is met.		
(g) preparing reports on procurement to other parts of government	PPL A.12(15) Bureau function: to submit quarterly and annual reports to the City Government regarding the overall functioning of the public procurement administration and provide such data as the Minister requests.	Not applicable	Criterion is met.		
(h) developing and supporting implementation of initiatives for improvements of the public procurement system	PPL A.12(2) Bureau function: implementation of system improvements. PPL A.12(11) Bureau function: develop policies and maintain an operational plan on capacity building both for institutional and human resource development.	Not applicable	Criterion is met.		
(i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement	PPL A.12(4) Bureau function: prepare, update and issue SBDs, procedural forms and other attendant documents (not yet done). As regards the integrity training programs, the responsibility lies with the State Ethics and Anti-corruption Commission, which, among other things, is in charge of overall responsibility for educating citizens on integrity and corruption matters. Ethic officers in public bodies are responsible to coordinate with the City Administration's Ethics and Anti-Corruption Commission in providing integrity training relevant to the public body.	Not applicable	Criterion is met.		
(j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation	PPL A.12(3) Bureau function: in collaboration with competent authorities, ensure the setting of training standards, competence levels, certification requirements, and professional development paths.	Not applicable	Criterion is met.		

Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
and certification schemes for the profession)					
(k) designing and managing centralized online platforms and other e-Procurement systems, as appropriate	PPL A.23 provides that the Bureau shall conduct a study and submit a proposal concerning an e-GP system and ensure that public bodies, suppliers, and supervising entities develop the necessary capacity. No action appears to have been taken to date.	Not applicable	Criterion is met.		

5(c) Organization, funding, staffing, and level of independence and authority

Assessment criteria [5(c) Organization, funding, staffing, and level of independence and authority]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.	PP: The functions are assigned to the Bureau. However, the BoF delegated the role to the Public Procurement Administration Directorate organized under BoF. The Directorate is responsible for providing the procurement regulatory functions in the City Government. The Head of the Directorate is assigned by the Head of BoF.	Not applicable	Criterion not met. The Regulatory function is not organized at the appropriate level of structure and the Head has too low a level for authoritative standing in the City Administration.	✓ Yes	Consider establishing an independent procurement regulatory body.
(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.	There is no provision that secures allocation of financing for regulatory function. The function is organized as a unit under BoF.		Criterion is not met	✓ Yes	Consider establishing a dedicated management structure to carry out regulatory function.
(c) The institution's internal organization, authority and staffing are sufficient and consistent with its responsibilities.	The PPL assigns the regulatory function to BoF. However, the function is delegated to a unit under BoF, which is the Public Procurement Administration Directorate. The directorate technically leads in all procurement regulatory functions assigned to the Bureau. Considering the huge volume of procurement in the AA City Administration, the procurement regulatory function is not organized with adequate institutional capacity and structure. The Directorate is organized under three teams: the Public Procurement Audit and Supervision Team, Public Procurement and Property Disposal Misconduct and Compliant Review and Resolution Team, and Public Procurement Training, Technical Support and Analysis Team. However, the key responsibilities such as research, policy, advisory service, updating/amending procurement laws and SBDs have no dedicated team/staffs and, as a result, are not being performed adequately or at all. At the time of the assessment, only half (15 out of 30) of the approved positions in the Directorate were filled.		Criterion is not met The unit responsible for regulatory function has no adequate organizational structure and staffing.	✓ Yes	See recommendation provided under 5 (c) (a).

5(d) Avoiding conflict of interest

Assessment criteria [5(d) Avoiding conflict of interest]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.	Conflicts of interest – institutional The objectives, functions and activities of the Bureau are wide-ranging, but this mix of duties and functions is incompatible in many respects, and, in absence of clear rules on separation of duties, the system/structure currently in place is insufficient to avoid conflicts of interest. More specifically, the Bureau considers and decides on requests for use of non-standard procedures (PPL A.12(5)), but also has responsibility for auditing public bodies' compliance with the procurement rules (PPL A.12(9)) and enforcement (PPL A.62(1)); the Bureau is responsible for operating and maintaining the supplier's list (PPL A.12(8)), but also for review and decisions on complaints concerning the conduct of suppliers (PPL A.12(7)), maintenance of the suspension/debarment list (PPL A.11(10)), and enforcement of non-participation of suspended (debarred) suppliers (PPL A.12(17)); the Bureau is involved in procurement processes – advice, assistance, and authorization – but it also provides, establishes and supports the Committee for reviewing complaints (PPD A.49). Rules of Ethics and Conflicts of interest - personal	In the private sector survey, 49 respondents (31 skipped), who operate in Addis Ababa, to the question whether there is a problem with conflict of interest in procurement processes responded as follows:  As shown on the above graph, 57% respondents think that the conflicts of interest are obvious or	Criterion is not met The functions and duties of the Bureau are wide-ranging with insufficient separation of duties to avoid actual or perceived conflicts of interest. For example, regarding procurement, the BoF is given the functions of auditing and monitoring. Whilst auditing would normally feed into a monitoring function, the monitoring function encompasses a much broader need for system measurement and analysis. Given the significance of procurement in the City administration, it appears that the regulatory role including responsibility for monitoring warrants separate and dedicated management structure. With regard to procurement audit, there are other authorities responsible for auditing who have more		Ditto Restructure the regulatory function to provide adequate capacity and avoid actual or perceived conflict of interest. Consider reviewing and clarifying the definition of responsibilities among the institutions for best efficiency and avoiding overlap. For procurement regulatory function (currently carried out in the BoF), priority may be given preferably to the monitoring function which

Assessment criteria [5(d) Avoiding conflict of interest]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
	PPL A.24 sets out basic Rules of Ethics in Public Procurement, subject to details to be specified in a Directive to be issued by the Head of Bureau. PPL A.24(1)(a) requires persons engaged in public procurement to observe the obligation to notify of any actual or possible conflicts of interest.	abundant. 43% respondents think that the regulatory institution at Addis Ababa is free from conflict of interest or that it is rarely a problem. It is noted, though, that some respondents also operate in other Regions and the federal level and their response may have also considered regulatory institutions across the country. Out of 45 respondents, 56% responded that they experienced a situation where the regulatory institution faced a conflict of interest giving the following reasons (33 respondents indicated the reason): Unclear separation of duties between institutions: 45% Unclear competencies of officials: 39% An official positions used for private advantage: 67% An official's family or other personal relations: 33% An official's political affinities: 48% (more than one answer was allowed)	staff, more capacity, and more knowledge of auditing in general. They may not have sufficient capacity in terms of procurement auditing, but that can be learned or provided. Building and maintaining auditing capacity within the Regulatory function sufficient to provide more than superficial audit reports (of a limited number of entities/contracts) absorbs a good deal of resources and leads to some duplication.		will also require new approaches, capacity, and possibly tailored software to allow for the collection and analysis of data and production of system reports.

6. Procuring entities and their mandates are clearly defined

6(a) Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) Procuring entities are clearly defined.	Definitions are clear and explained under Indicator 1(a)(b) above. While the definition of "public body" could arguably encompass a wide range of entities, it is unclear as to the coverage of utilities and public enterprises/state owned enterprises, resulting in different perception or practical realities. Also, a list of all public bodies subject to the PPL is not published anywhere. AA City Administration issued Pool Administration Directive No 1/2006 which describes the centralized procurement structure at Sub City and Woreda level. It indicates that the Finance offices consolidate requirements and carry out procurement through a competitive procedure. However, the arrangement is not specified in the primary document. See notes at indicator 1(a)(b) for more detailed discussion.	Not applicable	Criterion is partially met. See gap analysis at 1(a)(b). There is no published list of all public bodies subject to the PPL. The Pool arrangement at sub city and woreda level is not specified in the primary document.		It should be considered that the PPL provides a more complete and elaborate definition of "public body". Also, it should be considered to publish the full list of public bodies subject to the PPL. This would already increase the certainty on the scope of entities included within the scope of the PPL. Specify the pool structure (Centralized procurement arrangement) in the primary document.
(b) Responsibilities and competencies of procuring entities are clearly defined.	There is no single list of responsibilities and competencies of procuring entities, but their responsibilities and competencies are set out in the PPL. The Responsibilities of the Heads of Public Bodies are listed at PPL A.8. The position of Head of Public Body itself is not defined in the PPL. The Duties and Responsibilities of the Procurement and Property Administration Unit within the public body are listed in PPL A.9. PPL A.10 Accountability: confirms that heads of public bodies, heads and staff of procurement administration units and endorsing committees are accountable for their actions. Please see 6 (a) (a) regarding procurement responsibilities at local level.	Not applicable	Criterion is partially met. See gaps under 6 (a) (a).		See recommendation under 6 (a) (a).
(c) Procuring entities are required to establish a designated, specialized	The PPL requires Heads of public bodies to establish a Procurement and Property Administration Unit whose duties and responsibilities are listed at PPL A.9.	All 224 Public Bodies including 119 woredas, 10 sub cities, and 14 revenue authority Branch offices that	Criterion is partially met.		

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>procurement function with the necessary management structure, capacity and capability.*</p> <p><i>// Minimum indicator // *</i> Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - <i>procuring entities with a designated, specialized procurement function (in % of total number of procuring entities).</i> Source: Normative/regulatory function.</p>	<p>A.10 of PPL "Accountability" provides that staff from the procurement unit staff, head of such unit shall be accountable for their actions in accordance with the PPL and PPD.</p> <p>The accountability appears to stop at the technical level of the public body.</p>	<p>follow centralized procurement arrangement, have a designated, specialized procurement function.</p>	<p>Capacity and capability of the procurement function of public bodies vary and in many cases are insufficient.</p>		<p>Carry out regular audit to assess structure, capacity and capability of the procurement function of the public bodies to discharge their responsibilities.</p>
<p>(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.</p>	<p>The PPD A 6 specifies that the Finance, Procurement and Property Administration Core Process reviews and approves procurement decisions below the threshold specified in the PPD A 23.2.</p> <p>The PPD A 23.2, states that the Head of the PB or his/her delegate approves procurement decisions below the following threshold: Procurement of Works Birr 200,000, Goods Birr 75,000, Consultancy Birr 50,000, and Services Birr 60,000. However, the procurement legal documents do not specify the procurement decision authority above the threshold specified above.</p> <p>Normally, the Head of public bodies delegates this authority to the Head of the Procurement Directorate which is a mid-level management structure in public bodies. Thus, lower-level units do not have procurement delegation.</p>		<p>Criteria is not met.</p> <p>Decision making authority is not delegated to lowest competent level consistent with risks. The legal documents do not specify the decision-making authority for high-value procurements above the specified threshold.</p>		<p>Ensure that procurement decisions are expedited through delegation to the appropriate level of structure. Consider specifying decision making authority in the legislation to explicitly show the body authorized to make procurement decisions for high-value procurement.</p>
<p>(e) Accountability for decisions is precisely defined.</p>	<p>PPL A 10 specifies accountability for decision making. But the accountability provision is limited to few actors only - staff or head appointed to lead procurement and property administration units and members of the procurement endorsing committee in public bodies. Other actors are not covered in the accountability provision.</p>	<p>Not applicable</p>	<p>Criterion partially met.</p> <p>The accountability provision is limited to few actors and doesn't include all actors that are directly or indirectly involved in procurement.</p>		<p>Consider expanding accountability provisions to include all actors that are directly or indirectly involved in procurement decisions.</p>

6(b) Centralized procurement body

Assessment criteria [6(b) Centralized procurement body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The country has considered the benefits of establishing a centralized procurement function in charge of consolidated procurement, framework agreements or specialized procurement.</p>	<p>Yes. See 6(b) below.</p>	<p>Not applicable</p>	<p>Criterion is met.</p>		
<p>(b) In case a centralized procurement body exists, the legal and regulatory framework provides for the following:</p> <ul style="list-style-type: none"> • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is precisely defined. • The body and the head of the body have a high-level and authoritative standing in government. 	<p>Chapter Eleven of the PPL provides for "Special Procurement", which includes: (i) Large Value Procurement, and (ii) Procedure for Framework Contract. For that purpose, the PPL requires establishment of a central body. More specially:</p> <p>PPL A.52(1) provides that a central body shall be established, by Regulation of the City Government Cabinet, to be in charge of large value procurements having City-wide significance, and procurement of supplies for which a demand is shown by more than one public body.</p> <p>PPL A.53(2)(c) provides that the central body set up in accordance with PPL A.52(1) shall conclude and administer framework contracts in the manner prescribed in the PPL and by a Directive issued by the Head of the Bureau.</p> <p>Regulation 55/2013 for the establishment of the Public Procurement and Property Disposal Agency of the Addis Ababa City Government establishes the Public Procurement and Property</p>	<p>Not applicable</p>	<p>Criterion is met.</p>		

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [6(b) Centralized procurement body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>Disposal Agency (PPPDSA) to carry out procurement of common user items, goods and services which have national strategic significance.</p> <p>PPD A.25 sets out details on the special procurement of common user items by an agency to be established by law using framework agreements, and there are related obligations on public bodies to inform and cooperate with that agency.</p>				
(c) The centralized procurement body's internal organization and staffing are sufficient and consistent with its responsibilities.	<p>The Public Procurement and Property Disposal Service is led by the General Manager who directly reports to the Head of the BoF. There are five main units under the General Manager: Procurement & Contract Administration, Finance, Human Resources, Planning and Budget and Property Disposal units.</p> <p>The Procurement and Contract Administration unit is responsible for the procurement operations and organized into the Public Procurement Directorate and Contract Administration Directorates.</p> <p>The Procurement Directorate is responsible for processing all framework and strategic procurements on behalf of the public bodies, while the Contract Administration Directorate is responsible for the contract preparation and administration. At the time of the assessment, the two Directorates were adequately staffed with a total of 67 that filled 93% of the approved positions.</p>	Not applicable	Criterion is met.		

7. Public procurement is embedded in an effective information system

7(a) Publication of public procurement information supported by information technology

The country has a system that meets the following requirements:

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	There is no easily accessible media of wide circulation used for publication of procurement information. Article 13 of the procurement directive provides options for the BoF to publish the aggregate procurement plan received from the public bodies or facilitates the public bodies to publish their procurement plans of high value on the Bureau's website. But the BoF so far has no experience of publishing the procurement plans received from the public bodies. None of the public bodies use a website or other easily accessible information system for publication of procurement information.	Not applicable	Criterion is not met. Information on procurement is not accessible to the public.		In the short term, the Bureau should discuss and consider the use of the federal PPA's website as a central portal and ensure that documents are published and made accessible to the public. In the long term, the City administration/Bureau should consider developing its own website.
(b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.	There is no integrated or centralized portal used for publication of procurement information. The assessment team has not been able to come across and access a website established by the Bureau.		Criterion is not met. There is no integrated information system or online portal used at regional or national level.		See the recommendation provided under 7 (a) (a).
(c) The information system provides for the publication of: * <ul style="list-style-type: none"> • procurement plans • information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions 	No. See 7 (a) (b).	While there is no centralized online portal or website to publish procurement information, assessment was made of what procurement information is published through other means. The quantitative assessment has shown that none of the PEs publish procurement plans. The only procurement information PEs publish is bid opportunities in the national newspaper. For the contracts covered in the assessment, 74% of procurement opportunities were published in the national newspaper.	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See the recommendation provided under 7 (a) (a).

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>• linkages to rules and regulations and other information relevant for promoting competition and transparency.</p> <p>// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):</p> <ul style="list-style-type: none"> • procurement plans published (in % of total number of required procurement plans) • key procurement information published along the procurement cycle (in % of total number of contracts) : • invitation to bid (in % of total number of contracts) • contract awards (purpose, supplier, value, variations/amendments) • details related to contract implementation (milestones, completion and payment) • annual procurement statistics • appeals decisions posted within the time frames specified in the law (in %). <p>Source: Centralized online portal.</p>					
<p>(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).</p>	No. See 7 (a) (b).	Not applicable	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See the recommendation provided under 7 (a) (a).
<p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e): - Share of procurement information and data published in open data formats (in %). Source: Centralized online portal.</p>	No. See 7 (a) (b).	Not applicable	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See the recommendation provided under 7 (a) (a).
<p>(f) Responsibility for the management and operation of the system is clearly defined.</p>	No. See 7 (a) (b).	Not applicable	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See the recommendation provided under 7 (a) (a).

7(b) Use of e-Procurement

Assessment criteria [7(b) Use of e-Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) E-procurement is widely used or progressively implemented in the country at all levels of government.*</p> <p><i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a):</i> <i>uptake of e-Procurement</i> <i>- number of e-Procurement procedures in % of total number of procedures</i> <i>- value of e-Procurement procedures in % of total value of procedures</i> <i>Source: e-Procurement system.</i></p>	E-procurement is not considered. The establishment of an e-Procurement system is a work in progress and not yet completed at federal level. There is no strategy that shows how the e-GP will be rolled out in regions. The PEs in AA operate in the same market with the PEs at the federal level. It undermines the benefit from economies of scale and the credibility of the procurement system in general when bidders interact electronically with some PEs and manually with others.	Not applicable	Criterion not met. The establishment of an e-Procurement system is a work in progress and not yet completed at federal level. There is no strategy that shows how the e-GP will be rolled out in regions.		Initiate discussion with the federal PPA on the e-GP rollout strategy to the City Administration and implement same.
(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.	See 7 (b) (a).	Not applicable	Criterion not met.		Initiate discussion with the federal PPA on the e-GP rollout strategy to the City Administration and implement same.
(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.	See 7 (b) (a).	Not applicable	Criterion not met.		Initiate discussion with the federal PPA on the e-GP rollout strategy to the City Administration and implement same.
<p>(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*</p> <p><i>* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):</i> <i>- bids submitted online (in %)</i> <i>- bids submitted online by micro, small and medium-sized enterprises (in %)</i> <i>Source: e-Procurement system.</i></p>	See 7 (b) (a).	Not applicable	Criterion not met.		Initiate discussion with the federal PPA on the e-GP rollout strategy to the City Administration and implement same.
(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.	See 7 (b) (a).	Not applicable	Criterion not met.		Initiate discussion with the federal PPA on the e-GP rollout strategy to the City Administration and implement same.

7(c) Strategies to manage procurement data

Assessment criteria [7(c) Strategies to manage procurement data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-	There is no system developed or adopted by the City Administration to collect data on procurement.	Not applicable	Criteria not met.		Consider implementing a KPI performance measurement system by integrating it into the procurement system and

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Procurement or other information technology.					ensuring the quality of data collection, analysis and use.
(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.	See 7 (c) (a).	Not applicable	Criteria not met.		Consider implementing a KPI performance measurement system by integrating it into the procurement system and ensuring the quality of data collection, analysis and use.
(c) The reliability of the information is high (verified by audits).	See 7 (c) (a).	Not applicable	Criteria not met.		Consider implementing a KPI performance measurement system by integrating it into the procurement system and ensuring the quality of data collection, analysis and use.
(d) Analysis of information is routinely carried out, published and fed back into the system. * // Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d): • total number and value of contracts • public procurement as a share of government expenditure and as share of GDP • total value of contracts awarded through competitive methods in the most recent fiscal year. Source: Normative/regulatory function/E-Procurement system.	See 7 (c) (a).	Not applicable. The team was not able to access any official report or analysis showing public procurement as a share of government expenditure and as share of GDP. No report on total value of contracts awarded through competitive methods in the most recent fiscal year.	Criteria not met.		

8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria [8(a) Training, advice and assistance]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) substantive permanent training programmes of suitable quality and content for the needs of the system.	There are no permanent procurement training programs in the City Administration. However, the unit responsible for the procurement regulatory function in the BoF had offered ad-hoc need-based trainings. For instance, there was a case in which the Procurement Directorate in BoF provided 5 days of training for procurement staffs, bid committee and technical committee members on basic procurement rules and concepts covering the procurement proclamation, directives and SBDs. The continuity of this ad-hoc training is not certain due to the decision to transfer training responsibility to the City Public Service Agency. For instance, this year, the Procurement Directorate didn't provide trainings due to unreleased budget from the city civil service.	Not applicable	Criterion is not met. There is no permanent procurement training programs of suitable quality in the region.		Consider establishing permanent training programs of suitable quality or work with the federal PPA to access training programs offered at federal level.
(b) routine evaluation and periodic adjustment of training programs based on feedback and need.	There is no routine evaluation of the training program except the feedback collected by BOF at the end of every training.	Not applicable	Criterion is not met.		See the recommendation provided under 8 (a) (a).
(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.	The Procurement Training and Support Service Team in the Procurement Directorate of BoF provide advisory/support service to PEs. However, the staff in some of the PEs consider the advisory service inadequate and lacking technical depth to help them resolve real-time issues. The BoF also provides advisory service to the Suppliers when requested.		Criterion is partially met. Advisory service is inadequate.		Consider improving the capacity of the advisory service in terms of staffing and by providing guidance.
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	Capacity Building and Good Governance is one of the pillars in the current Growth and Transformation Plan (GTP) II (2016-2021) of Ethiopia. The plan recognizes the need to develop public procurement capacity and strengthen transparency and accountability in the use of public resources. Following the GTP document and based on the prototype from the MoF, the BoF (Addis Ababa) prepared the PFM strategy that has also identified public procurement capacity building	Not applicable	Criterion is partially met. The PFM strategy document is not comprehensive in addressing the capacity need of key actors in procurement. The capacity of the key actors like the Regulatory function and the private sector is		Update and expand the BoF's PFM strategy to address capacity challenges in key public procurement

Assessment criteria [8(a) Training, advice and assistance]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	as one focus areas. However, the strategy is not well-integrated with other measures for developing the capacity of key functions in public procurement, such as improving the procurement Regulatory framework. Therefore, the regulatory function lacks the capacity in terms of qualified staff and structure to deliver its responsibilities, but it is not covered in the strategy document. Similarly, there is no strategy in place to improve the capacity of the private sector as key players in public procurement despite the challenges PEs face due to limited local market and capacity of the private sector, particularly the small-scale suppliers and contractors.		overlooked. The strategy document appears the same in all regional states and may not be adequately customized to the reality of the City Administration.		stakeholders, including the regulatory function and the private sector.

8(b) Recognition of procurement as a profession

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

Assessment criteria [8(b) Recognition of procurement as a profession]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Procurement is recognized as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	In many of the PBs, the procurement function is organized as "Directorate" which is a higher-level positioning in the organization structure of the City Administration. In addition, the procurement positions are graded from junior level up to Director level at different levels and requirements based on seniority. However, the procurement jobs grading is based on educational qualifications and generic experiences and doesn't consider other essential competencies required to deliver procurement responsibility. It specifically misses competence requirements (skill and behavior) required to carry out procurement responsibility successfully. Most importantly, the procurement processing, specifically the bid opening and bid evaluation, is carried out by a Bidding Committee established in each PE with members drawn from different departments. These key milestones in the procurement process are carried out without the involvement and support from the procurement team which is, in fact, contrary to the roles and responsibilities specified in the PPL A 9.	Not applicable	Criterion is not met. Key procurement activities (bid opening and evaluation) are not carried out by procurement professionals. Procurement jobs are not competence-based.	✓ Yes	Consider revising the roles and responsibilities in the procurement processing and ensure that key procurement activities are carried out by procurement professionals. Consider competencies (technical and behavioral) in the procurement jobs requirement.
(b) Appointments and promotion are competitive and based on qualifications and professional certification.	The procurement job grades are not linked with procurement professional certifications and competency requirements. Instead, they are based on generic educational qualifications and experiences that are not directly relevant to performing procurement tasks under different level of complexities. As a result, though procurement positions are filled competitively, the selection criterion does not allow for identification of the right expert based on skill and competency requirement. Staffs with no procurement experience / procurement qualifications are filled in some agencies.	Not applicable	Criterion is not met. While the appointments are competitive, they are not based skill and competency requirements specific to the job. Key procurement activities are not carried out by procurement professionals.	✓ Yes	Consider revising the roles and responsibilities in the procurement processing and ensure that key procurement activities are carried out by procurement professionals. Consider competencies (technical and behavioral) in the procurement jobs requirement.
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	Staff performance is evaluated on a regular basis as part of the human resource management function in public bodies. But there is no link to trainings which are not provided based on need assessment. The perception in most of the visited agencies is that staff's performance evaluation is carried out to meet HR formalities and do not have impact on staff promotion or training. The inconsistency between the focus of the evaluation and the skill required to deliver procurement responsibilities eroded the trust of the experts in the evaluation system.	Not applicable	Criterion is partially met. Performance evaluation is generic and not tailored to procurement job requirements. Besides, performance evaluation is not linked to promotion or training requirements and is carried out to meet HR requirements.	✓ Yes	Consider developing a performance evaluation system specific to public procurement and linked with incentives and promotion.

8(c) Monitoring performance to improve the system

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	There is no workable and consistently applicable performance measurement system that focuses on both qualitative and quantitative aspects. The BoF has not adopted and implemented the KPI system (performance measurement system based on identified indicators) which is implemented partially at federal level and in other regions. The practice in the Procurement Directorate at the BoF to review procurement reports submitted by the sectors is not tantamount to procurement performance measurement system.	Not applicable	Criterion is not met.		Consider adopting the KPI system.
(b) The information is used to support strategic policy making on procurement.	There is no system used for collection and analysis of procurement data to support strategic policy making on procurement.	Not applicable	Criterion is not met.		In addition to adopting and implementing the KPI system, it is appropriate to

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
					establish a procurement policy team that utilizes the data to make procurement policy recommendations. The team should ensure the consistency of the procurement system and implementation to the broader policy objectives of the government.
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	No evidence was obtained that supports the existence of a strategic plan including results framework.	Not applicable	Criterion is not met. No evidence was obtained that supports the existence of a strategic plan including results framework.		Introduce a strategic plan supported by results framework to improve the procurement system. Consider the recommendation provided under See 8 (c) (a).
(d) Responsibilities are clearly defined.	As per the PPL A 12, one of the functions of the BoF is to monitor and report to the Mayor's office on the performance of the public procurement and property administration systems in the City Government and initiate amendments on laws and implementation system improvements.	Not applicable	Criterion is not met. The BoF is tasked with a lot of responsibilities that require close management attention and follow up. The procurement regulatory function, including the responsibility for procurement data management, is delegated to the Procurement and Property Administration Directorate that has limited capacity and staffing.		Consider establishing the regulatory function separately from BoF with dedicated management and internal structure and staffing.

Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	Some of the visited PEs carry out need analysis and market research during the planning and procurement implementation stage. However, the market assessment is not carried out especially for the purpose of guiding selection of the procurement approaches. Procurement methods are selected mainly based on thresholds, following the provisions in the directive. Besides, the market analysis is not systematized and integrated into the procurement system. There is no guidance and template to support need analysis and market research and to ensure application of the results to inform procurement decision making. It was revealed that there is a general attitude to comply with procurement rules instead of finding and pursuing innovative solutions that evidently support better procurement outcomes.	Not applicable	Criterion is not met. There is no mechanism and supporting tools to enable procuring entities to carry out meaningful market assessment that informs selection of the optimal procurement approach. Selection of procurement approaches is basically made based on threshold as provided in the procurement documents instead of on market realities and outcomes. In addition to a lack of supporting tools, the procurement system is hampered by fear of discretion and risk avoiding behavior. It is key to enhance confidence in the procurement decision making process that focuses on procurement outcome, rather than mere compliance with rules.		Consider introducing a requirement and provide tools/templates to support needs analysis and market research for the purpose of defining optimal procurement strategies. Empower procurement decision makers to consider innovative and optimal approaches based on market information.
(b) The requirements and desired outcomes of contracts are clearly defined.	The requirements and desired outcomes of contracts are described in the procurement documents. The PEs specify the requirements in the specifications, Terms of reference, and Bill of Quantities, as appropriate. Requirements in case of works contract are normally defined through cross-referencing the standard technical specification of building works developed by the former Building and transport Construction and Design Authority (BaTCoDA) with standard technical specification of road works developed by the Ethiopian Roads Authority (ERA). Procuring Entities use these standards through cross-referencing name of the standard and as	Not applicable	Criterion is partially met. It appears that there are problems in practice with the use of discriminatory specifications, particularly in procurement of goods and services.		Enhance the procurement audit carried out by the regulatory function to put emphasis on the technical specifications and follow-up

Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	part of the contract. However, it appears that there are problems in practice with the use of discriminatory specifications.				to ensure improvement in preparing the specifications. Expand training on the requirements for neutral specifications, functional where appropriate, and based on international norms when possible.
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	<p>The procurement arrangement supports social and economic objectives which are integrated into the procurement legal framework and SBDs. The procurement proclamation article 25 specifies preference for locally manufactured goods and services and Micro and Small Enterprises (MSEs).</p> <p>The BoF issued instruction to the centralized procurement agency to procure from local manufacturers items like Cement. Bar irrespective of amount.</p> <p>Similarly, the City Government Micro and Small Enterprises Development Bureau issued a circular in February 2014 reserving markets for enterprises established as "MSEs".</p>	Not applicable	<p>Criterion is not met.</p> <p>There is no legal requirement and practice to use sustainability criteria (environmental, social, and economic) to ensure value for money. The only exception is the price preference margin allowed for goods and services manufactured locally, or participation of MSEs. The preference for MSEs has been changed into "set aside" of contracts up to defined thresholds excluding other groups of similar size from accessing the market. This is likely to create unintended social consequences. The decision for granting price preference (where and how) has not been supported by any analysis that shows the value addition and consistency with the national economic objectives. Thus, it is exposed to risk of misuse.</p> <p>The mandatory subcontracting is implemented contrary to the procurement rules and looks unbalanced.</p>	✓ Yes	<p>Having the history of using the preference schemes, both at the Federal and Regional level, it is recommended to study the use of the requirements and their impact. This study can be carried out jointly as similar schemes at both levels and the Regions are looking to the Federal government for guidance.</p> <p>Revise the preference schemes based on the evidence of their impact.</p>

9(b) Selection and contracting

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	The procurement documents provide a procedure for the use of the multistage approach. However, there was no practice of using the procedure because, unless for very rare cases, procurements at the regional level are not complex.	Not applicable	Criterion is met.		Consider using multistage procedures in case of complex procurement, as appropriate. Prepare guidance on how to use multistage procedure.
(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	Public bodies use standard bidding documents (SBD) developed by the federal PPA. The SBDs incorporate all sections that are found in typical SBDs, including Instruction to Bidders, Bid Data Sheet, schedules and templates, Standard Conditions of Contract, Special Conditions of Contract etc. However, it appears that the SBDs are considered complex and their use is limited to procurement of works contract and ICB procedures.	Not applicable	<p>Criterion is not met.</p> <p>The federal SBDs were issued in 2011 and not updated to meet the current practice and market operation. Besides, the SBDs are not officially endorsed by the appropriate authority for mandatory use and appear complex for procurement in some sectors.</p>		Discuss with the federal PPA and ensure that national SBDs are issued that accommodate the specificity in regions and proportional to the market.
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	The procurement legal framework defines open bidding as the default procurement method which is largely followed by the public bodies. But other procurement methods are also used if the procurement meets the conditions stated in the directive and if the procurement is within the specified threshold. It appears that there is a high tendency of complying with the threshold requirements, instead of applying professional judgment in selecting the appropriate procurement method that is relevant to attain successful results in the procurement.	Not applicable	<p>Criterion is partially met.</p> <p>The choice of procurement methods is guided mainly by the applicable threshold as provided in the procurement legal framework. These thresholds are not always consistent with the development of markets in some sectors like construction. There is a tendency of complying with the threshold requirements instead of applying professional judgment in selecting the appropriate procurement method that is relevant to attain successful results in the procurement.</p>		Consider following the procurement procedures as specified in the legal documents. Ensure accountability for decisions taken otherwise. Provide guidance/tools to guide evaluation and selection of workable procurement options. Consider updating procurement methods

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations								
			The application of a one-size-fits-all approach in setting thresholds is not working well. The construction sector may need different thresholds, commensurate with the local capacity in the sector.		thresholds to reflect the capacity of the local market.								
(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.	<p>Procedures for bid submission, receipt, and opening are clearly described in the SBDs and complied with by the PEs. The PEs allow bidders or their representatives to attend bid openings. The PPD 16.18 specifies that representative of mass media or any interested observer can attend the bid opening ceremony, as far as practicable, namely it does not interfere with the bid opening process and there is enough space.</p> <p>The PBs do not specify the actual bid closing/opening date in the Invitation for Bid (IFB) due to uncertainty on the actual date of publication of the IFB on Newspaper. Instead, they express the number of days that the IFB floats, and bidders are required to calculate the bid opening days at their own risk. This has created uncertainty on the actual bid closing/opening day and added risk to the bidders.</p>	Not applicable	Criterion is partially met. The IFB does not specify bid closing/opening day.	✓ Yes	Discuss and agree on a mechanism with the press agency on how to specify the bid closing/opening day in the IFB.								
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	The PPL A 44 specifies the rule of confidentiality. It requires PEs not to disclose information related to examination, clarification, bid evaluation, and award decision until the award is publicly announced. The rule of confidentiality is also expressed in the legal documents as one of the ethical standard expected from persons engaged in public procurement. The same is reflected in the SBDs issued by the regional PPA that requires process to be confidential and all communication with bidders to be in writing. However, there were cases in which confidentiality requirements were breached. There is no practice of orienting evaluators on the rules of confidentiality and no detailed guidance is provided. The PPD A 44.2 requires PEs to communicate the result of the technical evaluation in writing to all bidders at the same time for bids submitted through two envelopes system. The technical evaluation committee receives complaints and responds, including making the necessary correction on the report before the PE reaches final decision by the authorized officials. Though the process is supported by the legal document, it exposes the procurement process to unintended external influences and unfair practices.	<p>While a quantitative indicator is not envisaged here, the Assessment Team asked the private sector in the survey about their perception of confidentiality of the procurement process.</p> <p>41% of respondents said that confidentiality is ensured throughout the bid evaluation and award process. 22% said that it is not, and 37% was not sure.</p> <table border="1"> <caption>Confidentiality Perception Survey Results</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>41%</td> </tr> <tr> <td>No</td> <td>22%</td> </tr> <tr> <td>Not sure</td> <td>37%</td> </tr> </tbody> </table>	Response	Percentage	Yes	41%	No	22%	Not sure	37%	Criterion is partially met. The procurement system does not provide tools to ensure and support maintaining confidentiality which might include requiring evaluators to sign a declaration to uphold confidentiality.		Consider providing tools and templates to enforce confidentiality provisions.
Response	Percentage												
Yes	41%												
No	22%												
Not sure	37%												
(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.	<p>The procurement proclamation allows two types of evaluation: least cost and best advantageous bid, which considers quality as one aspect of evaluation. In practice, PEs are inclined to use the least cost evaluation method.</p> <p>However, for procurement of equipment, IT facilities, etc., PEs use a merit point evaluation system with due consideration of quality aspects in the evaluation of bids. Other techniques like Best and Final Offer (BAFO) or competitive negotiation, etc., are not accommodated in the procurement legal framework and are not applied.</p>	<p>Percentage of 50 respondents to the private sector survey who think that the following criteria should be the most important is (Q28):</p> <ul style="list-style-type: none"> Combination of quality and price (69%) High quality (60%) Combination of price, quality, preferences for SMEs, environmental, and social (51%). <p>37% of 27 respondents (53 skipped) said that the bidding documents include criteria that allow achieve value for money, 41% said that they do not contain such criteria, and 22% were not sure (Q29).</p>	Criterion is partially met. The award criteria are limited to the least cost and merit point evaluation only. Given the development in the market and the increasing complexity of procurement, other award criteria should be considered in the legal documents and applied in practice.		See the recommendation 1 (f) (b). Ensure that the training program includes how to design and apply the evaluation criteria.								
(g) Contract awards are announced as prescribed.	Article 46 of the Proclamation stipulates the manner in which the contract award is notified. The PEs comply to the provision by notifying the contract award decision both to the successful and unsuccessful bidders, including the reason why the unsuccessful bidders are not considered.	57% of 27 respondents to the private sector survey said that contract awards are published, 19% that they are not published, and 26% of respondents are not sure (Q35).	Criterion is met.		Consider publishing contract awards at least for procurement above the specified threshold.								
(h) Contract clauses include sustainability considerations, where appropriate.	PPA's SBD, which PBs in the region use, provide clauses that require suppliers/contractors to respect environmental considerations as stipulated in the Ethiopian law. The SBDs for works contract has extended provisions on environment and social aspects including the required measures that should be taken to address HIV/Aids risks and other STDs during construction. The PEs apply the provisions as stipulated in the SBDs.	35% of 26 respondents to the private sector survey said that contract clauses include sustainability considerations, 27% that not. And 38% are not sure (Q36).	Criterion is partially met. Use of the federal SBDs is not a mandatory requirement in the region.		See recommendation under 2 (b) (a).								

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations						
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	There are no provisions and practices that provide incentives for exceeding performance levels. However, there is a disincentive clause for failure to meet agreed terms particularly on slippage from the agreed delivery time. It appears that the PEs are obliged to apply the liquidated damage clauses which is 0.1% for each day of delay. Not applying the liquidated damages is indicated as a non-compliance in audit reports.	Not applicable	Criterion is not met. Contract clauses do not provide incentives for exceeding performance.		Standard contracts may provide for incentive for timely excellent performance (that exceed expectations above the agreed terms like time, quality) (e.g. a bonus). Consider introducing the value engineering provision that allows enhancing performance, reliability, quality, safety, effectiveness, or other desired characteristics.						
(j) The selection and award process is carried out effectively, efficiently and in a transparent way. * *Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j): - average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each procurement method used) - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) Source for all: Sample of procurement cases.	The selection and award process is not carried out effectively, efficiently and in a transparent manner. The assessment team learnt that there were various instances in which the procurement processes were nullified due to a delay in awarding contracts within the bid validity periods. It is also observed that the process lacks transparency. For instance, it is not a common practice to publish award information in accessible media.	Average time to procure for NCB procedure: <table border="1"><thead><tr><th>Method</th><th>Av. time</th><th>Range</th></tr></thead><tbody><tr><td>NCB</td><td>127</td><td>58-215</td></tr></tbody></table> The number of ICB contracts carried out during the assessment period were only two in one of the visited PEs. The average time to procure of these contracts was 260 days. On average, 3 and 4 responsive bids were obtained in procurements conducted using ICB and NCB procedures respectively. This implies that there was modest level of competition both under ICB and NCB methods with slightly better competition while procuring from local than international market. Compliance with publication requirement: None of the contracts assessed were in full compliance with the publication requirement, as per the rule.	Method	Av. time	Range	NCB	127	58-215	Criterion is not met. The average time to process procurement is significantly longer than the normal bid validity time and international practices. This makes the procurement process inefficient. The level of compliance with the publication requirement is also low.	✓ Yes	Regularly review the performance in each public body and identify inefficiencies and bottlenecks, based on which define and implement measures to improve the processes. Monitoring efficiency and transparency of the processes should be incorporated as part of monitoring and reporting function by the Regulatory unit.
Method	Av. time	Range									
NCB	127	58-215									

9(c) Contract management

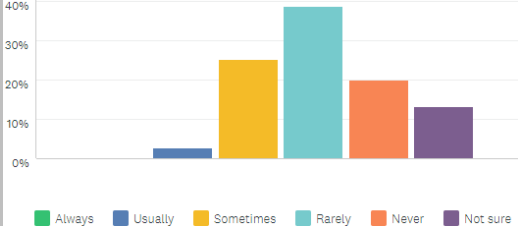
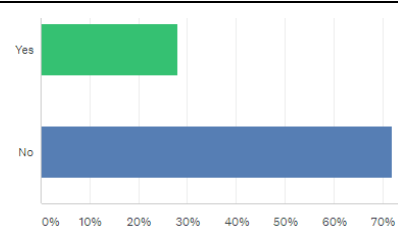
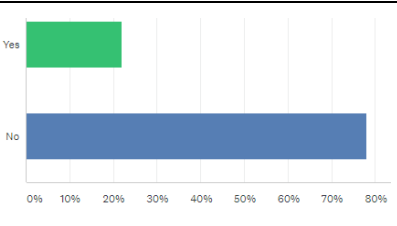
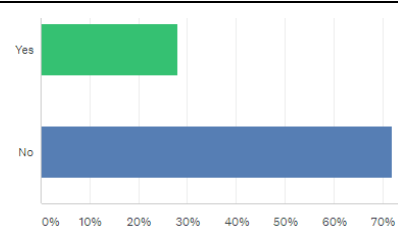
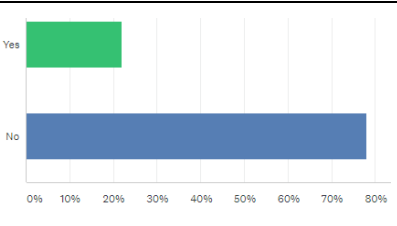
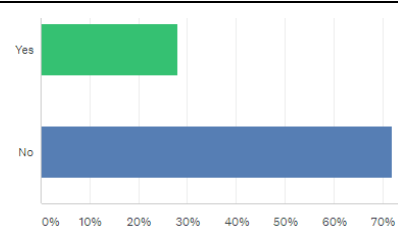
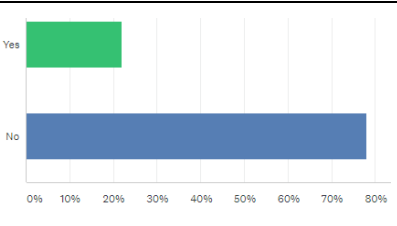
Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Contracts are implemented in a timely manner.* Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)	Contracts are not implemented timely. Time overrun in the reviewed sample of contracts was significant. The reasons vary.	Time overrun: On average, there was a time overrun of 90 days beyond the originally agreed contract completion time for all contracts covered under the assessment.	Criterion is not met. Contracts are not implemented timely. In some cases, the time overrun exceeds 2 years.		Public bodies should regularly analyze contract performance and outcome, identify reasons for contract time overrun and implement corrective measures. Consider preparing guidance tools and provide training to staff.
(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*	The General Conditions of Contract in the SBDs provide provisions for Inspection and Tests of items procured and delivered and works performed. The PEs responded that they carry out inspection routinely before acceptance of the Goods. But the quantitative data shows that quality control and inspection was carried out only in 65% of the contracts reviewed.	Quality control and inspection work was carried out as per the contract agreement in 65% of the contracts covered in the assessment. However, there was huge heterogeneity in the performance of the PEs covered in the assessment. The analysis shows that there were	Criterion is partially met. Quality control and inspection work were not routinely carried out in all contracts.		Public bodies should regularly monitor contract management, identify reasons for non-compliance

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)	For works contract, PBs follow the established procedure and employ consultants for supervision of construction projects.	PEs that carried out quality control and inspection in all the contracts sampled in the assessment as compared to PEs that carried out quality control and inspection in none of the contracts reviewed.			and implement corrective measures.
(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).	Please see 4 (b) (b). The procurement Directive Article 27.5 specifies the payment procedure mandating PEs to effect progress payments for works contracts within 14 working days after receipt of payment certificate from the consultant. However, in most cases, the payment time specified in the contract documents exceed the time specified in the PPD. PBs are required to submit invoices with the supporting documents for payments above Birr 1,000,000 to the BoF for verification and authorization for payment only once a month.	On average, about 57% of the invoices were paid on time. The performance varies from PEs that paid 90% of invoices on time to PEs that paid only 45% of invoices on time.	Criterion is partially met. Some invoices were not paid on time. Some of the PEs paid less than half of the invoices on time. This might be related to weak contract management capacity and follow-up mechanisms that lead to delay in contract completion, as observed above, and consequential costs to the government.	✓ Yes	Review the invoice verification process and payment obstacles to optimize the payment process and minimize delays that are due to unavoidable reasons such as the prevalent shortage of Forex that cannot be mitigated at the time of payment.
(d) Contract amendments are reviewed, issued and published in a timely manner.* Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)	Contract amendments are prepared and reviewed by the relevant work unit in the PBs in consultation with the procurement team. The legal provision requires for variation orders above 25% of the contract amount to be reviewed and approved by the BoF. There is no experience of publishing contract amendments.	On average, 17% of the contracts covered in the assessment were amended. The average increase in contract amount due to amendment is only 2%. The maximum increase in contract amount was only 2% which was observed in one of the PEs while there was no cost amendment in all contracts managed by the other visited Pes.	Criterion is partially met. See the gap under 6 (a) (d). The approval process established for high-value contracts/amendments is not clear.	✓ Yes	Clarify the approval process for high-value contracts and amendments above the specified threshold in the PPD.
(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.	There are no procurement statistics available that could be used to measure and improve procurement performance. The KPI system is adopted and implemented in AA City administration.	Not applicable	Criterion is not met.		Please see the recommendation under 7 (c) (a).
(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.* Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.	There are no opportunities for direct involvement of relevant external stakeholders in most of the public procurements. However, there are rare experiences of road projects in which elected officials in sub-cities/Woredas participate from project design preparation up to completion and handover.	There was no direct involvement of civil society organizations in any of the contracts covered in the assessment.	Criterion is not met. Except for rare experience of participation of elected officials in road projects, there are no opportunities for direct involvement of external stakeholders in procurement. The procurement system has not reached the level of maturity that encourages stakeholders' participation in the procurement process. Even though engagement of external stakeholders is not prohibited, they are not engaged because there are no CSOs working in the procurement area.	✓ Yes	Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.
(g) The records are complete and accurate, and easily accessible in a single file.* // Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g): - share of contracts with complete and accurate records and databases (in %) Source: Sample of procurement cases*	Records are not accessible in a single file. In most of the PEs, the records are incomplete and filed randomly. Only in few cases the procurement unit keeps the complete procurement records, otherwise, it was documented separately in different files and accessing it depends on the staffs availability and willingness. In all of the PEs, the payment document is kept in the finance unit/archive and procurement records are filed to support the payment. Accessing and relating the procurement documents and the payment documents were difficult. There is no reliable data retrieval system. In most of the PEs, the procurement records are not kept in complete and accessible manner.	Not applicable. Record management is a systemic challenge across all public bodies. Procurement records are not complete and accessible and supported by databases. Thus, the team dropped the quantitative analysis as it is not possible to make a meaningful comparison and a different result is not expected.	Criterion is not met. Procurement records are not kept in a complete and accessible manner.	✓ Yes	Given how widespread a problem with record-keeping appears to be, special attention is recommended during the next year procurement review to review the record-keeping arrangements held by the public bodies and follow up within let's say 3 months in case of negative findings (not awaiting the next audit).

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
					Special attention should be maintained until significant improvement.

10. The public procurement market is fully functional

10(a) Dialogue and partnerships between public and private sector

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations				
<p>(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a): - perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.</p>	<p>The BoF – Procurement Directorate organizes an annual forum in collaboration with the City’s chamber of commerce. In the forum, representatives from the private sector, public bodies, and the oversight authorities (the Finance Standing Committee of the City Council) participate. The main focus of the forum is to discuss all relevant procurement issues that affect the procurement performance and propose possible solutions. The BoF uses the opportunity to orient the procurement rules of the city, and to highlight the expectations from the public bodies and the suppliers/contracts/SMEs. However, the assessment team has not been presented with evidence showing the proceedings of the forum.</p>	<p>Out of 75 respondents (5 skipped) to the private sector survey, 28% responded that the private sector is always, usually or sometimes consulted before changes are introduced to the procurement rules and procedures. 59% responded that such consultation is made rarely or never. 13% are not sure.</p>  <p>Out of 48 respondents, who responded to the question whether opinions of the private sector are considered. (i) 6% said that yes; (ii) 40% said no; and (iii) 54% were not sure.</p>	<p>Criterion is partially met. The RPPA carries out regular discussions with the private sector through the associations. This mainly reaches the big suppliers/contractors that are members of the different associations. However, it may not reach sufficient coverage of the private sector. The results of the survey show that an open dialogue with the private sector and the consultative process in adopting change to the procurement framework is limited.</p>		BoF should enhance the engagement by creating venues also for the involvement of small businesses as well as ensuring awareness of the Forum among all relevant associations to enable them to participate in the dialogue with the Regional Government.				
<p>(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.</p>	<p>The BoF does not have a formal training program for the private sector. Training for the private sector is provided through annual workshops, and dissemination of information.</p> <p>There is no special capacity-building program for SMEs by the Procurement Directorate of BoF. In the private sector survey, the following results were obtained.</p> <table border="1"> <tr> <td>Are you aware of capacity building programs being run by the government for private contractors?</td> <td>Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?</td> </tr> <tr> <td>  </td> <td>  </td> </tr> </table>	Are you aware of capacity building programs being run by the government for private contractors?	Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?			Not applicable	<p>Criterion is not met. There is no formal training program. A more in-depth and focused training program helps to create better understanding among the private sector and enhance responsiveness.</p>		BoF should monitor capacity and competitiveness of the private sector, and act, if necessary, to adjust the availability of procurement training and its quality on the market.
Are you aware of capacity building programs being run by the government for private contractors?	Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?								
									

10(b) Private sector’s organization and access to the public procurement market

Assessment criteria [10(b) Private sector’s organization and access to the public procurement market]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The private sector is competitive, well-organized, willing and able to</p>	<p>The participation and organization level of the private sectors varies from sector to sector and based on procurement volume. In procurement of high-value works contracts and consultancy</p>	Not applicable	<p>Criterion is partially met.</p>	✓ Yes	

<p>participate in the competition for public procurement contracts.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p> <ul style="list-style-type: none"> • number of registered suppliers as a share of total number of suppliers in the country (in %) • share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) • total number and value of contracts awarded to domestic/foreign firms (and in % of total) <p>Source: E-Procurement system/Supplier Database.</p>	<p>services, the level of participation is relatively high and the contractors are better organized as compared to small-value works procurements. The PBs consider that, even in procurement of goods, the level of participation differs by item of category. For instance, there is consideration of better participation of private sectors in IT, Electronics, Office Equipment and Furniture procurements. In most cases, the private sectors lack the capacity to understand and respond to the requirements of bidding documents.</p>		<p>The private sector, particularly small businesses, are not competitive and well organized. They lack the capacity to participate in public procurement competitively.</p>	<p>Consider a procurement arrangement that accommodates small business. Resolve issues/bottlenecks that hinder participation of small business in the procurement opportunities.</p>																																																
<p>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):</p> <p>- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).</p> <p>Source: Survey.</p>	<p>The main systemic constraints inhibiting the private sector to access the public procurement market is related to shortage of foreign currency. The private sector is hesitant to participate in bids that involve import from abroad. Inflation is also considered as one of the factors that inhibit participation in procurement opportunities.</p>	<p>Based on the private sector survey, appropriateness of conditions in the public procurement is shown in the table below.</p> <p>57 respondents responded to the question whether the below listed conditions to participate in competition for public contracts are met:</p> <table border="1" data-bbox="1409 926 1902 1157"> <thead> <tr> <th></th> <th>Always</th> <th>Sometimes</th> <th>Rarely</th> <th>Never</th> <th>Not sure</th> </tr> </thead> <tbody> <tr> <td>Access to financing</td> <td>11%</td> <td>21%</td> <td>34%</td> <td>29%</td> <td>5%</td> </tr> <tr> <td>Procurement methods are proportionate to the risk and value</td> <td>5%</td> <td>35%</td> <td>40%</td> <td>14%</td> <td>5%</td> </tr> <tr> <td>Procurement rules are simple and flexible</td> <td>5%</td> <td>20%</td> <td>36%</td> <td>38%</td> <td>2%</td> </tr> <tr> <td>Contracting provisions help distribute risk fairly</td> <td>11%</td> <td>33%</td> <td>33%</td> <td>22%</td> <td>2%</td> </tr> <tr> <td>Payment provisions are fair</td> <td>11%</td> <td>27%</td> <td>41%</td> <td>21%</td> <td>0%</td> </tr> <tr> <td>Effective mechanism for appeals and dispute resolution</td> <td>7%</td> <td>19%</td> <td>44%</td> <td>26%</td> <td>4%</td> </tr> <tr> <td>Conditions are conducive to win contracts in the public procurement market</td> <td>10%</td> <td>29%</td> <td>39%</td> <td>23%</td> <td>0%</td> </tr> </tbody> </table>		Always	Sometimes	Rarely	Never	Not sure	Access to financing	11%	21%	34%	29%	5%	Procurement methods are proportionate to the risk and value	5%	35%	40%	14%	5%	Procurement rules are simple and flexible	5%	20%	36%	38%	2%	Contracting provisions help distribute risk fairly	11%	33%	33%	22%	2%	Payment provisions are fair	11%	27%	41%	21%	0%	Effective mechanism for appeals and dispute resolution	7%	19%	44%	26%	4%	Conditions are conducive to win contracts in the public procurement market	10%	29%	39%	23%	0%	<p>Criterion is not met.</p> <p>There are major systemic constraints inhibiting private sector access to the public procurement market. The main systemic constraint is associated with the shortage of foreign currency that limits the private sector's capacity to bid and honor contractual commitments.</p>	<p>Consider an alternative procurement arrangement to minimize the impact of shortage of foreign currency and inflation on participation of the private sector. Address other constraints as reflected by the private sector, including defining proportional procurement methods, simplifying rules, streamlining payment provisions, contract conditions, etc., which are included in the relevant section in the matrix.</p>
	Always	Sometimes	Rarely	Never	Not sure																																															
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10(c) Key sectors and sector strategies

Assessment criteria [10(c) Key sectors and sector strategies]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Key sectors associated with the public procurement market are identified by the government.</p>	<p>The City didn't make an identification of the key sectors for procurements.</p>	<p>Not applicable</p>	<p>Criterion is not met.</p>		<p>BoF should carry our regular assessment and identify the key sectors to focus on for capacity building and monitoring.</p>
<p>(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.</p>	<p>There is no practice of undertaking procurement risk assessments and existing opportunities at the city level or by the PEs.</p>		<p>Criterion is not met.</p> <p>There is no practice of assessing risks associated with key sectors.</p>		<p>BoF should carry out regular assessments of risks associated with the identified key sectors, to ensure collaboration of the sector markets in specific areas to support the procurement policy objectives.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

11. Transparency and civil society engagement foster integrity in public procurement

11(a) Enabling environment for public consultation and monitoring

Assessment criteria [11(a) Enabling environment for public consultation and monitoring]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	There is no practice of consulting the public when formulating changes to the public procurement system. However, the Regional Council holds public consultations before a new proclamation is enacted. All other changes to the public procurement system are carried out without transparent and adequate public consultation.	Not applicable	Criterion is partially met. The practice on public consultation is not adequate. The PBs do not carry out public consultations, which are limited to the legislative level.		BoF should monitor that a transparent and consultative process is followed when formulating changes to the public procurement system by any public body that issues such changes.
(b) Programs are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.	There is no regular and comprehensive capacity building program established to build the capacity of relevant stakeholders. However, RPPA conducts a biannual forum with the private sector on public procurement issues, performance, challenges, etc.	Not applicable	Criterion is not met. There is no regular and comprehensive capacity-building program established to build the capacity of stakeholders.		Consider a more comprehensive capacity building program which includes private sector and CSOs to enhance their role and participation in procurement. Consider continuous engagement with the public through mass media similar to the practice in the federal and SNNPR.
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	The participation of Civil Society in the region's public procurement is missing.	Not applicable	Criterion is not met.		See recommendation under 11 (c) (a).

11(b) Adequate and timely access to information by the public

Assessment criteria [11(b) Adequate and timely access to information by the public]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	The procurement proclamation article 7 obliges procurement law and directives and other procurement documents to be accessible to the public. But even the main procurement legal documents are not accessible to the public.	Not applicable	Criterion is not met. The public is not provided adequate and timely access to procurement information.		Consider requirement to publish key procurement information in an easily accessible manner. Consider use of the centralized federal PPA's website to publish procurement information.

11(c) Direct engagement of civil society

Assessment criteria [11(c) Direct engagement of civil society]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: <ul style="list-style-type: none"> the planning phase (consultation) bid/proposal opening (observation) evaluation and contract award 	The procurement regulatory framework does not specifically mention and allow participation of citizens in the procurement system. Ability to finance CSO's activities, complex legal provisions of the Proclamation, broad discretionary powers of the Charities and Societies Agency regulated by the now-rescinded 2009 Charities and Societies Proclamation No. 621 (repealed in 2019) with numerous directives, may	Not applicable	Criterion is partially met. While it does not prohibit, the legal framework does not explicitly state that participation of CSOs in the procurement process is allowed. In practice the public bodies do not prohibit their participation. However, there are no active CSOs working in public procurement in the City		Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.

Assessment criteria [11(c) Direct engagement of civil society]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(observation), when appropriate, according to local law • contract management and completion (monitoring).	have created a non-conducive environment for CSOs in Ethiopia and subsequently a lack of their involvement in procurement. The new Organizations of Civil Societies Proclamation No. 1113/2019 aims at creating an enabling environment to enhance the role of civil society organizations in the development. Its effect is yet to be seen.		Administration. Restrictive provisions and practices may have created a non-conducive environment for CSOs in Ethiopia and subsequently lack of their involvement in procurement.		
(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.	It was reported that the Road authority of the City Administration facilitates citizens' participation in monitoring road projects. The citizens conduct site visits and follow up the progress of the projects and report issues back to the City council.		Criterion is partially met. The practice of involving citizens is limited to the road sector and not supported by a legal requirement.		Expand citizens' participation in all sectors and support it with a legal requirement.

12. The country has effective control audit systems

12(a) Legal framework, organization and procedures of the control system

The system in the country provides for:

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies	Proclamation 982/2016 Reestablished the office of the Auditor General of the Addis Ababa City Administration and sets out its functions. It covers external audit. Its main function is to investigate that the activities of all covered public entities in AA City Administration are carried out effectively, economically and in accordance with the rules and regulations of finance and notify the results to the head of the audited entity for response. Where the response is unsatisfactory, the discovered failures will be recorded in its annual report. Curiously, it is also given the power to audit the accounts of private contractors relating to government contractual work involving sums in excess of Birr 250,000. Audits may be carried out over all entities or by spot check. The audits cover the two previous fiscal years only except that if the Auditor General suspects failures before then, he may perform audits covering earlier years. Penalties are foreseen for lack of cooperation by the entities being audited. Internal audit is provided for in Proclamation 51/2017 of the Financial Administration of the Addis Ababa City Government. A.6 gives the head of the Bureau the power to conduct audit of public bodies 'if it deems necessary'. It is also given power to oversee the internal audit function of those public bodies; develop appropriate standards of work and conduct to be applied by public bodies in internal audit functions; develop internal control standards; and assist in building the capacities of internal audit. Accountability for public funds is vested in the heads of the public bodies and these must ensure, <i>inter alia</i> , that the internal audit systems are properly staffed and trained so that internal audits are carried out efficiently, effectively and economically; the timely preparation and dissemination of reliable financial information; and submission of a financial report to the Bureau. The internal audit bodies are made responsible for conducting internal audits at specific intervals and submitting audit reports to the head of the body and the Bureau and to follow-up on measures based on the audit findings; develop appropriate audit programs and procedures; develop a monitoring system which regularly reports to management on regulatory compliance; and advise management on internal practices and controls. As per the procurement proclamation, the BoF is also authorized to carry out procurement audit.	Not applicable	Criterion is met.		
(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on	Every PB established an internal audit function that carries out audit and reports to the management. As part of the financial audit, the internal auditors carry out a procurement compliance audit to check compliance of the procurement documents and decisions against the City's procurement rules. But the internal Audit coverage in all the visited PEs is limited as	Not applicable	Criterion is not met. The procurement decision structure in practice is not consistent with the provisions in the legal documents		Ensure the legal document is clear on the procurement decision making authority

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
compliance, effectiveness and efficiency of procurement operations	compared to the significant size of procurement in the PEs. The internal audits prepare quarterly report including gaps and recommendations and submit to the public body with a copy to BoF. However, the procurement function and decision-making structure in PEs is not organized in a manner that enhances internal control. The key procurement activities including opening of bids and evaluation is carried out by a committee drawn from different units and established by the Head of the PE. Contrary to the legal requirement, the procurement unit has no major role in bid opening and evaluation. Instead, the committee carries out evaluations and submits to the Head for approval. The procurement legal document is not clear on the approval authority of high-value contracts above the specified threshold. In practice, the Head of the PE provides the final decision on the bid evaluation report for high-value contracts based on recommendation from the tender committee. Besides, the Head of the PE is mandated to receive and resolve complaints. This arrangement in AA city administration is different than the procurement arrangement in other regions and federal government, which establishes independent Bid Endorsing Committee to make final decision on high-value contracts while the Head of the PE reviews and resolves complaints.		and lacks adequate checks and balances for enhanced internal control.		and enhance internal control through adequate Checks & Balances in the system.
(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	See 12 (a) (b) above. The procurement decision making structure in the legal document lacks clarity. It doesn't explicitly specify the decision authority above specified threshold (high-value contracts). In practice, regardless of the amount of procurement, all procurement decisions are made by the Head of the PE. Besides, the actual processing of key procurement activities (bid opening and bid evaluation) is carried out by a Tender committee whose members have different primary responsibility in the PE, impacting the timely processing of procurement.	Not applicable	Criterion is not met.		See recommendation under 12 (a) (b) above. Consider delegation of procurement technical works to the qualified and full-time procurement experts.
(d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management	As per the proclamation No. 29/2012, the Office of the Regional Auditor (ORAG) is reestablished as an independent body from the executive both in terms of financing and reporting. The auditor general and the deputies are assigned by the City Council and serve until the age of retirement. Besides, ORAG requests and secures the budget required for its operation directly from the City government council without the involvement of the executive. The ORAG undertakes three types of audits, which are (a) Regulatory/Financial Audit, which is mainly a compliance audit and includes auditing transactions on procurement. The Regulatory/financial audit is carried out annually and is carried out on high-risk, medium-risk and low-risk public bodies every year, two years and three years respectively. (b) Performance audit, which focuses on the performance of the system including the procurement system and is largely focused on providing recommendations on how to improve the system. (c) Special Audit, which is an audit undertaken based on demand when requested by external parties. In addition, the City BoF – procurement Directorate conducts procurement compliance audit and provides findings and recommendation to the PEs and the BoF.	Not applicable	Criterion is met.		
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	As per the proclamation No 29/2012, the ORAG submits its audit report to the City council twice a year. According to Article 14. 2 (l) of the City Charter, the City Council has an authority to review and decide on the report from ORAG. Besides, the audit report on individual public bodies is shared with the supervising authority of the audited PB and copy is sent to the audited PB. The public expenditure and accounts standing committee in the City Council carries out regular supervision of entities that have overdue audit findings. The BoF - Procurement Directorate reports its procurement audit findings to the Head of BoF and shares its reports to the Mayor Office and the Finance Standing Committee of the City. There is no evidence of actions taken on BoF procurement audit reports. If the findings require the intervention of the City's Anti-Corruption Commission and Police, the report is also shared to these agencies as well.		Criterion is partially met. There is no requirement to submit procurement audit reports to a higher organ within the City Administration that has a supervising authority on all procuring entities.	✓ Yes	Ensure enforcement of actions and addressing the audit findings by the public bodies.
(f) clear mechanisms to ensure that there is follow-up on the respective findings.	Both the external audit and the internal audit do have and follow clear follow up procedures. The follow-up on the external audit is conducted both by the ORAG and legislature (City Council) as follows: The ORAG-auditors check the implementation of audit action plans as part of the audit and include the actions not taken in the report for the following year. Based on the ORAG report, the City Council takes decision, including reporting to the police and Attorney general for their legal action.		Criterion is partially met. See 12 (a) (e).		See recommendation under 12 (a) (e).

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>The public expenditure and accounts standing committee in the City Council carries out regular supervision of entities that have overdue audit findings. The progress of audit implementation and the performance is used as input during the review of the Pes' performance.</p> <p>The ORAG also established a quarterly stakeholder meeting among the government, public and oversight bodies to discuss the audit performance, implementation of audit recommendations and actions, challenges and gather feedback.</p> <ol style="list-style-type: none"> 1. There is a clear mechanism for the follow-up on the findings of the internal audit. The follow-up on internal audit is carried out by the Internal Audit Directorate in the procuring entity and the follow-up report is submitted both to the management in the PE and the Inspection and Audit Directorate in the BoF. 2. The BoF – procurement Directorate procurement audit report is submitted to the BoF and follow-up is conducted by the BoF itself. 				

12(b) Coordination of controls and audits of public procurement

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	The finance administration proclamation extensively covers the requirements for the internal control and audit, including the responsibility of the head of the PB. In addition, internal audit is carried out based on the Internal Audit Manual issued by the Federal MoF, and internal control standard directive 09/2003 (E.C) issued by the Addis Ababa City Government. Both documents provide detailed procedures for conducting internal audit, which includes Value for Money Audit and audit on major contracts/projects.		Criterion is met.		
(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.	<p>The proclamation No. 29/2012 Article 16.2 requires ORAG to carry out audit based on international auditing standards. In compliance to the rule, ORAG adopted the AFROSAI-E audit manual which is prepared based on the INTOSAI audit manual. Besides, the ORAG translated all the working papers in Amharic based on the AFROSAI-E manual and the working papers are checked and signed by the manager as assurance of audit quality control. Any update to the manual or the working papers are communicated through the office of the Federal Auditor General and gets updated.</p> <p>The procedure for internal audit is described in the internal audit manual and includes both the compliance audit and special audit including value-for-money audit and audits on major contracts/projects.</p> <p>The BoF is using the procurement audit manual issued by Federal PPA which describes, inter alia, the planning, execution and reporting procedures while carrying out procurement audit. It also provides a checklist that provides step-by-step activities during the planning, execution and reporting of procurement audits.</p>		Criterion is partially met. There is no manual specific to procurement audit.		Consider officially adopting the federal procurement audit manual.
(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c): - number of specialized procurement audits carried out compared to total number of audits (in %). - share of procurement performance	<p>The Auditor General of the City carries out financial audits annually on a sample basis. The ORAG audit coverage over the three years' period of the assessment is 58% in 2016/17, 65% in 2017/18, and 65 % in 2018/19.</p> <p>The ORAG also conducted performance audit and the coverage was 4,3 and 5 public bodies in 2016/17, 2017/18, and 2018/19.</p> <p>There is also evidence that the internal audit is conducted throughout the City's public bodies which covers financial audit, property audit and special audit. The internal financial audit is carried out and very few transactions are sampled in the PEs. The internal audit reports are produced quarterly and submitted to the BoF and Head of the PE.</p>		Criterion is met.		

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
audits carried out (in % of total number of procurement audits). Source: Ministry of Finance/Supreme Audit Institution.					
(d) Clear and reliable reporting lines to relevant oversight bodies exist.	<p>As per the provision specified in the City's Charter, the report from ORAG is submitted to the City Council. But when the City Council is not in session, the report is submitted to the cabinet of the City government of Addis Ababa on exceptional basis. The public expenditure and accounts standing committee in the council is responsible for closely reviewing the report and undertaking follow-up action on behalf of the council.</p> <p>The internal audit reports to the BoF as per article 6 of the finance proclamation of the City government.</p> <p>The reporting structure for Procurement audit beyond BoF is not clear and specified.</p>		<p>Criterion is partially met. BoF is responsible for carrying out procurement audit and the final destination of the report is not specified and clear.</p>		Consider the option of addressing procurement audit to the oversight body beyond BoF.

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

Assessment criteria [12(c) Enforcement and follow-up on findings and recommendations]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Recommendations are responded to and implemented within the time frames established in the law.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.	The legal provisions on external and internal audit require PBs to take corrective action within 15 and 10 days, respectively, from the date of receipt of the report. However, it was responded that, in both cases, PBs do not take action on audit findings within the specified time period which is a recurrent problem for both types of audit. There is no specified time frame in the legal document to respond to the procurement audit carried out by BoF.		<p>Criterion is not met. Actions on audit reports are not taken timely.</p>	✓ Yes	Enhance the enforcement mechanism.
(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.	<p>There are multiple arrangements in place to follow up on the implementation of audit recommendations. The City Council through the public expenditure and accounts standing committee in the City Council carries out regular supervision of entities that have overdue audit findings. ORAG also follow up on the implementation of audit action plans through follow-up audits. The auditor general can report to the attorney general to make the audited PB liable in case of failure to implement audit actions.</p> <p>Both the internal audit findings and BoF-procurement findings are reported to the BoF for follow-up and further action. The BoF issued a directive which includes provisions to enforce implementation of audit findings/recommendations. As per article 13.1.7 of the Administrative/Financial Measure Directive 01/2011 E.C issued by the BoF, responsible officials in PBs will be subjected to administrative measures including fines and even removal from office in case of recurrent failure to implement audit recommendations.</p> <p>However, no evidence has been obtained on the enforcement actions taken by the BoF.</p>		<p>Criterion is partially met. It appears that there is a system in place for audit follow-up, particularly external carried out by ORAG and internal audit. But there is no significant change due to weak or lack of enforcement. BoF procurement audit has no clear mechanism.</p>	✓ Yes	Consider a strong accountability and enforcement mechanism. Define the enforcement mechanism to ensure that the findings of the procurement audit are addressed timely.

12(d) Qualification and training to conduct procurement audits

Assessment criteria [12(d) Qualification and training to conduct procurement audits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*	<p>The ORAG office provides regular training on the procurement rules to equip the auditors with knowledge required to carry out procurement audit. It coordinates with the regional PPA to train the auditors for at least 25 hours on procurement.</p> <p>The Internal Auditors are provided training through the PFM institutionalized training. But the training focuses on overall auditing practices and not on procurement. The internal auditors'</p>		<p>Criterion is not met. There is no regular training to auditors to equip them with knowledge and skill required to carry out procurement audit.</p>		Establish an effective procurement training program targeting to auditors.

Assessment criteria [12(d) Qualification and training to conduct procurement audits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</p> <p>- number of training courses conducted to train internal and external auditors in public procurement audits. Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</p> <p>- share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>understanding of procurement is limited to knowledge acquired by their own reading of the procurement legal documents.</p> <p>Similarly, the Procurement Auditors in PPA didn't receive training on procurement and auditing.</p>				
<p>(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>	<p>Auditors are not specifically required to have procurement knowledge to carry out procurement audits. Rather, their educational background is largely in accounting and auditing. There is no either experience in supporting auditors with service from procurement specialists or consultants while undertaking procurement audit. As a result, there is growing concern among procurement staff that the audit carried out both by internal and external auditors lacks the benefit of good understanding of the procurement environment and there is a tendency to overly rely on compliance.</p>	Not applicable	<p>Criterion is not met.</p> <p>The selection of auditors does not require procurement knowledge. Even the auditors in RPPA who are fully engaged in auditing procurement contracts and processes are not required to have a procurement knowledge. Most of the auditors join the agency directly from university with no prior working experience. With the limited or no training, the auditors carry out procurement audit without adequate knowledge and skills on public procurement.</p>	✓ Yes	<p>Consider revising the job requirements to include procurement knowledge and introduce a competitive scheme to attract qualified and experienced staff.</p>
<p>(c) Auditors are selected in a fair and transparent way and are fully independent.</p>	<p>The selection of the auditors (internal or external) follows an open competitive procedure in accordance with the HR recruitment procedure. The City Government issued a new amendment to its proclamation (which was not effective at the time of the assessment) allowing ORAG to hire auditors through a competitive salary structure instead of the structure established by the civil service commission.</p> <p>To enhance the independence of the internal auditors, the decision on the recruitment and promotion of the internal auditor is fully delegated to MoF and not carried out by public bodies.</p>		<p>Criterion is met.</p>		

13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Decisions are rendered on the basis of available evidence submitted by the parties.</p>	<p>Decisions are required by the law to be rendered on the basis of available evidence submitted by the parties, which may include an oral hearing.</p> <p>The main provisions in the legal framework on the right of appeal and appeal process are set out in PPL A.62 to A.65.</p> <p>PD A.51 empowers the Committee to require (i) evidence, documents, registers and explanations to be produced from the public institution or the bidder through the Bureau and (ii) make witnesses having connection with procurement activities appear and give their testimony under oath.</p>		<p>Criterion is met.</p>		

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations																
	<p>The decisions of the CRB cited supporting evidence reviewed by the Committee when passing decisions. The following sample cases reviewed as part of the assessment show that the CRB relies on the available evidence and that it is cited in the decision letter.</p> <table border="1" data-bbox="498 426 1264 1213"> <thead> <tr> <th>#</th> <th>Issue</th> <th>Decision</th> <th>Evidence referred and cited</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Technical evaluation was not conducted as per the bidding document and the winner is considered as it includes 15% VAT but not mentioned at bid price reading</td> <td>PE to continue the process</td> <td>Not specifically mentioned which documents are referred to. But there is a statement stating the procurement documents are reviewed but for more clarification representatives from both parties were invited. -Procurement directive Article no. 15.19.1.4 Receives oral explanation from both the bidder and the PE bid committee and other involved staffs</td> </tr> <tr> <td>2</td> <td>Bidder envelope was not opened during bid opening for inappropriate sealing of bid</td> <td>To include the bidder's envelope and continue the procurement process</td> <td>-Bidding Document - Bid Invitation - Procurement directive Article no. 15.19.1.4 Oral explanation from the bidder and the PE representatives.</td> </tr> <tr> <td>3</td> <td>- Unclear evaluation criteria</td> <td>- The PE was ordered to cancel the bid</td> <td>- Procurement directive Article 15.8.1. - Bidders bid document - Oral explanation from the bidder and the PE representatives.</td> </tr> </tbody> </table>	#	Issue	Decision	Evidence referred and cited	1	Technical evaluation was not conducted as per the bidding document and the winner is considered as it includes 15% VAT but not mentioned at bid price reading	PE to continue the process	Not specifically mentioned which documents are referred to. But there is a statement stating the procurement documents are reviewed but for more clarification representatives from both parties were invited. -Procurement directive Article no. 15.19.1.4 Receives oral explanation from both the bidder and the PE bid committee and other involved staffs	2	Bidder envelope was not opened during bid opening for inappropriate sealing of bid	To include the bidder's envelope and continue the procurement process	-Bidding Document - Bid Invitation - Procurement directive Article no. 15.19.1.4 Oral explanation from the bidder and the PE representatives.	3	- Unclear evaluation criteria	- The PE was ordered to cancel the bid	- Procurement directive Article 15.8.1. - Bidders bid document - Oral explanation from the bidder and the PE representatives.				
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3	- Unclear evaluation criteria	- The PE was ordered to cancel the bid	- Procurement directive Article 15.8.1. - Bidders bid document - Oral explanation from the bidder and the PE representatives.																		
<p>(b) The first review of the evidence is carried out by the entity specified in the law.</p>	<p>PPL A.63 provides that, in the first instance, candidates submit a complaint to the public body.</p> <p>The head of public body is obliged to review and decide upon the complaint in accordance with the provisions of the PPL and PPD. In practice, in some public bodies the head delegates the responsibility to procurement staff and the bid endorsing committee.</p> <p>However, the fact that the Head of the PB approves procurement decisions and reviews complaint undermined the impartiality of the complaint system at the level of PB.</p>		<p>Criterion is partially met.</p>		<p>Consider establishing an impartial complaint handling system at all levels including at the level of PBs.</p>																
<p>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p> <p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):</p> <p>- number of appeals. Source: Appeals body.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):</p>	<p>There is no specific statement in the PPL that the decisions of the Bureau are final and binding (enforceable).</p> <p>However, the Administrative/Financial Measure Directive 01/2011, mandates the public bodies to respect the BoF decision. The directive introduces a penalty provision on PEs that fail to implement the decision of the CRB. The decision of the BoF is considered final but either of the parties have the right to take the case to court if not satisfied by the BoF decision, as per Article 49 of the procurement directive.</p> <p>The CRB reviews the complaints and evidence presented by both parties, including inviting both parties for explanation in its session/meeting before making decisions. The decisions of the CRB are endorsed by the Head of the BoF. The letter communicating the decision to both parties is also signed by the Head of the BoF. However, the procurement directive Article 41 provides the CRB the power to make decisions and communicate the same to the respective public body. There is no evidence that shows decisions of the CRB were not respected and implemented.</p>	<p>The team was not able to access data on number of CHB's decision that were enforced. The regulatory body or the appeal body do not systematically follow the enforceability of the decisions and capture records in central data base.</p>	<p>Criterion is partially met.</p> <p>There is no specific statement in the PPL that the decisions of the Bureau are enforceable.</p>		<p>Introduce a provision in the PPL showing that the CRB's decision is enforceable.</p>																

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>number (and percentage) of enforced decisions. Source: Appeals body.</p>					
<p>(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.</p>	<p>The time frames for submission and review of challenges, appeals and issuing of decisions set out in the legal framework do not unduly delay the procurement process or make an appeal unrealistic.</p> <p>Time frame for submission of challenges and appeals: PPL A.63((2) requires the candidate to submit the complaint to the head of the public body within five working days from the date he knew, or should have known, the circumstances giving rise to the complaint</p> <p>Time frame for issuance of decision by the head of the public body: PPL A.63(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons.</p> <p>Time frame for complaint to the Bureau: PPL A.63(4) If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Bureau. The complaint to the Bureau must be submitted within 5 five working days from the date on which the decision had been or should have been communicated to the candidate.</p> <p>Time frame for issuance of decision by the Bureau: PPL A.64(5) requires the Bureau to issue its decision within 15 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any. The Bureau is given 3 days from receipt of the Committee recommendation to issue its decision with immediate effect – this gives the Committee 12 days to reach its recommendation.</p> <p>The PPD (A.18.27(5) & (6)), which provides for a maximum number of days for signature of the contract following notification, appears to recognize that there may be delay due to complaints but falls short of establishing a ‘standstill’ period.</p> <p>The assessment team analyzed six cases reviewed by the CRB, which on average took 37 calendar days to respond at the CRB level. The CRB took up to 57 days to review and respond to appeals. Hence, the decision of the CRB is not rendered within the time limit specified in the law.</p>		<p>Criterion is partially met. The CRB does not provide resolution within the stated time frame. Almost all the decisions were made after unduly delay.</p>		<p>Restructure the appeal system to ensure impartiality with adequate capacity and competence to respond within the specified time frame. If applicable, consider sharing the service of one strong appeal body with the federal and Oromia region.</p>

13(b) Independence and capacity of the appeals body

The appeals body:

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions</p>	<p>The links between the Bureau and the Committee for review are necessarily close. The Bureau in effect serves as the Secretariat of the Committee. In that context the Secretariat receives and processes complaints. The Bureau is also the body that makes the final decision on the complaint on the recommendation of the Committee, although the possibility given to it to amend or decline the recommendation is not mentioned.</p> <p>Board members: The Committee established by the Bureau pursuant to PPD A.49 to review complaints is a body which is independent of the procuring entity. It is composed of 5 members with knowledge and experience of procurement activities as follows:</p> <ul style="list-style-type: none"> • Bureau member – Chair • Chamber of Commerce – Member • Procuring Entities – Member 		<p>Criterion is not met. Links between the Bureau and the Committee: The close links between these bodies create the potential for conflict with other advisory, regulatory and monitoring roles of the Bureau in relation to procurement and contracts.</p> <p>Appointment of Committee members: It is not clear whether open competition is required for the appointment of Committee members. Membership of the Committee is an important, quasi-judicial role. Appointment as a member should be by way of an open, public competition. The type and level of necessary experience should be clearly specified to</p>		<p>Links between the Bureau and the Committee: The review body should, ideally, be supported by its own secretariat, independent of the Bureau and other bodies.</p>

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<ul style="list-style-type: none"> State Owned Enterprise – Member Procurement and Property Administration Agency – Member Regional procurement works unit – Member and Secretary 		<p>ensure that members are appropriately qualified and experienced to undertake this important task. It is common practice for a number (not necessarily all) of the members to be legally qualified.</p> <p>Committee members: Conflicts. Committee members are drawn from representative groups which create the potential for conflicts of interest. There are provisions in the PPD concerning reporting a conflict of interest (PD A.50) and ethical conduct. However, members from these organizations are placed in a potentially difficult position concerning actual or perceived independence and conflict. Each of the represented organizations has a day-to-day interest in the conduct of public procurement in general and may have direct interest in particular procurements in an advisory or review capacity, or as public bodies or bidders or representative of those organizations.</p>		
(b) does not charge fees that inhibit access by concerned parties	No fees are levied on complaints.		Criterion is met.		
<p>(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available</p> <p><i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (e):</i> <i>- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).</i> <i>Source: Appeals body.</i></p>	The procedures for review are clearly defined in the PPL and PPD.	There is no centrally maintained data showing time frame on appeal decision.	<p>Criterion is partially met. The procedure is not publicly available.</p>		Ensure that the procedure is publicly available. Follow the recommendation provided on accessibility of documents in the relevant section of the matrix.
(d) exercises its legal authority to suspend procurement proceedings and impose remedies	<p>Suspension: PPL A.64(1) provides that, upon receipt of a complaint, the Board shall promptly give notice of the complaint to the public body concerned and that notification automatically suspends further action by the public body until the Board has settled the matter.</p> <p>Remedies: PPL A.64(3) lists the remedies which may be imposed by the Bureau.</p> <p>The BoF has the legal authority to suspend the procurement proceedings and impose remedies. According to Article 64 (2) of the procurement proclamation, unless the BoF dismisses the complaint, it has the authority to render one of the following decisions (a) prohibit the public body from acting or deciding unlawfully; (b) order the public body to proceed in a manner conforming to the rules in the proclamation other than a decision to award or conclude a contract; (c) annul in whole or in part, an unlawful act or decision by the public body. It is supported with evidence that, upon receipt of complaints, the BoF issues letter suspending the procurement proceedings and issues decisions imposing remedies.</p>		Criterion is met.		
(e) issues decisions within the time frame specified in the law/regulations*	The procurement directive stated that the CRB shall provide responses within 15 working days. A sample of six complaints was reviewed and the dates show that the minimum number of days taken to respond is 10 days and the maximum number of days is 53 days. The average response time for the CRB is 37 days.		<p>Criterion is not met. Appeal decisions were not issued within the time specified in the rule.</p>		See recommendation provided under indicator 13 (a) (d).

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(f) issues decisions that are binding on all parties	There is no specific provision in the PPL stating that decisions are binding on all parties. But the BoF has the legal authority to suspend the procurement proceedings and impose remedies as stated above in 13 (b) (d).		Criterion is partially met. There should be a provision in the PPL stating that decisions are binding on all parties.		Include a specific provision in PPL dealing with binding nature of decisions.
(g) is adequately resourced and staffed to fulfil its functions.	The Bureau is adequately resourced and staffed but there is no dedicated budget allocated to the CRB. There is no adequate staff that enables the board to fulfill its function properly. The Complaint Handling Team in the BoF provides support to the CRB, but the team is not adequately staffed.		Criterion is not met. The CRB and the support team are not adequately resourced.		See recommendation under 13 (b) (a).

13(c) Decisions of the appeals body

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

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations												
(a) based on information relevant to the case.	<p>According to the procurement Directive Article 46, the CRB's decision shall be made based on the bidding document, bid document, invitation to bid, evaluation report and any other documents relevant to the case and in accordance with the proclamation and Directive. In addition, it was reported that the CRB usually conducts a hearing by inviting the two parties. The actual review of the 3 sample cases (please see Indicator 13 (a) (a)) shows that the CRB cited evidence reviewed and considered in reaching decisions.</p> <p>However, the survey result shows that the private sector lacks confidence on the appeal system. Based on the private sector survey, the perception on challenges of the appeals system is as follows:</p> <table border="1"> <thead> <tr> <th>ANSWER CHOICES</th> <th>RESPONSES</th> </tr> </thead> <tbody> <tr> <td>The system acts in accordance with rule of law and is predictable</td> <td>6.45% 2</td> </tr> <tr> <td>Most actions within the system are in accordance with rule of law and are predictable</td> <td>22.58% 7</td> </tr> <tr> <td>Only a very limited number of actions is in accordance with rule of law and predictable</td> <td>51.61% 16</td> </tr> <tr> <td>The actions do not seem to be in accordance with rule of law and are not predictable</td> <td>25.81% 8</td> </tr> <tr> <td colspan="2">Total Respondents: 31</td> </tr> </tbody> </table>	ANSWER CHOICES	RESPONSES	The system acts in accordance with rule of law and is predictable	6.45% 2	Most actions within the system are in accordance with rule of law and are predictable	22.58% 7	Only a very limited number of actions is in accordance with rule of law and predictable	51.61% 16	The actions do not seem to be in accordance with rule of law and are not predictable	25.81% 8	Total Respondents: 31			Criterion is not met. While the procedures governing the decision-making process of the appeals body provide that decisions are based on information relevant to the case, perception among the private sector is that the decisions are not in accordance with rule of law.		Improve the structure and capacity of the CRB, including ensuring specifying the minimum required qualification and experience required from each member of the members committee. Consider sharing the service of the same board with the federal government and Oromia National Regional State. Improve transparency of the appeal decisions and sensitize the private sector to establish a positive perception.
ANSWER CHOICES	RESPONSES																
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(b) balanced and unbiased in consideration of the relevant information.* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses). Source: Survey.	<p>In principle, the respondents to the private sector survey do not see the appeal system as fair and trustworthy or consistent. The results of the survey are presented in the column on the right.</p> <p>The private sector responded suggesting the following areas for improvement:</p> <ul style="list-style-type: none"> • Transparency • Timeliness • Accountability • Competence, professionalism • Fairness 	<p>59% of the 49 respondents to the private sector survey said that they appealed the decision of public body to the complaints review Board.</p> <p>61% of the 33 respondents responded that their complaints were not resolved timely.</p> <p>88% respondents said they were not satisfied with the outcome of the complaints review mechanism.</p> <p>88% of the respondents said that they do not consider the appeal system as fair and trustworthy.</p> <p>83% of the respondents said that the appeal decision was not consistent.</p> <p>81% of 31 respondents, who have never appealed the decision of the Public Body, said that they felt that the decision of the Public Body was unfair, but did not appeal because they did not believe the appeal system was sufficiently trustworthy.</p>	Criterion is not met. The private sector does not consider the Complaint Handling Board as trustworthy and fair. This is mainly due to: 1) the reporting structure of the Board (to Ministry of Finance) created mistrust on the impartiality of the Board, 2) the limited capacity in delivering its decisions within the time frame, and 3) The involvement of the agency in reviewing and analyzing the complaints, which is not viewed as independent and impartial. Lack of minimum qualification and experience requirement, and the formal positions of members of the Board are viewed as limiting factors in delivering responsibilities capably and independently.		See the recommendation under 13 (c) (a).												
(c) result in remedies, if required, that are necessary to correcting the	The BoF has the legal authority to suspend the procurement proceedings and impose remedies, including (a) prohibiting the public body from acting or deciding unlawfully; (b) ordering the public body to proceed in a manner conforming to the rules in the proclamation other than a decision to	The Report on the performance of the CRB in the year 2017/18 and 2018/19 shows that from the total 90 appeal cases reviewed by the CRB, 47 cases (more	Criterion is met.														

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>implementation of the process or procedures.*</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c):</i> - outcome of appeals (dismissed; decision in favor of procuring entity; decision in favor of applicant) (in %).Source: Appeals body.</p>	award or conclude a contract; (c) annulling in whole or in part, an unlawful act or decision by the public body.	than 52%) were decided in favor of the complainant. But the private sector does not consider the appeal system balanced and trustworthy (see survey result 13 (c) (b)).			
<p>(d) decisions are published on the centralized government online portal within specified timelines and as stipulated in the law.*</p> <p><i>// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d):</i> - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralized online portal.*</p>	There is no legal requirement to publish full decisions and currently no Bureau portal on which to do so. PD A.54.2 requires the Bureau to make the decision available to the applicant and the Government. But the decision is not published.		Criterion is not met. Publication of full decisions: In order to ensure transparency and an effective complaints system, all decisions should be published in full on a central online portal. This could also help to build positive perception on the appeal system.		Include a provision in primary legislation requiring publication of full decisions within a specified time period. Ideally this should be in a user friendly and easily searchable format. Consider use of federal PPA's website in the short term.

14. The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

The legal/regulatory framework provides for the following:

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.</p>	<p>The PPD defines (A55.4) corrupt and fraudulent acts to include: bribery of the person making the purchase in the form of any value; presentation of false or fraudulent document; and hindering free competition by way of price collusion with other bidders.</p> <p>These are not definitions consistent with obligations deriving from legally binding international anti-corruption agreements.</p>		<p>Criterion is partially met.</p> <p>There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law, which each define fraud & corruption in different ways, and also set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations may contradict each other, such as, for example, application of the specific law above general, while the specific law does not provide for specific issues up to the professional standard. For example, PPL is a specific law but its definition of offenses lacks a standard requirement for prosecution e.g., intent of the wrongdoing.</p>	✓ Yes	Ensure consistency among the procurement documents, Anti-corruption law and international obligations.
<p>(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.</p>	<p>Responsibility/accountability of government employees: PPL A.24(1)(e) requires personnel engaged in public procurement to observe rules of ethics which include the requirement to report to the law enforcement agencies any intended or completed action of corruption and contribute to the effort to fight corruption and malpractice.</p> <p>PD A.42.8 requires any employee or person in position of responsibility to notify the appropriate body of any acts of corruption, intended or perpetrated. In such a situation the individual must</p>		<p>Criterion is partially met.</p> <p>There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law, which each define fraud & corruption in different ways, and set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations</p>	✓ Yes	<p>Ensure consistency of the public procurement legislation and other laws.</p> <p>Fines and Imprisonment: It would be preferable to ensure consistency between</p>

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>make sure the allegation is supported by evidence and isolate themselves from facilitation or assisting in the intended act.</p> <p>Penalties for government employees: PPL A.66 sets out offences and punishments for persons appointed to or employed by a public body and procurement and property administration officers. The penalties for offences under these provisions, which include fraudulent and corrupt practices as well as bribery, include fines and terms of imprisonment.</p> <p>Responsibilities of private firms: PPL A.24(2) requires that any candidate or supplier shall refrain from any act contravening the public procurement process. Candidate or supplier is prohibited, in summary, from actions intending to influence the public body, and must not make gifts or offer other forms of inducement. (PPL A.22(2)(a)). PD A.18.4(e) sets up a form of integrity in the bidding document by requiring candidates to complete and sign an undertaking form attached to the bid proposal document, certifying that they are clear from any act of corruption or embezzlement, and comply with federal and state laws.</p> <p>PD A.42.7 Ethics expected of candidates: requires candidates and suppliers to refrain from making gifts to persons with responsibility for public procurement, not to engage in collusive behavior (connivance), and to disclose to the appropriate body any intended or perpetrated act of corruption and not be complicit in such act.</p> <p>Disqualification: PD A.11(21) provides that a public body may disqualify a bidder where it is proven that the bidder has committed an act of embezzlement, fraud or connivance with other bidders.</p> <p>Rejection of bid: PPL A.22(1)(f) provides that a public body may reject a bid in whole or in part where it is proven that the bid is not sufficiently competitive as a result of collusion (connivance) or unethical conduct.</p> <p>Debarment: PPD A.55 provides for debarment for the offences described in Indicator 14(a)(a). Compensation: PPD A.55. provides that without prejudice to any action that may be taken by the Bureau, public bodies shall be entitled to seek compensation for any damage or loss they have sustained on account of the breach.</p>		<p>may contradict each other, such as, for example, application of the specific law above general while the specific law does not provide for specific issues up to the professional standard. For example, the PPL is a specific law, but its definition of offenses lacks a standard required for prosecution, e.g., intent of the wrongdoing.</p> <p>In addition, the offences set up in the PPL mix criminal and administrative wrongdoing with criminal penalties for all of them.</p> <p>Fines and Imprisonment: PPL A.66 sets up what are in effect criminal penalties. Whilst it has been common, historically, to refer to criminal penalties in administrative type laws such as the PPL, this is again not based on a strict reading of the Constitution which gives the Federal Government the mandate to adopt a penal code. Regions are permitted to adopt penal laws only to the extent that they are not specifically covered by the Federal code. Where penalties are included in regional laws, it is based, so it would seem, on the desire to make subjects aware of those penalties, i.e., they are not intended to create new penalties, but merely to reflect those adopted by the Federal Government. This is not, however, how the Addis Ababa PPL is drafted. The Attorney-General has the task of ensuring the consistency between the Federal penal code and any other law which includes them (as explained above, as a matter of transparency), but there is a suspicion that the offences 'created' in the Addis Ababa PPL are not always consistent, thereby giving rise to a legal conflict and possibility of challenge.</p>		any penalties contained in the PPL with penalties provided for the same offences in the Federal penal code.
(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	<p>Responsibility/accountability of government employees: PPL A.24(1)(a) requires personnel engaged in public procurement to observe rules of ethics which includes the obligations to notify any actual or possible conflict of interest and isolate oneself from any processes involving such conflict.</p> <p>The PPD A.42.8 requires employees directly or indirectly related to procurement to notify in writing any activities that benefit himself/herself or families and isolate himself/herself from the process. The PPD further provides how the conflict of interest should be managed by the public body.</p>		Criterion is met.		

14(b) Provisions on prohibited practices in procurement documents

Assessment criteria [14(b) Provisions on prohibited practices in procurement documents]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.	<p>Federal Standard Bidding Documents: (example used is SBD for Works, National Competitive Bid (NCB)) The Instructions to Bidders (clause 3 in SBD Works NCB)) include a section which refers to the requirement on both public bodies and bidders to observe the highest standard of ethics. It uses the definitions of corrupt, fraudulent, collusive, coercive and obstructive practices referred to in</p>	Not applicable	<p>Criterion is not met. The PPL doesn't specify prohibited practices that should be observed both by public officials and procuring entities. Use of federal SBDs is not mandatory.</p>		Consider specifying prohibited practices in the procurement legal documents. Please refer to

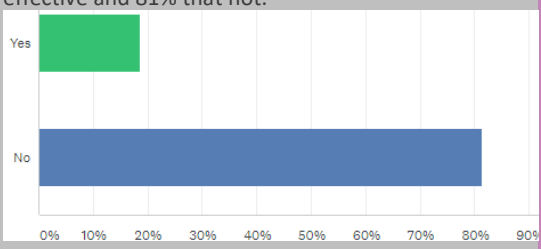
Assessment criteria [14(b) Provisions on prohibited practices in procurement documents]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	the Manual (see 14(a)(a) above). It confirms that the public body will reject a recommendation for award if it determines that the bidder has been engaged, directly or indirectly, in one of these practices. It also refers to the debarment process and list of debarred bidders held by the Agency and published on the Agency's website. It states that the public body may terminate a contract if at any time it determines that corrupt or fraudulent practices have been engaged in. Bidders are required to indicate their acceptance of the provisions on fraud and corruption through the statement in the Bid Submission Sheet (Part 1, section 4 : Bidding Forms, Form A). Bidders must permit the Agency to inspect their accounts, records and other documents.				recommendation provided under sub-indicator 9 (b) (b).
(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.	The Federal General Conditions of Contract (clause 5 in the example used; SBD for Works, National Competitive Bid (NCB)) includes provisions on fraud and corruption including reference to contract cancellation and debarment. The General Conditions of Contract are part of the SBD and may not be altered.	Not applicable	Criterion is partially met. See 14 (b) (a).		Consider the recommendation given on SBDs under the relevant section in this matrix.

14(c) Effective sanctions and enforcement systems

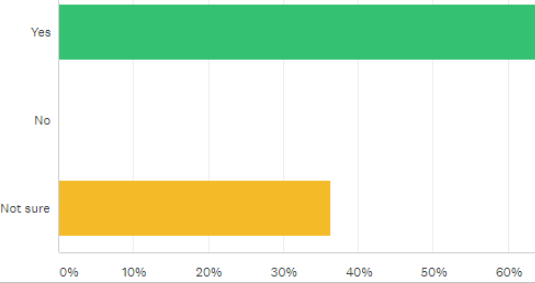
Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.	PPL A.24(1)(e) Rules of Ethics requires personnel engaged in procurement to report to law enforcement agencies any intended or committed act of corruption. The legal documents refer to only one aspect of malpractice as "corruption" and are lenient on the other aspects of malpractices including fraud. There is also inconsistency between the proclamation and the directive regarding whom to report, in which the proclamation specifies "law enforcement authorities" while the Directive refers to "relevant authorities". Besides, there is no clear procedure to report allegation of fraud and corruption to the law enforcement authorities. The legal framework also requires, for example, public bodies reporting corruption to provide evidence. Given that non-professionals are not in a position to do it, many allegations may go unreported. Staff in PEs do not appear to understand the requirement to report cases of malpractices. For instance, there is a practice of rejecting bidders alleged with forged documents (fraud) from the bidding process without reporting to the law enforcement authorities. No evidence has been obtained on any specific corruption /fraud case reported to and followed up by BoF.	Not applicable	Criterion is partially met. The reporting structure on fraud and corruption and other illegal practices has to be clearly established and communicated to all parties including staff in procuring entities. The languages of the directive and the proclamation and other documents including the SBDs have to be consistent and comprehensive so that it avoids misconception or misinterpretation.	✓ Yes	Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the public procurement legal framework and with other laws. Consider providing training and guidance to staff on how to report on cases of corruption and other malpractices anonymously.
(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.	There is no clarity as to whom corruption allegations are to be reported to, as explained above. In practice, they are reported to AAEAC, Attorney General and police commission. However, it is not clear whether all allegations are directed to the agency responsible for acting on them. Cross-check did not provide such assurance.		Criterion is partially met. See 14 (c) (a).	✓ Yes	The working relationship among the relevant agencies in particular among RPPA, REAC, ORAG, Regional Attorney General and police commission has to be worked out together with clarity and consistency of the legal framework for reporting corruption.
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	The procurement proclamation Article 12 (16) mandates BoF to review and decide on the complaint from public bodies submitted on the conduct of bidders. The decision could be to suspend the bidder/supplier for a definite and indefinite period, give a written warning, or dismiss the complaint. PPL Article 65 provides the procedure for reviewing and deciding on complaints, and includes requirement on the BoF to notify and take into account information and argument presented by the parties before reaching a decision. The list of debarred companies/individuals is communicated to the federal PPA for purpose of cross-debarment and communication to all PBs at federal and Regional level. Currently, there are 108 companies debarred from participation in public procurement across the country, including 22 companies debarred by AA BoF.		Criterion is met.		Improve coordination and information flow among the procurement regulatory bodies and law enforcement authorities to ensure malpractices are legally addressed.

Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d):</p> <ul style="list-style-type: none"> - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory function/anti-corruption body. - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body. - Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). Source: Survey. 	<p>The Assessment Team was not able to obtain data on enforcement of the laws on fraud, corruption, and other prohibited practices. Information obtained from the federal AG informs only about the recent 7 cases of indictment for fraud and corruption. The Team was not able to verify whether these cases were reported to PPA and Regions to act on debarment. The Team reviewed the Reports of FEAC which provide a lot of information including performances in the Regions. In the Reports issued at the time when the investigation and prosecution functions were with FEAC, data related to fraud and corruption were aggregated and the Team was not able to establish the number related to fraud and corruption in procurement.</p> <p>Based on public information, it is known that from time to time, public officials are detained on suspicion of corruption and many of them are released after varied time counted in months without indictment.</p>	<p>In the private sector survey, out of 45 respondents 67% said that they believe that the companies are expected to give a gift to secure a contract in the public sector. 35 respondents skipped this question.</p>	<p>Criterion is not met.</p> <p>There is no access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.</p>	<p>✓ Yes</p>	<p>Ensure availability and access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.</p>

14(d) Anti-corruption framework and integrity training

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The country has in place a comprehensive anti-corruption framework 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.*</p> <p>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):</p> <ul style="list-style-type: none"> - percentage of favorable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey. 	<p>The country has in place a comprehensive anti-corruption framework. The anti-corruption responsibility is divided among three entities. The federal anti-corruption commission is responsible for preventing and fighting corruption through public education and awareness. The law enforcement responsibility is placed in the Attorney General (prosecution and overseeing investigation) and Police (investigation).</p> <p>In addition, different arrangements were established and up running with the purpose of creating awareness and fighting corruption at national level. The anti-corruption commission formed 14 coalitions at national level with different groups and interested parties including youth, women, religious groups, teachers, students etc. They have also established a joint platform with the Federal Auditor General to plan and tackle corruption based on audit findings and recommendations. There is a plan to hire a consultant and prepare a national anti-corruption policy.</p> <p>However, the capacity of the anti-corruption commission is limited. The commission lacks the technical competence and budget to deliver on its responsibility.</p> <p>FEAC undertook a survey to understand the nature of corruption in procurement. The survey was conducted in collaboration with Transparency International on the construction sector.</p>	<p>In the private sector survey, out of 43 respondents 19% said that they believe that the anti-corruption measures undertaken by the Government are effective and 81% that not.</p>  <p>55% of 45 respondents chose from the proposed options law enforcement as a very effective measure to reduce corruption, and 39% of 45 respondents said e-procurement is a very effective measure.</p> <p>Asked to indicate their priorities to enhance anti-corruption measures the respondents most often indicated:</p> <ul style="list-style-type: none"> • E-procurement 	<p>Criterion is partially met.</p> <p>While Ethiopia has in place a comprehensive anti-corruption framework 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, the legal framework lacks transparency in the first place. The private sector indicated some features they believe should be improved to support the existing system. See recommendation under 14 (c) (a).</p>	<p>✓ Yes</p>	<p>Review factors that help preventing corruption and improve them both in the legal framework and practice.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
		<ul style="list-style-type: none"> • Law enforcement • Transparency • Appropriate staff • Proper staff compensation <p>74% out of 42 respondents responded positively to the question whether they think that introduction of e-procurement will lead to reduction in corruption. 2% responded negatively, and 24% were not sure.</p> <p>64% of 33 respondents said that CSO involvement in overseeing procurement contracts would be beneficial in future.</p> 			
(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.	There are certain mechanisms that are in place to detect and mitigate corruption risks in the public procurement cycle. Currently, an Ethics office is established in 14 sector offices. Other sector offices including key sectors like Water, Education and Health abandoned the Ethics office a year before the assessment for reasons unclear to the assessment team. The ethics office is closely accessible to report corruption allegations and supports the registration and update of assets owned by officials and staff. The City government identified procurement as one of the sectors vulnerable to corruption. As a result, all government officials and employees in the city that are involved in procurement activities are required to declare and register their assets at the Federal Ethics and Anti-Corruption Commission and update every two years. Assets that are acquired above the official income are considered as obtained through corruption and can lead to prosecution.	Not applicable	Criterion is partially met. Lack of adequate segregation of roles and incompetent structure in performing key procurement activities (like evaluation and award decision) exposes the system to misuse. Incorporate integrity training session in the PFM training program or as a standalone program delivered on the regular basis m for corruption. Ethics offices have not been established in all sectors.		Consider revising procurement responsibilities in a manner that enhances internal control. Consider reinstating the Ethics office in all sectors or use cluster offices.
(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	There is no practice to adequately compile statistics on corruption-related legal proceedings. However, the assessment team came across reports that were annually issued by FEAC before the mandate was transferred to Federal Attorney General. FEAC compiled information from the federal and regions and issued annual report covering the performance on training and awareness, prevention, investigation and prosecution including information on number of allegations received, investigation done, prosecution and conviction. It appears that the good experience in FEAC has not continued by the Attorney General.	Not applicable	Criterion is not met. Statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	✓ Yes	Ensure that statistics on corruption-related legal proceedings and others are compiled and published.
(d) Special measures are in place for the detection and prevention of corruption associated with procurement.	There is no special mechanism in place for detecting and preventing corruption in procurement.		Criterion is partially met. There are no special measures other than what is described under (b) above.	✓ Yes	Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system.
(e) Special integrity training programs are offered and the procurement	There is no regular integrity training program on procurement. But the corruption prevention Department provides dedicated support on integrity training. Also, FEAC provides anti-corruption awareness to the public and training to public bodies when requested.	Not applicable	Criterion is not met.	✓ Yes	Incorporate integrity training session in the PFM training program or as a standalone

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
workforce regularly participates in this training.			There is no regular integrity training program on procurement. But the corruption prevention Department provides dedicated support on integrity training.		program delivered on the regular basis.

14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There are strong and credible civil society organizations that exercise social audit and control.	There are no strong and credible civil society organizations that exercise social audit and control.	Not applicable	Criterion is not met. There are no strong and credible civil society organizations that exercise social audit and control.		See indicator 9 (c) (f).
(b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.	The new Organization of Civil Society Proclamation No 1113/2019 opened a new era in the establishment and operation of CSOs in Ethiopia. The new law, inter alia, allowed all CSOs to engage in any lawful activities and relaxed the distribution of funds between administrative and operational costs. While there is a relatively conducive environment for the operation of CSOs, the procurement environment has no procedure to encourage the involvement of CSOs in public procurement. As a result, there are no practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.	Not applicable	Criterion is partially met. The new CSO law provides opportunities to enhance the role and operation of CSOs in Ethiopia. However, the procurement procedure has not identified and provided guidance on the involvement of CSOs in public procurement.		See indicator 9 (c) (f).
(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil society organizations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement. Source: Survey/interviews.	There are not many CSOs that are working on public procurement in Ethiopia. The Construction Sector Transparency Initiative (CoST Ethiopia) is the only active CSO working on the transparency aspect of procurement related to construction contracts. CoST provides for the disclosure of project information on a selection of construction projects and the procurement aspect. PPA redesigned its website for purpose of publication with support from CoST Ethiopia. The main benefit of enhancing transparency in the sector is to improve the integrity and accountability in the system. However, this is only a single CSO, and its engagement is limited to construction projects. There is no evidence of its involvement at the regional level.	27 respondents out of 80 responded to the question whether civil societies are allowed to monitor bid submission, receipt, and opening, and 26% said that they are allowed. 33% said that they are not allowed, and 41% were not sure. Out of 43 respondents asked whether they are aware of any CSO providing an oversight in procurement, 5% said that they are aware and the remaining 95% said that they are not aware. This perception is different from the response of the Procuring Entities who generally say that CSOs are allowed to participate but they do not participate. Out of 52 respondents asked whether they think that CSO involvement in overseeing procurement contracts could be beneficial, 58% said yes, 6% said no, and 37% were not sure. Asked to tell obstacles for CSO participation in public procurement, the respondents indicated mostly lack of transparency and lack of funding.	Criterion is partially met. The procurement legal framework should encourage the involvement of CSOs in public procurement as oversight and monitoring partners. PPA should establish closer working relationship with relevant CSOs to attract their interest and support their involvement on public procurement.		See indicator 9 (c) (f).
(d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.	There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.		Criterion is not met.	✓ Yes	BoF should work with the business associations to promote adopting internal compliance measures by private firms to support integrity and ethical behavior in public procurement.

14(f) Secure mechanism for reporting prohibited practices or unethical behavior

Assessment criteria [14(f) Secure mechanism for reporting prohibited practices or unethical behavior]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.	There is a secure and accessible and confidential procedure to report allegation on corruption and unethical behaviors. The AAEA Directorate under the FEACC provides regular awareness creation trainings; distributes brochures that describe detailed procedures on how to report corruption cases; protections are given for witness and whistle-blowers; and brochures on corruption-reporting procedures are posted at least in five places.	Not applicable	Criterion is met.		
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	According to the Protection of witnesses and whistleblowers of criminal offences proclamation no 699/2010, witnesses and whistleblowers are provided with better protection by the law. The law provides different protection methods, including assigning security protection, accommodation, change in identity etc.	Not applicable	Criterion is met.		
(c) There is a functioning system that serves to follow up on disclosures.	The federal police commission established an anti-corruption directorate with three divisions that investigates corruption on non-government organization, government organizations or Stated Owned Enterprises. In addition, under the deputy police commissioner, two bureaus are established that have specialization on information collected from documents and witnesses (Tactic) or forensic investigation (techniques).	Not applicable	Criterion is met.		

14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a): - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.	The procurement proclamation article 32 provides the Rules of Ethics in public Procurement and Property Administration. The article specifies the required ethical conducts from personnel engaged in public procurement and candidates or suppliers on public procurement. In addition, the procurement directive Part IX Article 34 provides relatively elaborated ethics or code of conduct expected from employees or public officials and candidates engaged in public procurement. The code of conduct is mandatory and applicable in all PEs and staff involved in procurement. <i>But</i> no code of conduct has been found for staff involved in Public Financial management activities.	Not applicable	Criterion is partially met. No Code of Conduct applicable for staff working in PFM.		Consider developing Code of Ethics applicable to staff and officials working on PFM area.
(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.	Accountability for decision making is clearly stipulated in the procurement Proclamation. Article 11 of the procurement proclamation states that "Procurement and property administration staff or heads of procurement and property administration units and members of the procurement endorsing committee in public bodies shall be accountable for their actions in accordance with this Proclamation and the directives to be issued by the Minister." In addition, the federal government issued a proclamation to provide Disclosure and Registration of Asset No 668/2010 that obliges public officials to disclose their asset and register by the federal ethics and anti-corruption commission. So far, more than 100,000 public officials registered their asset in the commission. However, the accountability provision is not broad enough to include all employees and officials that are involved in procurement decisions including technical experts and Head of Pes, etc.	Not applicable	Criterion is partially met. The accountability provision is limited to few staff and doesn't cover employees directly or indirectly involves in procurement activities and decisions.		Consider expanding the accountability provision to cover all involved in procurement activities and decisions.

Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.	The code of ethics in procurement is mandatory. It is stipulated in the procurement Proclamation and Directive that are applicable in all PEs and procurement staff involved in public procurement.	Not applicable	Criterion is met.		
(d) Regular training programs are offered to ensure sustained awareness and implementation of measures.	The AAEC directorate provides awareness creation to sectors and trainings on implementation of the code of ethics. However, there is no regular training program related to code of ethics. The Commission mentioned budget and technical constraints in providing regular trainings.	Not applicable	Criterion is partially met. There is no regular training program.	✓ Yes	Ensure regular training on ethics. Besides delivery by REAC, it can be jointly organized either as part of the PFM training or as a standalone program.
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.	There is no requirement to capture information on beneficial ownership. There is also no system to systematically capture and maintain information on conflict of interest. The software for asset registration is also not functional, and information exchange is reliant on manual communication. Thus, the information on beneficial ownership, conflict of interest or asset disclosure are either not available or not systematically captured, maintained, utilized for decision making.	Not applicable	Criterion is not met. There is no established procedure and practice to capture information on beneficial ownership. Similarly, there is no established procedure to notify, address and capture information on conflict of interest. The lack of capacity to rollout the software designed for capturing, updating and analyzing information on asset register has limited the capacity to fight corruption in public procurement.		Ensure that Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

The Federal Democratic Republic of Ethiopia

Assessment of the Public Procurement system 2021

Volume II.3

Indicator Matrix for Afar



MAPS assessment in: Ethiopia

Name/organization: The World Bank in cooperation with the Ministry of Finance and the Public Procurement and Property Administration Agency of the Government of Ethiopia

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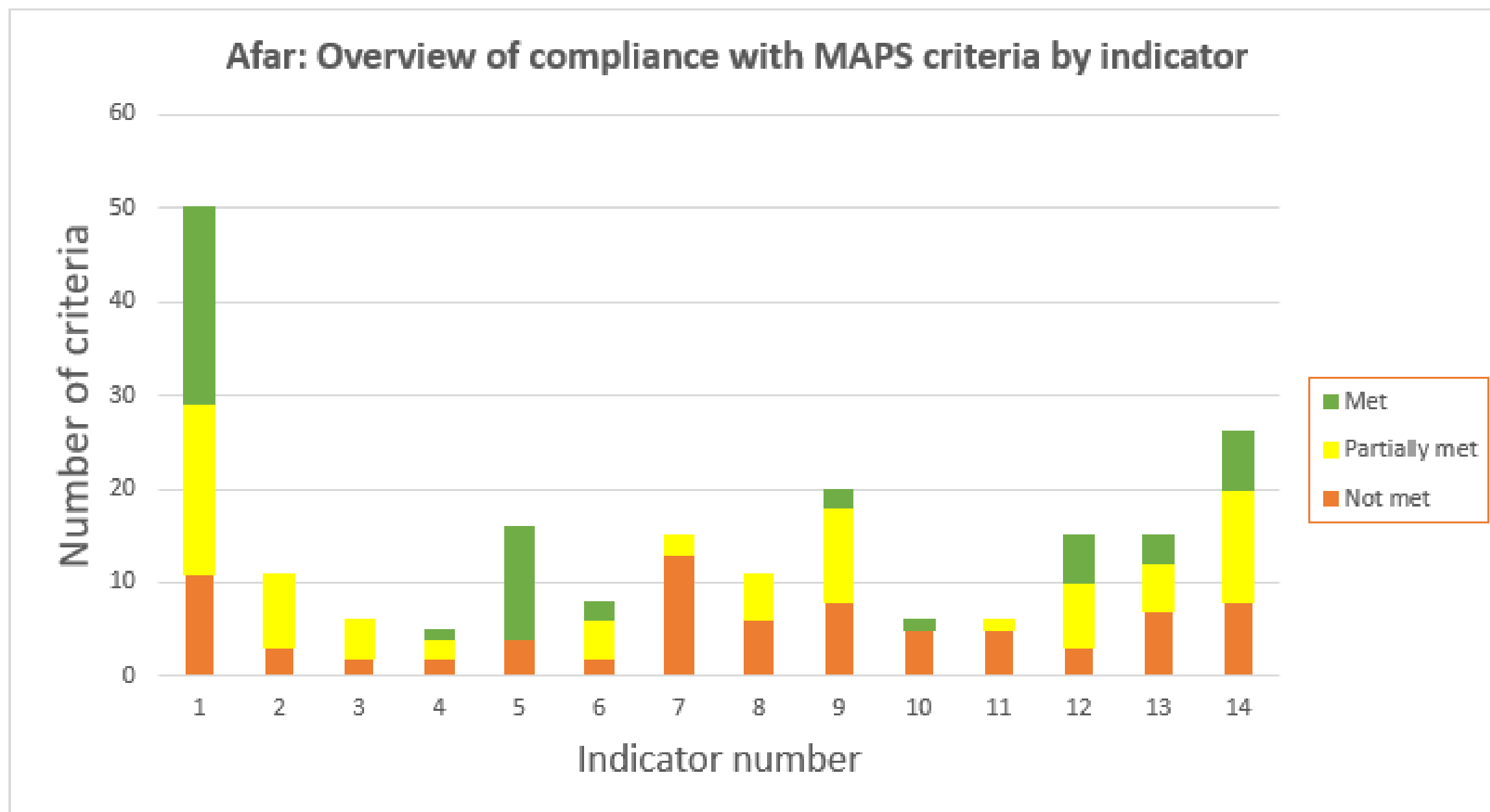
The public procurement system in Afar, Ethiopia: Overview of compliance with MAPS indicators

Red flags raised ✓	Non-compliance	Partial compliance	Compliance
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Indicators are assessed against several criteria. Non-compliance for an indicator is considered if at least one criterion is not met. Partial compliance is considered if at least one criterion is partially met. Compliance is considered if all criteria are met.

	Pillar I	Pillar II	Pillar III	Pillar IV				
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	✓ 1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well-integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring		
	1(b) Procurement methods		✓ 4(b) Financial procedures and the procurement cycle			9(a) Planning	11(b) Adequate and timely access to information by the public	
	✓ 1(c) Advertising rules and time limits	5. The country has an institution in charge of the normative / regulatory function.	5(a) Status and legal basis of the normative / regulatory institution function			9(b) Selection and contracting	11(c) Direct engagement of civil society	
	1(d) Rules on participation		5(b) Responsibilities of the normative / regulatory function	9(c) Contract management	12. The country has effective control and audit systems.	✓ 12(a) Legal framework, organisation and procedures of the control system		
	1(e) Procurement documentation and technical specifications		✓ 5(c) Organisation, funding, staffing, and level of independence and authority	10(a) Dialogue and partnerships between public and private sector		12(b) Coordination of controls and audits of public procurement		
	1(f) Evaluation and award criteria		5(d) Avoiding conflict of interest	✓ 10(b) Private sector's organisation and access to the public procurement market		✓ 12(c) Enforcement and follow-up on findings and rec.		
	1(g) Submission, receipt, and opening of tenders		6. Procuring entities and their mandates are clearly defined.	6(a) Definition, responsibilities, and formal powers of procuring entities		10(c) Key sectors and sector strategies	✓ 12(d) Qualification and training to conduct procurement audits	
	1(h) Right to challenge and appeal			6(b) Centralized procurement body	10. The public procurement market is fully functional.	13. Procurement appeals mechanisms are effective and efficient.	13(a) Process for challenges and appeals	
	1(i) Contract management		7. Public procurement is embedded in an effective information system.	7(a) Publication of public procurement information supported by information technology			13(b) Independence and capacity of the appeals body	
	1(j) Electronic Procurement		8. The public procurement system has a strong capacity to develop and improve.	7(b) Use of e-Procurement			13(c) Decisions of the appeals body	
	1(k) Norms for safekeeping of records, documents, and electronic data.			7(c) Strategies to manage procurement data			14. The country has ethics and anticorruption measures in place.	✓ 14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties
	1(l) Public procurement principles in specialized legislation			8(a) Training, advice, and assistance				✓ 14(b) Provisions on prohibited practices in procurement documents
	2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures	✓ 8(b) Recognition of procurement as a profession	✓ 14(c) Effective sanctions and enforcement systems				
2(b) Model procurement documents for goods, works, and services		8(c) Monitoring performance to improve the system	✓ 14(d) Anti-corruption framework and integrity training					
2(c) Standard contract conditions		3. The legal framework reflects the country's secondary policy objectives and international obligations	✓ 3(a) Sustainable Public Procurement (SPP)	✓ 14(e) Stakeholder support to strengthen integrity in procurement				
2(d) User's guide or manual for procuring entities	3(b) Obligations deriving from international agreements		14(f) Secure mechanism for reporting prohibited practices or unethical behaviour					
				✓ 14(g) Codes of conduct / codes of ethics and financial disclosure rules				

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



Explanation for the Matrix:

PPL –the Afar National Regional State Procurement and Property Administration Proclamation No. 65/2003 (or the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 dated 9 September 2009 if so indicated or relevant in the context); PPD – the Procurement Directive adopted in EC 2005: Procurement Directive No 11/2005

Procuring entity (PE) = public body (PB)

1. In accordance with the MAPS methodology “red flags” are factors likely to prevent appropriate action to improve the public procurement system. These are used to highlight any element that could significantly impede the main goals of public procurement and that cannot be mitigated directly or indirectly. They can be factors that lie outside the sphere of public procurement.
2. The MAPS methodology defines the minimum requirements for all criteria under its indicators. The Assessment Team assessed whether the public procurement system in Ethiopia meets the required minimum and based on the results concludes on each criterion that “Criterion is met”, “Criterion is not met” or “Criterion is partially met”. There are criteria which meet the required minimum and are indicated as “Criterion is met”. However, in some cases, the Team sees the possibility of improving the aspect of the public procurement covered by such criterion. In such cases, the Team offered a recommendation for such improvement proposed in addition to the conclusion that “Criterion is met”.

Pillar I. Legal, Regulatory, and Policy Framework

1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.

1(a) Scope of application and coverage of the legal and regulatory framework

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

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	<p>Summary: The legal and regulatory framework is adequately recorded and is organized hierarchically with precedence clearly established.</p> <p>Constitution: The 1995 Constitution of Afar¹ is the supreme law of the State. Any law including state law, customary practice or decision of an organ of state or a public official which contravenes the Constitution shall have no effect (Constitution A.9(a)). The Afar Constitution is, however, without prejudice to the 1995 Constitution of the Federal Democratic Republic of Ethiopia which, therefore, takes precedence.</p> <p>International agreements: The Constitution does not refer to the negotiation and conclusion of international agreements. This falls within the jurisdiction of the Federal Government under the Federal Constitution since the power is not expressly given to the States and all powers given to the regions and cities are subject to the powers explicitly granted to the Federal Government. In this respect, the Federal Government is given explicit powers to formulate and implement the country's foreign investment policies² and foreign policy and ratify international agreements.³All international agreements ratified by Ethiopia are an integral part of the law of the land (1995 Constitution A.9(4)).</p> <p>The Afar Public Procurement Proclamation ('the PPL')⁴ confirms in A.6 that to the extent that the PPL conflicts with an obligation of the Federal Government under or arising out of an agreement with one or more states or with international organizations, the provisions of that agreement shall prevail. Given that only the Federal Government has the power to conclude such agreements, it must be assumed that this obligation applies to the State only in so far as the obligation is passed on to the State by the Federal Government when it provides development assistance and loans to the State⁵ under its power to administer the Federal budget⁶. There is a general obligation on all governments (Federal, State and Regional) to observe international agreements⁷. The highest legislative authority is vested in the Regional Council.</p> <p>Primary legislation - Proclamations: The Regional Council adopts primary legislation consistent with that of the Federation.</p> <p>Secondary legislation – Regulations and Directives: The PPL provides for the adoption of a Procurement Directive ('PPD') by the regional Finance and Economic Development Bureau ('the Bureau').</p> <p>The key primary legislation on public procurement in Afar is currently:</p>		<p>Criterion is partially met.</p> <p>International agreements PPL A.6 The provisions with regard to international agreements create some uncertainty and it is not clear exactly how they apply in a Federal context.</p> <p>1. Despite the exclusive mandate given to the Federal Government to enter into international agreement, it seems that there is an informal 'understanding' (which ostensibly contradicts the Federal constitution) that regional governments may enter into grant (but not credit) agreements with international organizations. This is not explicitly stated in the Afar constitution nor is it referred to in the PPL. This then raises the question of whether similar conditions that attach to grant agreements must also be respected in the same way as indicated in PPL A.6. This is not stated.</p> <p>2. The obligations attaching to grants and credits obtained by the Federal Government from international organizations are passed on to the regions through a 'specific purpose grant' which is given either by way of formal agreement or by way of an attached letter setting out those obligations from the Ministry of Finance. Though these letters are considered legally binding (and always accepted by the regional states), the new Federal Administrative Proclamation provides that all such conditions will in future be passed on by way of formal agreement.</p>	✓ Yes	<p>International agreements. It would be preferable to have more explicit provisions in this respect:</p> <ol style="list-style-type: none"> 1. Making clear which, if any, international agreements may be entered into by the State (for example, grants) and setting out the application of the conditions imposed by the grantor. 2. Explaining clearly how the obligations attaching to grants and credits obtained by the Federal Government from international organizations are passed on to the regions. 3. Possibly by excluding procurement funded through grants and loans by international financing institutions from the PPL altogether.

¹Afar Gazette of August 21, 1995

² Article 51(4) of the Federal Constitution.

³ Article 51(8) of the Federal Constitution.

⁴ Proclamation No. 65/2003 Afar National Regional State Procurement and Property Administration Proclamation

⁵ Article 94(2) of the Federal Constitution.

⁶ Article 51(10) of the Federal Constitution.

⁷ Article 86(4) of the Federal Constitution.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>Proclamation No.65/2003: the Afar National Regional State Procurement and Property Administration Proclamation which came into force in 2003. The date and months of enactment are not clear and not stated in the PPL.</p> <p>This is supported by a comprehensive Procurement Directive: The Afar Regional State Public Procurement Directive adopted in EC 2005: Procurement Directive No 11/2005 ('the PPD').</p> <p>Also enacted is the Afar Regional State Construction and Consultancy Procurement Directive 14/2005 ('CPD') which applies specifically to the construction sector, but the hierarchy or complementarity of rules is not clear.</p> <p>The Bureau is given the task of publishing Standard Bidding Documents (SBD) and other supporting documents as well as any e-GP strategy. The Bureau has published its own SBDs for national bidding, but these are not used in practice. Reliance is placed on the Federal SBDs.</p> <p>In terms of electronic procurement, the process does not yet appear to have begun.</p> <p>There are provisions on administrative contracts in Proclamation No. 165/1960 (as amended), the Civil Code Proclamation, which entered into force on 5 May 1960 ("the Civil Code"). This was adopted under the old regime but has not yet been replaced. Title XIX contains General Provisions on the formation of administrative contracts, including the procedure for allocation of contracts by tender, as well as on the effects of administrative contracts. It also contains specific provisions on "concession of public service" and contracts for public works and supplies.</p> <p>The extent to which the provisions in Title XIX of the Civil Code are in force and/or applied in practice in public procurement and to contracts awarded under the procurement legal framework is unclear. The interplay between the Civil Code and the specialized public procurement legal framework is ambiguous. This creates legal uncertainty.⁸</p> <p>Even the Federal Constitution is ambiguous. Article 55 gives to the Federal Government the power to enact civil laws deemed necessary to establish and sustain one economic community. In other respects, Regions may also adopt their own civil laws. There is another 'understanding' (not made legally explicit) that, since contract law is necessary for the maintenance of one economic community, the adoption of laws relating to contract are within the sole remit of the Federal Government and that Regions will not adopt their own provisions.</p> <p>Due to this lack of clarity on the standing of the civil code in the overall procurement framework of Ethiopia, we have not analyzed or commented in detail on the provisions of the Civil Code.</p> <p>See also note at indicator 1(a)(c) on the legal framework for public private partnerships.</p>		<p>Alignment between PPL and PD It is appropriate that the PPD (as secondary legislation) elaborates on the provisions of the PPL. However, in some cases the PPL lacks provisions which we would usually expect to see in primary legislation, such as candidates'/bidders' rights to clarification and the right to judicial appeal. On other occasions, the PPD introduces a wide interpretation or additional provisions on important issues which are probably better placed in primary legislation, such as a full list of grounds for exclusion. Examples of particular note are highlighted in this assessment.</p> <p>Directives and similar advisory documents It is important for the transparency, clarity, and legal certainty to ensure that all documents forming the legal and advisory framework for public procurement are published on a single, central and easily accessible repository. This includes all documents issued by the Bureau but also those issued by any other body. It is also essential that any such documents are consistent and in line with primary legislation. They should not, as a general rule, create exceptions to the application of the public procurement legal framework. This carries the risk of, at least, fragmentation and the possibility of undermining the operation of the public procurement system as a whole.</p> <p>Application of contract law: There is a significant lack of clarity on the applicable contract law. It appears that the 1960s civil code is still in force but its scope of application in the Regions is unclear. The Federal Government has the power to adopt any new civil laws, including any replacement of the 1960 civil code, but has not yet done so. Even though the Regions are entitled to adopt civil laws themselves, they may not do so if the scope of the civil law in question is one which is necessary for the maintenance of one economic community. Though not made legally explicit, there is an understanding that contract law would be one such law so that the Regions could not adopt their own contract law and must instead follow that adopted by the Federal Government.</p>		<p>Alignment between PPL and PD Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, ensure that PPD and the circulars do not introduce provisions that materially limit or inappropriately expand the provisions of the PPL.</p> <p>Directives and similar advisory documents Require that all Directives and similar advisory documents are published on a single, central and easily accessible repository. The repository must be kept up to date. Ideally, the repository should also be in electronic form and be easily searchable using a range of search terms so that all users can easily identify advisory and other documents of relevance to them.</p> <p>Ideally, the central repository should be comprehensive and thus also include sectoral specified documents, including defense and health related procurement, links to PPP legislation, and guidance and links to relevant websites.</p> <p>Application of contract law: Given the importance of contract law to public procurement, the applicable contract law in Afar should be made explicit.</p>

⁸ For further discussion on this issue see article by: Bahta, Teclé. (2018). Conflicting Legal Regimes Vying For Application: The Old Administrative Contracts Law Or The Modern Public Procurement Law For Ethiopia. African Public Procurement Law Journal. 4. 10.14803/4-1-23.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
			One additional issue may be that the PPL is stated to override any inconsistent laws. To the extent that the civil code (if that applies), then the PPL would prevail.		
<p>(b) It covers goods, works and services, including consulting services for all procurement using public funds.</p>	<p>Summary: The legal and regulatory framework covers the procurement of goods, works and services including consulting services, for procurement using public funds. The definitions of a “public body” and “public fund” are not sufficiently clear and create legal [and practical] uncertainty as to coverage. Defense and security procurement is generally excluded from the coverage of the PP, as are contracts between public bodies.</p> <p>PPL A.2 Definitions defines “procurement” as “obtaining goods, works, consultancy or other services through purchasing, hiring or obtaining by any other contractual means.” The terms “goods”, “works”, “services” and “consultancy services” are defined.</p> <p>“Public procurement” is defined as “procurement by a public body using public fund.” “Public fund” is quite broadly drafted to mean any monetary resource appropriated to a public body from the treasury of the Afar National Regional State as well as any federal government subsidies or aid, grants and credit put at the disposal of public bodies by foreign donors put at the disposal of the public bodies through Afar Regional State or internal revenue of the public body. The terminology refers to aid, grants and credit being put at the disposal of public bodies by foreign donors through Afar Regional State and not through the Federal Government.</p> <p>PPL A.3 states that the PPL applies to “all procurement in this region”.</p> <p>Bodies subject to the PP</p> <p>Public body: PPL A.2 Defines a “public body” (procuring entity) as “any public body, which is partly or wholly financed by the region’s state budget, higher education institutions and public institutions of like nature.”</p> <p>Public enterprises, state owned enterprises and other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage of the PP, though from the definition of “public body”, the public enterprises using public funds should be subject to the PPL. However, the general perception and feedback from stakeholders in Ethiopia is that public enterprises are excluded from the scope of the PP.⁹ This requires to be further reviewed in greater detail.</p> <p>Exemptions</p> <p>There is no exclusion for defense as in the Federal Government, but defense/security is, in any event, within the competence of the Federal Government, not the regions. Reference is made to the Federal matrix for further details.</p> <p>A.3(2)(b)) excludes from the coverage of the PPL “contracts a public body enters into with another public body for the provision of goods, works, services, consultancy or other services at cost.”</p>		<p>Criterion is partially met.</p> <p>Public funds: These are defined as covering both state funds and federal subsidies (provided by way of subsidy through a “block grant”). Given the definition of “public procurement”, this means that the PPL applies also to procurement using Federal funds since it applies to all procurement carried out in the region. There is some debate about whether, when Federal funds are used, it is the Federal PPL should be applied. There is thus a potential conflict in the Afar PPL and the scope of application of the PPL is thus unclear: does it apply to both State and Federally funded contracts (as the wording of the PPL suggests) or does it apply only to State funded contracts with Federally funded contracts subject to the Federal PP? The apparent anomaly may give rise to disputes over the application of the PPL, and it would be better to clarify the position.</p> <p>Bodies subject to the PP</p> <p>The definition of “Public Body” appears unclear as it does not define the specific entities subject to the PPL.</p> <p>Public enterprises, state owned enterprises, other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage of the PPL. The drafting of the definition of a “public body” is not sufficiently clear on the question of whether, or when, these enterprises or organizations are subject to the PPL.</p> <p>In addition, it is not clear whether an organization not generally within the scope of the PPL but in receipt of public funds for a specific project is required to comply with the PPL for the contracts awarded using those public funds. There is, therefore, a general lack of transparency and clarity and significant uncertainty as to the scope of the PPL in terms of which bodies are required to comply with the PPL.</p> <p>Exemptions</p> <p>Contracts between public bodies for the provision of goods, works, consultancy or other services at cost. PPL A.3(2)(b)) is a broadly drafted provision which has the potential to reduce transparency and competition if over-used. The impact of this provision is unclear, particularly as there is a lack of clarity as to which bodies fall within the definition of “Public Body” (see notes above). It may be</p>	<p>✓ Yes</p>	<p>Public funds: The scope of application of the PPL needs to be clarified in respect of the source of public funds. Does it apply to contracts funded by both State and Federal Government or only to those funded by the State?</p> <p>Bodies subject to the PP</p> <p>For legal certainty, it is desirable to list the categories of public bodies in the procurement legislation itself. Additionally, a list of designated public bodies, state enterprises and other bodies subject to PPL could be put together by the Bureau and published in the Bureau’s website for transparency and certainty.</p>

⁹ The explanation for this seems to be that public enterprises are established with authorized capital provided by Government but with managerial autonomy and the expectation that they will operate on market principles. See: Public Procurement Regulation in Africa, Eds. Quintot & Arrowsmith, Cambridge University Press 2013, Country Study on Ethiopia, Teclé Hagos Bahta and further explanation by the same author at paragraph II.2, Framework Procurement Contracts in the Ethiopian Public Procurement Law, PPR 2016 No.2 pp35-50.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
			<p>advisable to consider more detailed provisions. One possibility is requiring public:public arrangements to be subject to the PP, save in specified circumstances. Examples of such excluded circumstances could include: genuine co-operation between public bodies to deliver public services/tasks at cost; direct award of contracts between public bodies; or assignment of tasks/functions where the direct award or assignment of tasks/functions and participating bodies are designated by specific laws. Similarly, it may be appropriate to consider clear provisions dealing with the situation where an entity is wholly owned by a public body, carries out public tasks and is not active on the market.</p> <p>The centralized procurement arrangement at local level is not covered in the legislation. More importantly, the arrangement (pool) contradicts the procurement and delegation stipulated in the procurement legal documents that give delegation to PBs to establish procurement capacity and carry out procurement for their own need.</p>		Revise the procurement arrangement specified in the legal documents to reflect the centralized (pool) arrangement at local level preferable in the primary legislation.
(c) PPPs, including concessions, are regulated.	Summary: The PPL provides for separate PPP legislation by the Bureau but no such legislation has been identified.		Criterion is not met. To the extent that PPPs are being initiated in Afar, it is imperative that a Directive on PPPs be issued.		
(d) Current laws, regulations and policies are published and easily accessible to the public at no cost.	Summary: The PPL has been published in the regional Gazette but there is website for the Bureau which provides access to procurement legislation. The PPL has been published in the regional Gazette but the assessment team has not been able to identify a website for the BoF which provides access to procurement legislations	Not applicable	Criterion is not met. There is no Bureau website providing details of the procurement legal framework so there is no readily accessible repository of the prevailing primary and secondary legislation. Printed copies, if made available, will be subject to cost and delivery problems so that free access to a website would be preferable.		It is important to provide a readily accessible website for procurement documents. Consider publishing the procurement documents in a centralized portal. (At least in federal PPA's website as a short-term solution).

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	Summary: The PPL provides that public procurement contracts shall be awarded through Open Bidding, unless otherwise provided for in the PPL. The PPL defines situations where alternative procurement methods can be used, with grounds for justification clearly specified. General note: use of terms “candidate” and “bidder”. In the English language version of the PPL both “candidate” and “bidders” are defined terms. A candidate is a person invited or who has applied to take part in public procurement. A “bidder” is a person submitting a bid. However, the use of these defined terms within the PPL is not always complete or correct. For example, PPL A.18 refers to communications between candidates and public bodies being in writing with no reference to bidders and PPL A. 22 (2) refers to informing “candidates” of reasons for rejection of bids.	Not applicable	Criterion is met. PPL A.49 Request for Quotations (RFQ): the apparent restriction of the use of the RFQ method to ‘unplanned’ procurement seems to be illogical and removes one of the key benefits of the RFQ (i.e., the ability to reduce transaction costs for low-value procurement). It is not clear, as a result, what method applies to the identified purchases below these values. In the absence of any other provisions, it could only be open bidding which exponentially raises the cost of procurement for low-value procurement, the exact situation that the RFQ method was designed to avoid. Direct procurement may be applied where the estimated contract value is less than 1,000 Birr.		PPL A.49 Request for Quotations (RFQ) consideration should be given to removing the apparent restriction of the use of the RFQ method to ‘unplanned’ procurement. PPL

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>Open Bidding PPL A.13(2) provides that public procurement contracts shall be awarded through open bidding, except as otherwise provided for in the PPL. Open bidding is thus the presumed form of procurement method, at the top of the hierarchy of procurement methods. This is confirmed in PPD 14.2.</p> <p>Other competitive methods: PPL A.13(1) lists a range of other competitive methods and non-competitive award. These methods are permitted only where conditions set out in the PPL are satisfied (PPL A.13(3)).</p> <p>Other competitive methods laid down in the PPL are: Request for Proposals (consultancy services), Two stage Tendering, Restricted Tendering and Request for Quotation.</p> <p>The conditions for use of methods other than the open bidding method are listed in the PP.</p> <p>Under PPL A.49 Request for Quotations (RFQ) may be used for (1) the purchase of readily available goods or (2) for procurement of works or services for which there is an established market; so long as the estimated value of the contract does not exceed the specified threshold (The current maximum thresholds¹⁰ for use of RFQ are Ethiopian Birr: Works 250,000; Goods 70,000; Consultancy Services 50,000; Services 60,000.) The basic procedure (not supplemented by the PD) is set out in PPL A.50.</p> <p>However, PPL A.49(1) appears to limit RFQ to ‘unplanned’ procurement suggesting that, even if purchases of the identified goods, works and services are needed, public bodies may not make those purchases unless they did not plan for them.</p> <p>Selection of suppliers to whom RFQ is issued: under PPD A.50, the RFQ method requests are issued to at least 3 suppliers selected from the supplier list, to the extent practicable.</p> <p>Restricted Tendering is permitted where one of three conditions is met (PPL A.41): (1) where the required object of the procurement is available only with limited suppliers; (2) where the time and cost required to evaluate and examine a large number of bids is disproportionate to the value of the needs and the value of those contracts does not exceed the thresholds set out in the PPD (this is really a double condition); and (3) where a previous competitive procurement failed (the PD, A.17.7 is rather more vague). PPL The maximum thresholds are set out in PPD A.17.7 and are, in Ethiopian Birr: Works 1,000,000; Goods 300,000; Consultancy Services 250,000; Services 250,000).</p> <p>In the case of condition 1, the invitation is sent to all known suppliers. In the case of condition 2, the invitation to bid is, so far as possible, sent to suppliers chosen from a suppliers’ list and to at least 5. There is no reference to how suppliers should be selected under condition 3 (which is probably the result of the typographical errors that have crept in, but which leaves public bodies with no indication of how to address this situation). This approach has significant potential for favoritism and, may result in less-than-optimal outcomes if conditions of entry to suppliers list is not sufficiently rigorous. PPL A.47 Requests for Proposals may be used where a public body seeks to obtain consultancy services or contracts for which the component of consultancy services represents more than 50% of the contract, but there is very little detail on the procedure to be used which is not supplemented by the PPD.</p> <p>PPL A.55 Two-stage bidding may be used, in summary, (1) where it is not feasible for the public body to formulate detailed specifications, to identify the characteristics of the requirements in order to obtain the most satisfactory solutions; (2) for genuine research and development; (3) where there is a failure in a previous bid procedure due to failure to clearly describe the object of the procurement or absence of clear and complete specifications; (4) where technical characteristics or nature of services</p>		<p>PPL: Use of supplier list to select suppliers in [Request for Quotations (PPL A.50)] and Restricted Tendering (PPL A.42) The use of the supplier list to select bidders has the potential to reduce competition. Whilst this can be an appropriate way to select suppliers in low-value RfQ processes, as it can reduce administration and speed up procurement, this is dependent on the way in which supplier’s list operates in practice. It can be a problem if the way in which the supplier list is operated lacks transparency or suppliers have practical problems getting on to the suppliers list. It can also be problematic if it merely creates an additional layer of bureaucracy, with suppliers required to submit information twice, once for inclusion in the Supplier’s List and another time as part of the bid.</p> <p>In the case of RFQ, the absence of direction on how to select suppliers where previous competition has failed is likely to cause confusion.</p> <p>Current provisions of the PPL provide for a wide interpretation and significant (inappropriate) flexibility and variations to be negotiated. This raises serious concerns on the transparency of the procurement process.</p> <p>PPL A.47 Requests for Proposals: the lack of detail on the procedures to be used for RFPs in either the PPL or the PPD is a cause for concern.</p> <p>PPL A.43 does not state that Direct Procurement is to be used only exceptionally. It is recommended that the exceptional nature of direct procurement is made explicit in primary legislation.</p>		<p>Use of supplier list to select suppliers in [Request for Quotations (PPL A.37)] and Restricted Tendering (PPL A.40). Ensure that operation of and admission to supplier lists is transparent and efficient. Remove use of supplier lists to select bidders in Restricted Tendering. Explain how suppliers are to be selected where previous competition has failed.</p> <p>PPL A.34 Requests for Proposals: supplement the PPL and/or PPD with details on the operation of the procedure.</p> <p>PPL A.43 Direct Procurement (without competition): Add provision stating that Direct Procurement is to be used only exceptionally, and “emergency” is not created by the lack of planning or dilatory conduct on the part of public body.</p>

¹⁰ PPD 18.2

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>mean it is necessary for the public body to negotiate with suppliers. The negotiations provisions are quite problematic. Though they are permitted with the successful bidder only (PPL A.56(5)), the wording of the PPL is quite broad (A.36), allowing the public body to (1) negotiate on matters of contract performance not dealt within the bidding document; and (2) except in a single source procurement, the public body may not negotiate on the price offered by the successful bidder and on other issues related to price.</p> <p>PPL A.57 requires international competitive bidding in specified cases including where the value of the contract exceeds thresholds specified in the PPD, which are, Ethiopian Birr: Works 30 million; Goods 5 million; Consultancy Services 1 million; Services 2 million.</p> <p>Non-competitive method: The non-competitive method is Direct Procurement (single source).</p> <p>PPL A.43 Direct Procurement (without competition/single source) is permitted in eight specified circumstances, listed at PPL A.43(2)(a) to (h) (there is a letter (i) but this is not a ground for justification and merely repeats the obligation under A.43(1) of the public body not to abuse the procedure), subject to satisfaction of conditions, including in some cases financial caps, set out in PPL A.43.</p> <p>The eight specified circumstances are, in summary: absence of competition for technical reasons; additional supplies of goods which are intended as replacement or extension of existing supplies; additional necessary works required due to unforeseeable circumstances; repetition of similar works; continuation of consultancy services; special procurement needs of the public body; emergency; and for procurement contracts below 1000 Birr, subject to aggregated total limit in one fiscal year of 20,000 Birr.</p> <p>PPL A.43 does not state that Direct Procurement/single source is to be used only exceptionally, although it does state that the procedure should not be abused (see PPL A.43.1).</p>				
(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.	<p>Summary: The PPL sets out conditions for use of procedures other than the open bidding procedure which are generally linked to the nature, complexity or risk involved in the contract which is the subject of the procurement. The PPD sets out thresholds applying to the use of the competitive procedures with the lightest methods of procurement permitted for low-value tenders. The procurement methods and processes are proportional to the value and risks of the underlying project activities. The range of options does provide, in theory, for a procurement system in which value for money, fairness, transparency, proportionality, and integrity are achieved. Direct award (single-source procurement) is permitted only where specified grounds for justification are satisfied.</p> <p>“Lighter” methods of procurement are available where the benefits of “process-heavier” methods are not evident or necessary.</p> <p>More process-heavy methods are permitted in specified cases, in particular for more complex contracts.</p>	Not applicable	Criterion is met.		
(c) Fractioning of contracts to limit competition is prohibited.	<p>Summary: Fractioning of contracts to avoid open competition is prohibited when it aims at circumventing competitive rules.</p> <p>PPL A.25(4) provides that Public Bodies shall not split procurement requirements for a given quantity of goods, works or services with the intention of avoiding the preferred procurement procedure.</p>	Not applicable	Criterion is met.		
(d) Appropriate standards for competitive procedures are specified.	<p>Summary: The PPL requires use of Open Bidding as the default procedure but permits public bodies to use other competitive procedures subject to meeting</p>	Not applicable	Criterion is met.		

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	conditions set out in the PPL as described in (a)(b)(c) above, which generally reflect the nature and complexity of the contract concerned.				

1(c) Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criteria [1(c) Advertising rules and time limits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations																																																													
(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).	<p>Summary: The legal framework requires that procurement opportunities are publicly advertised, at least, in national, regional or Woreda-level newspaper, depending on the circumstances and where the public body finds it necessary, on national and regional radio or television when deemed necessary.</p> <p>Publication: PPL A.26 requires advertisements for open to be advertised at national, regional or Woreda-level newspaper, as the situation requires. Where necessary the public body may, in addition advertise on national radio or television. PPD A.15.2.1 does not clarify when each level of advertisement is necessary, nor does it explain where advertisements for international bidding should be published.</p>		<p>Criterion is partially met. It is unclear in the context of the Federal system whether 'national' means at the federal level or at the State level. It is assumed that it means country-wide, i.e., at Federal level but this needs to be confirmed.</p> <p>Publication of notices is done primarily through newspapers, which does not provide full transparency of procurement procedures. The details of where publication should take place is unclear. It is unclear when publication in woreda, regional or national newspaper should be followed.</p>		<p>It may be inefficient and technically difficult, in absence of an e-procurement platform to publish all notices, but adoption of an e-procurement platform where the procurement information is transparently disclosed, is absolutely critical for increasing the transparency and disclosure of procurement information. Clarify in the legal documents the conditions to publish bid opportunities in the national or regional and woreda newspapers.</p> <p>Until e-procurement is introduced and in use, consider use of centralized website (federal PPPAA's website) for publication of procurement opportunities.</p>																																																													
(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.	<p>Summary: Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of the procurement, for potential bidders to obtain documents and respond to the advertisement.</p> <p>PD A.15.9 requires the Public Body to fix the timetable for the procurement process. In doing so it must take into consideration matters including the urgency and complexity of the procurement and the identity of the participants (international or otherwise). The minimum time periods are defined in PPD A.15.9(5).</p> <table border="1"> <thead> <tr> <th rowspan="3">No</th> <th rowspan="3">Category</th> <th rowspan="3">Complexity</th> <th colspan="4">Minimum Floating time (# of days)</th> </tr> <tr> <th rowspan="2">ICB</th> <th rowspan="2">NCB</th> <th colspan="2">Restricted Tender</th> </tr> <tr> <th>Involving foreign bidder</th> <th>Only domestic bidders</th> </tr> </thead> <tbody> <tr> <td rowspan="2">1</td> <td rowspan="2">Works</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>21</td> <td>35</td> <td>21</td> </tr> <tr> <td rowspan="2">2</td> <td rowspan="2">Goods</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>15</td> <td>35</td> <td>15</td> </tr> <tr> <td rowspan="2">3</td> <td rowspan="2">Consultancy</td> <td>Complex</td> <td>14</td> <td>10</td> <td></td> <td></td> </tr> <tr> <td>noncomplex</td> <td>10</td> <td>7</td> <td></td> <td></td> </tr> <tr> <td rowspan="2">4</td> <td rowspan="2">Other services</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>15</td> <td>30</td> <td>15</td> </tr> </tbody> </table>	No	Category	Complexity	Minimum Floating time (# of days)				ICB	NCB	Restricted Tender		Involving foreign bidder	Only domestic bidders	1	Works	Complex	45	30	45	30	noncomplex	35	21	35	21	2	Goods	Complex	45	30	45	30	noncomplex	35	15	35	15	3	Consultancy	Complex	14	10			noncomplex	10	7			4	Other services	Complex	45	30	45	30	noncomplex	35	15	30	15	Not applicable	<p>Criterion is met. No minimum periods are set in the case of two-stage bidding and for proposal submission in case of consultancy services.</p>		<p>Consider providing minimum days for submission of proposals (consultancy) and for two-stage tendering in the PPD.</p>
No	Category				Complexity	Minimum Floating time (# of days)																																																												
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4	Other services	Complex	45	30	45	30																																																												
		noncomplex	35	15	30	15																																																												
(c) Publication of open tenders is mandated in at least a newspaper of wide national	<p>Publication in national newspaper is mandated as described in (a) above. PPD A.15.2 apparently clarifies the PPL by requiring public bodies to publish procurement</p>	Not applicable	<p>Criterion partially met.</p>		<p>Streamline the process for advertising bids on the newspaper in collaboration</p>																																																													

Assessment criteria [1(c) Advertising rules and time limits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).	opportunities in a newspaper that has national circulation at least once. No location is mandated either in the case of national or international competitive bidding. There is no designated website for publication.		There is a physical constraint to access press agency for publication of IFBs. PBs have to appear in person in the press agency, which requires travel from the work location to Addis Ababa, which is inefficient and transaction intensive.		with the Press Agency. Consider establishing e-mail communication and wire transfer for payment of services charges.
(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.	PD A.16 sets out the information to be included in the invitation to bid advertisement. This includes, for example, a description of the requirement, qualification criteria, amount of bid security and bid closing time and place.		Criterion is partially met. When placing an advertisement of procurement opportunities in the newspaper, public bodies receive no planned date of publishing given. Therefore, the published invitation does not include the exact date for submission of bids. Instead, the period for preparation of bids is included.	✓ Yes	The process of placing an ad in the newspaper should allow agreeing on the publishing date thus enabling the public bodies to calculate and include dates of submission of bids and their opening. Or else the PBs should consider specifying the bid closing/opening date in the bidding documents.

1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.	<p>Summary: The legal framework requires candidates to satisfy qualification requirements set out in the bidding documents. A non-exhaustive list of qualification criteria is set out in the PPL. The principles of non-discrimination, transparency and fairness are underlying requirements.</p> <p>Non-discrimination - General principles PPL A.5(2) refers to the principle of non-discrimination among candidates on grounds of nationality or any other criteria not having to do with their qualification, except in case of preference specifically provided for in the PPL or by decision of the Afar National Regional State (thus providing more flexibility). PPL A.5(3) refers to the principles of transparency and fairness, on the basis of which decisions are given.</p> <p>Exclusion See comment at 1(d)(c).</p> <p>Qualification PPL A.16 refers to the principle of non-discrimination, providing that candidates shall not be discriminated against on the basis of nationality or any other criterion not having to do with their qualifications. This is subject to price preference provisions in PPL A.17.</p> <p>PPL A. 20 provides that, in order to participate in public procurement, candidates must meet criteria listed in PPL A.20 “and such other criteria, as the public body considers appropriate under the circumstances.”</p> <p>The criteria listed in PPL A.20(1) require candidates to have relevant professional and technical qualifications and competence, financial resources, equipment and other facilities, capability, experience, reputation, and personnel. Candidates must have legal capacity to tender the contract, have a bank account and not be insolvent or bankrupt or in analogous situations. They must not be subject to a suspension from participation in public procurement and must have the relevant trade license and have paid taxes according to Ethiopian tax laws.</p>		<p>Criterion is not met. Overall, the currently existing procedures and requirement do not offer full fairness with respect to the participation of bidders.</p> <p>Qualification of foreign bidders: The obligations on foreign bidders in terms of qualification requirements and evidence including acceptance of equivalent qualifications and/or documents is not expressly provided for.</p> <p>PPL A.20.2 provides that public bodies may use additional qualification criteria “as they consider appropriate under the circumstances.” The general principles in PPL A.5 should apply to the setting of additional qualification criteria. PPL A.20 does, however, provide a potentially wide margin of discretion to public bodies and, if not carefully monitored, it raises the possibility of inappropriate, disproportionate, or discriminatory qualification criteria, which cannot be challenged anyway through the complaints review mechanism.</p> <p>The grounds for eligibility and disqualification of the bidders in the PPL and PPD are very different, creating confusion as to which list applies and whether all requirements should be cumulatively met.</p>		Ensure consistency of all levels of legislation with the requirement of the PPL that public procurement will comply with the principle of non-discrimination and remove the provisions that differentiate the qualification criteria depending on the bidder’s nationality. The bidder/candidate should not be denied qualification for reasons unrelated to its capability and resources to successfully perform the contract. The qualification requirements should be defined as skills, experience, and resources necessary to perform the contract.

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>However, the PPD A.15.19 provides a list for disqualification of the bidders, which is not contained in the PPL and includes the following grounds: when the bidder supplies goods, works or services originating from a country with which Ethiopia has a trade embargo; commits an act violating the provisions of the PPL and PD; failure to perform a previous obligation; bidder has offered bribe to an official or procurement staff to influence the public body's decision; bidder has committed a corrupt practice; or has provided false documents.</p> <p>Suppliers list: They must also be registered on the suppliers list A.20(1)(d). There are some references in the PPL to the suppliers list: PPL A.13(17) Bureau function: introduce an efficient system of listing of interested suppliers and receive, review, and record applications by candidates and distribute the suppliers list. PPL A.20(1)(d) Pre-qualification requirements. PPL A.42(2) Restricted tenders - selection of bidders from the suppliers list. PPL A.50(1) RFQ process – selection of bidders from the suppliers list.</p> <p>PPL A.20(5) provides that the public body shall disqualify a candidate who submits a document containing false information for the purposes of qualification or if qualification information is materially inaccurate or materially incomplete.</p> <p>PPL A.20(2) A public body may require candidates to provide appropriate documentary evidence or other information so that the public body may satisfy itself that candidates meet the qualification criteria. PPL A.20(3) requires qualification requirements to be set out in the bid documents and apply equally to all candidates Evaluation of qualification must be based on published criteria and procedures (PPL A.20(4)).</p>				
<p>(b) It ensures that there are no barriers to participation in the public procurement market.</p>	<p>Qualification criteria: the listed qualification criteria do not contain any explicit barriers to participation.</p> <p>Price preference PPL A.17 sets out preference provisions. It allows for a price preference margin, to be determined by a Directive issued by the Bureau, for goods produced in Ethiopia, for works carried out by Ethiopian nationals and for consultancy services rendered by Ethiopian nationals. In addition, further preference margin may be allowed for small and micro-enterprises.</p> <p>Any goods to which more than 35% of the “value added” occurs in Ethiopia shall be deemed to be produced in Ethiopia.</p> <p>PPL A.11 also provides that, where evaluation of bids results in the award of equal percentage points for bidders offering similar price and quality, preference shall be given to local goods, services, or companies.</p> <p>Preferences must be clearly stated in the bidding documents.</p> <p>In addition, there is a (draft) Procurement Directive for Construction and Consultancy services (No 14/2006) which, in A.8(e) states that preferences shall be given to MSEs in accordance with the Directive for special incentives granted to MSEs. PPD A.27 states that construction carried out by MSEs is managed by the City Development and Construction Bureau and implemented based on the market integration directive issued by the Afar Regional State. The assessment noted that the directive is not yet issued but at draft stage. The draft directive proposes mandatory sub-contracting to MSEs on any construction contracts.</p>	<p>Not applicable</p>	<p>Criterion is partially met. The obligations on foreign bidders in terms of qualification requirements and evidence, including acceptance of equivalent qualifications/documents is not expressly provided for.</p>		<p>The recommendation proposed under criterion 1 (d) (a) above applies.</p> <p>Ensure consistency of rules, including those obligations that change the rights of parties are incorporated in the primary legislation. Support the different incentives (“MSEs” and “mandatory sub-contracting”) with adequate study and ensure consistency with other social and economic objectives including the achievement of value for money in procurement.</p>

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.	<p>PPL A.20 sets out the requirements for bidder qualification. See indicator 1 a) above. Grounds for exclusion from qualification include debarment (PPL A.20(1)(f)), although there is no reference to any debarment procedure or requirement for due process in the PP.</p> <p>Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for: participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings, or the equivalent of those offences.</p> <p>PD A.15.19 Disqualification of bidders: lists additional grounds for disqualification of bidders (not candidates): see (a) above.</p> <p>PPL A.22 Rejection of bids, proposals and quotations:</p> <p>The grounds for rejection of bids, proposals and quotations are numerous and broadly drafted providing ample opportunity for public bodies to reject bids but also abandon procurement processes in both appropriate and inappropriate circumstances. Public bodies are required to disclose, but not justify, the reasons for rejection and this lacks transparency. Public bodies shall incur no liability for rejection in accordance with PPL A.22(3).</p> <p>PPL A.22.1(f) provides that public bodies may reject bids, proposals or quotations where there is proof of concerted practices, collusion [connivance] and the bidding is not sufficiently competitive as a result.</p> <p>Suspension (otherwise known in other jurisdictions as “Debarment”)</p> <p>PPL A.69(6) Review by the Bureau: this establishes a process which may lead to a decision by the Bureau to suspend a supplier from participation in public procurement for a definite or indefinite period (debarment), although no explicit power is given to the Bureau to conduct this activity under A.14 and no further details of the process are set out in the in the PP, the PPD or the CPD (where exclusion due to administrative debarment is mentioned but no provisions requiring due process for debarment are included). The CPD does, however, briefly describe the process for debarment on defaulted contractors and states that the Bureau may, based on the gravity of the default, impose penalties on the contractors ranging from written a warning up to 2 years of suspension. However, the CPD lacks clarity on the authority between the Bureau and the City Development and Construction Bureau to review and debar a defaulting contractor.</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPL</p> <p>Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for specified offences.</p> <p>PPL and PPD Alignment</p> <p>It appears that PPL and PPD are not fully aligned in terms of eligibility criteria (PPL A.20) and grounds for disqualification of bidders (PD A.15.19). More importantly, all grounds for eligibility and qualifications of the bidders should be set out in detail in primary legislation, the PPL.</p> <p>Suspension (debarment)</p> <p>PPL A.69.6 Use in the English language version of the PPL of the term “complaint” in the context of suspension/debarment is potentially misleading as the term is commonly understood to refer to procurement review and remedies.</p> <p>Suspension (debarment)</p> <p>It is not clear where the right of referral to the Bureau arises for it to be seized of a debarment question. Whilst procuring entities are generally best placed to identify problems, the right to referral should be wide enough in the PPL to cover other stakeholders such as auditors, regulatory authorities, private sector, and civil society.</p> <p>There is no clarity on what resources and skills the Bureau has to investigate and prove corruption, bribery, fraud, collusion or coercion. Additionally, it is not clear whether debarment extends to affiliates and parents of debarred entities.</p> <p>Reference to a right of appeal against a debarment decision and venue for appeal should be included in the PPL (primary legislation).</p>		<p>PPL</p> <p>Include specific exclusion provisions in PP/DPL for criminal and corrupt activities.</p> <p>All grounds for the eligibility and qualifications of the bidders should be set out in detail in the primary legislation, the PP.</p> <p>Suspension (debarment)</p> <p>Consider use of alternative term to “complaint” in the context of suspension/debarment.</p> <p>Ensure that a right of referral to the Bureau is made explicit and that it is wide enough to cover stakeholders other than procuring public bodies such as auditors, regulatory authorities, anti-corruption commission, private sector, and civil society.</p> <p>Include reference to a right of appeal against a debarment decision and venue for appeal in the PPL.</p>
(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.	<p>Criterion is not met.</p> <p>The legal framework does not establish rules for participation of state-owned enterprises in public procurement.</p>		<p>Criterion is not met.</p> <p>PPL does not establish rules for participation of state-owned enterprises in public procurement.</p>		Amend PPL to include provisions on rules for participation of state-owned enterprises as bidder to promote fair competition.
(e) It details the procedures that can be used to determine a bidder’s eligibility and ability to perform a specific contract.	<p>Summary: The legal framework details procedures used to determine eligibility and ability to perform a specific contract. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. Multi-stage procedures are permitted for specified types of contracts and circumstances for use are defined.</p> <p>In general, bidders are required to submit qualification information with their bids. The Federal Standard Bidding Documents (SBD) used in practice in Oromia provide a section for bidders to demonstrate their qualification against the requirement specified in the bidding document.</p>	Not applicable	Criterion is met.		

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	In the case of construction, the CPD, in A.29, provides list of qualification criteria which are considered as part of the technical evaluation. The CPD sets a relative weight for the different qualification criteria in determining bidders' capability to perform contract. These are: general experience - 20%; similar experience - 20%; equipment - 20%; personnel - 20%; finance – 15%; bid security – 7.5%; and subcontracting of MSEs - 5%. However, since the public bodies do not follow pass/fail techniques in determining bidders' capability, it is not clear if the public bodies consider bidders that don't meet some of the qualification requirements. The PPD does not provide provision on qualification requirement for procurement of Goods.				

1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.	<p>Summary: The legal framework establishes the minimum content of the procurement documents and requires that the procurement documents must contain sufficient and relevant information to permit suppliers to respond to the requirement.</p> <p>PPL A.27 lists information which must be included in the Invitation to Bid. It requires public bodies to prepare bidding documents using the standard bidding documents (SBD) developed by the Bureau.</p> <p>PPL A.28 requires that bidding documents shall contain sufficient information to enable competition among bidder on the basis of complete, neutral and objective terms. PPL A.28 goes on to list required minimum content of the bidding documents. PD A.18.3 sets out further detail on the Invitation to Bid and bidding documents.</p>	Not applicable	Criterion is met.		
(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.	<p>Summary: The legal framework requires the use of neutral specifications, cites international norms, and provides for the use of functional (performance) specifications as far as possible.</p> <p>PPL A.21(3)(c) requires technical specifications to invite open competition and to be devoid of any statement having the effect of restricting competition.</p> <p>PPL A.21(3)(b) requires technical specifications to be based on national standard where such exist or otherwise on internationally recognized standards or building codes. National standards are issued by the Ethiopian Standard Authority and are applicable in all States.</p> <p>PPD A.15.5 requires public bodies to prepare specifications based on functional or technical or design requirements that do not restrict competition and refers to use of standards set by the Ethiopian Quality and Standard Authority (now the Ethiopian Standards Agency¹¹ (which is an ISO member¹²) or by other similar institutions.</p> <p>PPL A.219(3)(a) provides that technical specifications shall, as far as possible, be in terms of performance, rather than design or descriptive characteristics.</p>	Not applicable	Criterion is met.		
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	<p>PPL A.21(4) provides that there shall be no requirement or reference in technical specifications to a particular trademark, name, patent, design or type or a specific producer/provider. Where this is not possible, the words "or equivalent" must be included in the specification.</p> <p>These provisions are expanded upon in PPD A.15.5.</p>	Not applicable	Criterion is met.		
(d) Potential bidders are allowed to request a clarification of the	<p>Summary: the PPL does not include a specific provision confirming to potential bidders that they are entitled to request clarification. The PPD A.15.12, on the other</p>	Not applicable	Criterion is partially met.		Include clear provision in the PPL confirming that potential

¹¹ Ethiopian Standards Agency website, accessed 4 October 2019 <http://www.ethiostandards.org/>

¹² ISO website membership list, accessed 4 October 2019 <https://www.iso.org/member/1725.html>

Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)	<p>hand, provides for requests for clarifications and requires them to provide replies to request for clarification or amendments in writing and shared with all potential bidders at the same time.</p> <p>PPL A.30 provides that the public body may modify the bidding documents in response to an inquiry from a candidate by issuing an addendum which must be communicated at the same time to all candidates who purchased the bidding documents. The time limit for submission of bids may be extended where there is not enough time for bidders to take account of the amendments in their bid.</p>		The right of potential candidates/bidders to seek clarification is not set out in the PPL. This is an important right for bidders and so it is advisable to include at least the principle of the right to seek clarification in clear terms in primary legislation.		candidates/bidders have the right to seek clarification.

1(f) Evaluation and award criteria

The legal framework mandates that:

Assessment criteria [1(f) Evaluation and award criteria]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.	<p>Summary: The legal framework requires the evaluation to be objective and relevant. There are clear provisions requiring that criteria, and also methodologies and weightings, where used, are disclosed in advance in bidding documents. The award decision must be made only on the basis of pre-disclosed criteria.</p> <p>P A.28.9 requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents. PPD para 15.8 requires public bodies to precisely specify the evaluation and qualification criteria in the bidding documents. The evaluation criteria should be based on the objective context and quantifiable and should be to the extent feasible be translated into monetary values.</p> <p>PPL A.34(6) provides that, in selecting the successful bidder, the public body shall only consider substantially responsive bids and shall evaluate on the basis of the criteria set out in the bidding documents. No criterion shall be used that is not set out in the bidding documents.</p> <p>PD A.15.12 covers the preparation of bid evaluation criteria including requirements for advance disclosure, the objective nature of the criteria.</p>	Not applicable	Criterion is met.		
(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.	<p>Summary: Objectivity is an underlying principle. The use of price and non-price attributes are permitted and value for money is a consideration in the award of contracts.</p> <p>PD A.15.8 covers the preparation of bid evaluation criteria (see (a) above). In the case of procurement of consultancy services, the relative weighting ascribed to price is 80% and for price 20% of the total merit points (PD A.24). It further specifies that in case of the procurement of non-consultancy services, the relative weighting ascribed to price should not be less than 50%.</p> <p>PPL A.34(7): There are two bases for award of contract: (1) lowest evaluated bid from among bidders meeting technical requirements; and (2) highest-scoring bid against ascribed criteria which may include both quality and cost/price.</p>	Not applicable	<p>Criterion is partially met.</p> <p>While there is the possibility of using price/non-price attributes, life cycle costing is focused on property/assets management.</p> <p>In practice, setting a standard minimum weighting for price criteria may not deliver the best value for money outcome. It is also understood that procuring entities are unclear whether the same minimum weighting should be applied to goods and works procurement. This indicates a need for further clarity and also emphasizes that the use of quality criteria, weightings and methodologies including life-cycle costing requires substantive practical guidance and training for public bodies conducting evaluation.</p>		Consider preparing substantive practical guidance and provide practical training for public bodies conducting evaluation using quality and other criteria.

Assessment criteria [1(f) Evaluation and award criteria]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.	<p>Summary: Quality is a major consideration in evaluating Requests for proposals for consulting services, and clear procedures and methodologies are defined.</p> <p>PPL A.47 & A.48 concern the use of the Request for Proposals Method. The selection of consultants can be made in a number of ways but, with the exception of contracts for standard, simple requirements, the focus of evaluation is on qualitative factors.</p> <p>The CPD (A.22) specifies the factors that should be considered in determining the quality of proposals, which are relative experience of the firm, proposed methodology, transfer of knowledge, key staff and participation of locals. It provides a minimum 70% technical threshold to consider proposals for further evaluation. The PDs determined the relative weight as 80% for technical evaluation and 20% for price.</p>		Criterion is met.		See comment at 1(f)(b) on need for substantive practical guidance and training for public bodies using quality criteria in evaluation.
(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.	<p>PPL A.28.9 requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents.</p> <p>PD A.22 expands on these requirements and determines the score ranges for different quality aspects as follows: experience of the firm - 5 to 10 points; methodology - 20 to 50 points; knowledge transfer - 5 to 10 points; key staff - 30 to 60 points; participation of nationals - 5 to 10 points. 70% is the minimum passing point and 80/20 is the ratio between the technical score and the price.</p>	Not applicable	Criterion is met.		
(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.	<p>Summary: The legal framework provides that information on examination, clarification and evaluation of bids is not disclosed to participants during the evaluation period.</p> <p>PPL A.35 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced.</p>	Not applicable	Criterion is met.		

1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	<p>Summary: Opening of tenders, immediately following the closing date for bid submission, is a proceeding defined and regulated by the legal framework. Information on time limits and the process must be included in the bidding documents.</p> <p>PPL A.27 and A.28 require the Invitation to Bid/Bidding documents to include information on the place and time for opening of bids, along with an announcement that bidders or their representatives may be present.</p> <p>PPL A.33 requires that at the time stipulated in the bidding document the public body shall open all bids received before the deadline and specifies the information to be read out at the bid opening.</p> <p>This is confirmed in PPD A.15(17).</p>	Not applicable	Criterion is met.		

Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(b) Records of proceedings for bid openings are retained and available for review.	<p>Summary: The legal framework details the process for bid opening and requires records of the process to be maintained, with copies of those records to be made available to any bidder on request.</p> <p>PPL A.9.3 lists the responsibilities of the procurement unit as including maintaining complete records for each procurement. PPL A.15 sets out a non-exhaustive list of the records required to be kept.</p> <p>PD A.17.4 specifies information to be included in the bid opening minutes, being the names of bidders, their bid price and any other salient points. A signed attendance sheet is also required.</p> <p>PPL A.33.3 requires that a copy of the record of the bid opening is made available to any bidder on request.</p>	Not applicable	Criterion is met.		Introduce a provision in the PP/PD requiring public bodies to send the minutes of bid opening to all bidders who submitted bids, as opposed to sharing upon request.
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	<p>Summary: Security and confidentiality of bids until after award of contracts is maintained</p> <p>PPL A.35 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced.</p> <p>PD (para. 15.17) requires public bodies to prepare and receive bids through a secured 'tender box'. In case the bids do not fit in to the tender box, the public body must assign staff to receive bids against receipts. The PPD further elaborates on the safekeeping of the tender box which should be the responsibility of the procurement team until the bid is opened.</p>	Not applicable	Criterion is met.		
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	<p>PPL A.13(4)(a) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition." Legitimate commercial interest is not defined in the PP, and it is not clear how it is applied in practice.</p> <p>PPL A.15.2 provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body.</p> <p>PD A.27.9 prohibits employees or officials from disclosing bidders' confidential information, specifically: information that limits competition, allows unfair advantage, or harm the public body unless exceptionally authorized by the officials; information relevant to contract implementation; information related to bids, and evaluation results before the award is notified.</p> <p>- See 1(k)(a) for comment on impact of this provision on overall transparency of the procurement system.</p>	Not applicable	Criterion is partially met. Legitimate commercial interest is not defined in the PPL, and it is not clear how it is applied in practice.		Define the commercial interest for the purpose of non-disclosure of information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition."
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	<p>PPL A.32 sets out basic provisions concerning the submission and receipt of bid proposals.</p> <p>The PPD A.15.16 includes provisions on submission of bids, including rejection of bids submitted late.</p> <p>The SBDs contain detailed instructions and clear rules on bid submission. For example, SBD for procurement of Information Systems under NCB, Section D Submission and Opening of Bids.</p>	Not applicable	Criterion is met.		

1(h) Right to challenge and appeal

The legal framework provides for the following:

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	<p>Summary: Participants in procurement have the right to challenge decisions or actions taken by the procuring entity in the conduct of public procurement, subject to specified exclusions. In the English language version of the PP, the right to challenge is given to “candidates.”</p> <p>Standing to make a complaint PPL A.62(1) provides that a “candidate” shall be entitled to submit a complaint to the head of the public body or the Bureau “against an act or omission of the public body in regard to public procurement...where he believes that such act or omission violates this Proclamation or the directives.”</p> <p>As noted earlier, the use of terms candidates and bidders is not always used consistently.</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPL A.67(1) refers to “candidates” having standing to make a complaint. Standing to make a complaint should also be expressed to be available to “bidders.”</p>		<p>PPL Standing to make a complaint: Amend PPL to provide clarity and certainty on who has standing to make a complaint.</p>
(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.	<p>Summary: The legal framework allows for challenge to be brought before the Bureau which is a body independent of the procuring entity. The Bureau has authority to suspend the award decision and grant a range of remedies. There is a right of judicial review.</p> <p>Venue for complaint: The complaint must, in the first instance, be submitted the head of the public body (the procuring entity). There is a right to file a complaint with the Bureau where the head of the public body does not issue the decision within the specified time period or if the complainant is not satisfied with the decision.</p> <p>Bureau independent of the procuring entity: Even if the Bureau is independent of the procuring entity, there may, however, be a conflict between the functions of the Bureau, especially since no separate committee or other unit is identified to conduct the review.</p> <p>Remedies: PPL A.69 provides for two remedies. The Bureau may: a) prohibit the public body from acting or deciding unlawfully; b) annul in whole or in part, an unlawful act or decision by the public body.</p> <p>Right to appeal against decision of the Bureau: PD A.29 refers to a right of appeal to the competent court, though it does not specify which court it is.</p>	Not applicable	<p>Criterion is not met.</p> <p>PPL Right of judicial review is set out in the PPD. This is a fundamental right which should be specified in the primary legislation.</p> <p>The absence of any identified unit or committee to handle complaints suggests that conflicts might arise in the various functions assigned to the same Bureau. This will have a significant effect on the confidence of bidders in the review mechanism.</p>		<p>PPL Right of judicial review: Amend PPL to refer to right of judicial review and venue for judicial review.</p> <p>At least, a committee comprising of key stakeholders (private sector, PBs) should be identified to handle complaints so that a clear division of responsibility emerges in respect of conflicting functions. Details of its establishment would be needed together with its membership, functions and procedures.</p>
(c) Rules establish the matters that are subject to review.	<p>Summary: The PPL establishes the matters that are subject to review. The bidder’s right of review is not available in respect of <u>all</u> acts or omissions of the public body in regard to public procurement and the exclusions from coverage are [significant], severely impairing the effectiveness of the review system.</p> <p>Decisions or actions which are the subject matter of review – and exclusions PPL A.67(1) provides for a right to submit a complaint “against an act or omission of the public body in regard to public procurement...”</p> <p>The right of review is not available in respect of <u>all</u> acts or omissions of the public body in regard to public procurement.</p> <p>PPL A.67(2) provides that the right of review is not available in respect of three matters, the most relevant of which for public procurement are: a) the selection of procurement method, and b) rejection of bids, proposals or quotations pursuant to PPL A.22.</p> <p>PPL A.67(3) & (4) provide that complaints may not be brought after a contract has been signed with the successful bidder, subject to specified conditions being satisfied.</p>	Not applicable	<p>Criterion is partially met. PPL A.67</p> <p>Acts or omissions not subject to the right to review: The exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p> <p>Alignment between the PPL and PPD PD expands on exclusions from the right to review. All exclusions from right to review should be set out in primary legislation and the PPL and PPD should be aligned.</p>		<p>Acts or omissions not subject to the right to review: Reconsider the exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria which mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p> <p>Alignment between the PPL and PPD PPD expands on exclusions from the right to review. All exclusions from right to review should be set out in primary</p>

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	PD A.30 elaborates on and adds to these exclusions from the right to review to cover; the selection of bidders for procurement in restricted tendering or RFQ or the evaluation criteria in the bidding document; special conditions given under PPL A.15 (domestic preferences); and complaints submitted late.				legislation and the PPL and PPD should be aligned.
(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.	<p>Summary: There are rules establishing timeframes for the submission of challenges and appeals. There are also rules for issuance of decisions at the initial review stage, by the head of the public body and for issuance of decisions by the Bureau, the independent appeals body.</p> <p>Timeframe for submission of challenges and appeals: PPL A.68(2) requires the candidate to submit the complaint to the head of the public body within five (5) working days from the date he knew, or should have known, the circumstances giving rise to the complaint.</p> <p>Time frame for issuance of decision by the head of the public body: PPL A.68(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons.</p> <p>Timeframe for complaint to the Bureau: PPL A.68(4) If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submitting a complaint to the Bureau. The complaint to the Bureau must be submitted within five (5) working days from the date on which the decision had been or should have been communicated to the candidate.</p> <p>Timeframe for issuance of decision by the Bureau: PPL A.64(5) requires the Bureau to issue its decision within 5 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any.</p> <p>The PPD (A.31) mandates a 7-day standstill period after notification of award.</p> <p>The PPD provides no procedure or timeline for submitting and resolving appeals.</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPL: Timeframes for issuance of decisions of the Bureau are expressed inconsistently. The PPL and PPD should be aligned.</p> <p>It is not clear if the suspension of the procurement process is notified to all bidders and if so, when.</p> <p>In addition, it is not clear what happens to the suspended procurement process when the head of public body does not respond to the complaint within 5 working days as contemplated in the PPL. Is the suspension automatically lifted or public body should inform all bidders of the lifting?</p>		<p>PPL: Timeframes for issuance of decisions of the Bureau: Align timeframes in PPL and PPD.</p> <p>PPL should make clear that the suspension of the procurement process should be notified immediately to all bidders who submitted bids.</p> <p>Additionally, the PPL should clarify what happens to the suspended procurement process when the Head of public body does not respond to the complaint within 5 working days as required by PPL A.68(4).</p>
(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.	<p>Summary: There are no provisions in the legal framework on the publication of applications for appeal.</p>		<p>Criterion is not met. PPL A.5(3) sets out general principles requiring transparency, fairness, and accountability for decisions made in procurement. Failure to publish any, or any sufficient, information on complaints and decisions is in breach of these principles.</p> <p>Notification of decisions to parties: In the interests of efficient operation of the system, the legal framework (ideally primary legislation) should require prompt notification of decisions to parties within specified timescales.</p>		<p>Publication of applications and decisions: Include a provision requiring applications for appeal and full decisions to be published in easily accessible places and within a specified time period.</p> <p>Notification of decisions to parties: Include a provision requiring prompt notification of decisions to parties within specified timescales.</p>
(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).	<p>Judicial review/right of appeal: PPD A.34 specifies the right of the aggrieved bidder to appeal to a judicial body if it is not satisfied with the decision of the public body and the Bureau.</p> <p>First, the clause itself as drafted as problematic as it leapfrogs from a Public Body to the Court – while the highest administrative body is the Bureau. Second, it does not specify competent court who reviews the Bureau’s decision.</p> <p>It is advisable to include provisions concerning right of appeal in primary legislation.</p>		<p>Criterion is partially met. Judicial review/right of appeal: It is advisable to include a provision confirming the right of appeal, venue for appeal and time limits in primary legislation.</p> <p>If PPD at A.43 is intended as is drafted, i.e., to allow filing of appeals of decisions of a public body to court – without going through the Bureau, it creates inconsistency with the PP, which establishes a two-tier system of complaints with Head of Public Body as first tier and Bureau as the second.</p>		<p>Judicial review/right of appeal: Include provision confirming right of appeal, venue for appeal and time limits.</p>

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
			Leapfrogging from Public Body to the Court seems to leave out the role of the Bureau as second-tier reviewer. Some countries have adopted this model, but it is not clear if this is the intention.		

1(i) Contract management

The legal framework provides for the following:

Assessment criteria [1(i) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,	PPL A.336(4) states that the procedure for administering contract shall be prescribed by the Bureau. PD A.6.20 assigns the responsibility for contract management to the procurement unit. PPD A.23 specifies that, where a contract is administered by different parties, the public body should ensure that each party clearly understands its role and responsibility.	Not applicable	Criterion is met.		
(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.	PD A.23.4 provides that a contract may be amended in the course of its performance, but the amendment must not be detrimental to the interests of the public body and not favor the winning bidder against other participating bidders. PD A.15(4) requires a public body to include in the bidding documents information on the right of the public body to decrease or increase the quantity of goods of services by up to 20%. No other provisions are included on whether it is possible to make a price adjustment to the contract or the condition applying if it is done.	Not applicable	Criterion is met. The provision on contract amendments and price adjustment are broadly drafted and have the potential to be interpreted widely, to the detriment of competition.		Amend the provisions on contract amendments and price adjustment for more precision and avoidance of unjustified discretion in their application.
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	PD A.15(23)(d) requires that the signed contract provide for the procedure for resolution of disputes that may arise in the performance of the contract, but no further details are provided. The Civil Procedure Code A.315(2) provides that “No arbitration may take place in relation to administrative contracts of the Civil Code” ¹³ , i.e., public bodies are not subject to arbitration. The General Conditions of Contract in the SBD include dispute provisions. The SBDs GCC clause 26 provides provisions on settlement of disputes including preference for amicable settlement.	Not applicable	Criterion is partially met. As noted earlier under Indicator 1 (a), it appears there is a lack of certainty for public bodies and suppliers as to the correct classification of contracts awarded under the PPL and the impact of this on the availability of arbitration. Arbitration is not appropriate in all cases but for contracts where it is appropriate the legality of its use should be clear. We understand that there is a current review of certain aspects of the Civil Code, and it is possible that this is already being addressed.		The PPL or PPD should clarify when the arbitration shall be used as a forum. Arbitration would enable parties to settle their disputes using professional arbitrators, who are conversant on the matter instead of ordinary judges who have no specialization in the area of the contract subject matter.
(d) The final outcome of a dispute resolution process is enforceable.	The General Conditions of Contract in the SBD include dispute provision and provide that in the event of a failure to resolve a dispute it may be referred for resolution through the Courts. There is no specific provision concerning enforceability of the outcome of a dispute resolution process.		Criterion is partially met. There is no specific provision concerning enforceability of the outcome of a dispute resolution process. No evidence is obtained that mandates the use of the federal SBDs.		Include a provision concerning enforceability of the outcome of a dispute resolution process.

1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria [Electronic Procurement (e-Procurement)]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal framework allows or mandates e-Procurement solutions covering the public	Summary: The legal framework allows for e-Procurement solutions at a general level, but the implementation of e-GP will require substantial amendments and additions to the legal framework.	Not applicable	Criterion is not met. The PPL provides general permissive provisions for the development of an electronic procurement system.		Initial steps need to be taken to establish e-procurement. Once it

¹³ Thus, if public procurement contracts are classified as administrative contracts, and the provisions of the Civil Procedure Code are strictly interpreted they cannot be subject to arbitration. For further discussion on this issue see: Conflicting Legal Regimes Vying for Application: The Old Administrative Contracts Law or the Modern Public Procurement Law for Ethiopia, Teclé Hagos Bahta, African Public Procurement Law Journal (2017) 4 APPLJ 1.

Assessment criteria [Electronic Procurement (e-Procurement)]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
procurement cycle, whether entirely or partially.	<p>PPL A.23(1) allows for the Bureau to issue a Directive to determine the extent to which communication by electronic means may be used in addition to or instead of writing.</p> <p>PPL A.23 confirms that the Bureau may authorize the use of electronic means as a method of procurement. In order to implement this, the PPL provides for the Bureau to conduct a study and submit proposals; ensure that public bodies, suppliers and supervising entities have capacity to implement; and authorize the implementation of an electronic system in all or certain procurements.</p> <p>It is early days in the introduction of e-GP and much work remains. It has not yet begun in Afar.</p>		However, it stops there and does not contain any further specific provisions, covering areas needed to operationalize an e-procurement system. In reality, no steps have yet been taken to introduce e-procurement. Currently, both PPL and DPL include provisions throughout the procurement cycle that are relevant for manual system only.		begins, there will be a need for review and update PP/DPL and corresponding implementing rules guiding the manual procurement process to reflect the new practices to be followed when conducting procurement electronically.
(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.	See 1 (j) (a).		Criterion is not met. Please refer to gap under 1 (j) (a).		See 1 (j) (a).
(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.	See 1 (j) (a). See above in respect of PPL A23.		Criterion is partially met. Please refer 1 (j) (a).		See 1 (j) (a).

1(k) Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.	<p>Summary: The legal framework includes a list of procurement records and documents related to transactions, including certain aspects of contract management. Procurement records and documents are prepared and maintained at an operational level by the public body's procurement unit. Procurement records and documents are not available for public inspection.</p> <p>PPL A.9.3 requires the procurement department in a public body to maintain a complete record for each procurement in accordance with PPL A.15.</p> <p>PPL A.15 Records of Procurement requires the public body to maintain records and documents. It sets out a non-exhaustive list of information to be maintained. The list in the PPL does not specifically refer to contract management information.</p> <p>PPL A.15(2)(a)) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition."</p> <p>PPL A. A.15(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body.</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPL A.15 Records of procurement The drafting of PPL A.15 is confusing, particularly the interaction between A.15(2)(a) and A.15(2)(b) and what is, or is not, available for public inspection.</p> <p>PPL A.15(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body. This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p>		There is a need for separate guidance on the identification and managing of information of commercial sensitivity/confidentiality during bid evaluation process and after contract award.

Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p> <p>PPL A.33 on Opening of Bids requires the recording of the announcement of names of bidders, total amount of bids, discounts etc., and a copy of the record shall be made on request to bidders.</p>				
(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.	PPL A.15.1 Records of Procurement requires the public body to maintain records and documents regarding public procurement for a period of time determined by a Directive issued by the Bureau. PPD A.25 broadly indicates that the public bodies should keep procurement records which are specified in the PPL and other necessary procurement documents for a period specified in the finance administration proclamation and regulation relevant to finance records.		Criterion is met.		
(c) There are established security protocols to protect records (physical and/or electronic).	Unable to find established security protocols to protect records.	Not applicable	Criterion is not met. Unable to find established security protocols to protect records.		Consider establishing security protocol to protect records.

1(l) Public procurement principles in specialized legislation

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

Assessment criteria [1(l) Public procurement principles in specialized legislation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations	Recon
(a) Public procurement principles and/or the legal framework apply in any specialized legislation that governs procurement by entities operating in specific sectors, as appropriate.	There is no specialized legislation that governs procurement by entities operating in specific sectors, and the legal framework applies to procurement carried out by all public bodies.	Not applicable	Criterion is met.			
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	No such provisions exist at the level of the Region.	Not applicable	Criterion is not met. PPP not yet considered in the Region.		To the extent that PPPs are being initiated in Afar, it is imperative that a Directive on PPPs be issued. Consider introducing a responsible body for developing and implementing PPP in the next round of revision to the PPL.	
(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	No such provisions exist at the level of the Region.	Not applicable	Criterion is not met. PPP not yet considered in the Region.		Consider introducing a responsible body for developing and implementing PPP in the next round of revision to the PPL.	

2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria [2(a) Implementing regulations to define processes and procedures]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	<p>There is a comprehensive Procurement Directive adopted in EC 2005: Procurement Directive No 11/2005.</p> <p>Also enacted is the Afar Regional State Construction and Consultancy Procurement Directive 14/2005 which applies specifically to the construction sector.</p> <p>The PPD provides details on the issues covered in the PPL. In some cases, however, there are observed contradictions with the PPL.</p>	Not applicable	Criterion is partially met. The PPD on occasions, appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD (see specific comments elsewhere in this assessment).		Alignment between PPL and PPD Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, that PPD should not introduce provisions that materially limit or inappropriately expand the provisions of the PPL.
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	The PPD and CPD are both single documents but are not accessible electronically and not easily available either.	Not applicable	Criterion is partially met. The Procurement documents including the PPD are not accessible electronically.		Consider using federal PPA's website for the short term and upload procurement information including the legal documents for public accessibility. Consider establishing own website for the long term.
(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	<p>PPL A.71.1 provides that the Council of the Regional State may, where necessary, issue regulations for the implementation of the PPL.</p> <p>PPL A.77.2. provides that the Bureau may issue directives implementing the provisions of the PP.</p> <p>PPL A.77.3 provides that the Works and Urban Development Bureau may issue the construction sector directive implementing the provisions of the PP, to be approved by the Bureau (BoF).</p>	Not applicable	Criterion is partially met. The responsibility for maintenance of the secondary legislation is clearly established. The secondary legislation is updated from time to time. However, as discussed above, the PPD, on occasions, appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD.		See recommendation under 2(a) (a).

2(b) Model procurement documents for goods, works, and services

Assessment criteria [2(b) Model procurement documents for goods, works, and services]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.	<p>Summary: There are model procurement documents for use for a wide range of goods, works and services including consulting services.</p> <p>Standard Bidding Documents: There are model Standard Bidding Documents (SBD) published by the Bureau for NCB and RFQ, although these are not being used in practice. The Federal SBDs are relied upon. There are separate Federal SBDs for international competitive bids (ICB) and national competitive bids (NCB). There are also ICB and NCB SBDs for the procurement of goods under framework agreements and for procurement of Information Systems, Textbooks and Health Sector Goods. There is no SBD for procurement of goods where no framework agreement is used.</p> <p>The SBDs include Instructions to Bidders with information on the bidding process including evaluation and award, Statement of Requirements, General and Special Conditions of Contract and Bidding/Contract Forms including the bid submission sheet.</p> <p>Standard forms for bid opening and evaluation: In addition, there are standard templates covering invitation to bid, bid opening and evaluation; including a bid opening checklist, minutes of bid opening, report on bid submissions and bid evaluation report. There is also a sample letter of notification of award.</p>	Not applicable	Criterion is partially met. Use of the federal SBDs is not mandatory and not officially adopted by the Bureau.		Consider use of national SBDs in consultation with the federal PPPAA and other regions to ensure consistency. Provide adequate guidance and official instruction and guidance mandating use of SBDs by all PEs.
(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect	<p>PPL A.28 sets out the mandatory content of the Bidding Documents.</p> <p>PD A.15.3.2 provides that public bodies must use the standard bidding documents prepared by the Bureau without making any changes in the Instruction to Bidders</p>	Not applicable	Criterion is partially met. Please see gap under 2 (b) (a) above.		Please see recommendation under 2 (b) (a) above.

MAPS assessment in: Ethiopia

Name/organization: The World Bank in cooperation with the Ministry of Finance and the Public Procurement and Property Administration Agency of the Government of Ethiopia

Date: June 2021

Assessment criteria [2(b) Model procurement documents for goods, works, and services]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.	and General Condition of Contract section of the SBDs. Changes to the procurement schedule (equivalent of data sheet) and special conditions of contract are permitted to suit the context. The assessment was not provided with any official authorization issued by the Bureau mandating the use the federal SBDs.				
(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	PPL A.13.4 Functions of the Bureau: provides that the Bureau is responsible for preparing, updating and issuing authorized versions of the Standard Bidding Documents, procedural forms and other attendant documents.	Not applicable	Criterion is not met. Please see gap under 2 (b) (a) above.		Please see recommendation under 2 (b) (a) above.

2 (c) Standard contract conditions

Assessment criteria [2 (c) Standard contract conditions]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	The SBDs include standard contract conditions for works, goods, consultancy services and non-consultancy services contracts. There are both general conditions of contract and special conditions of contract. PPL A.28.5 Bidding Documents requires the bidding documents used by public bodies to include the general and specific conditions of contract. PD 15.3.2 provides that public bodies must include the general conditions of contract in bidding documents without making any changes.	Not applicable	Criterion is partially met. Please see gap under 2 (b) (a) above.		Please see recommendation under 2 (b) (a) above.
(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	The standard general contract conditions contain provisions which are consistent with internationally accepted practice, including defining the parties to the contract, their respective obligations, assignment and sub-contracting, contract changes, payment provisions, liability, dispute, and termination. PD A.37.4 Contract amendments: The drafting in the procurement Directive is too wide. It has the potential to be interpreted widely to the detriment of competition. The legal documents do not specify the review and approval process for contract amendment. The content of the standard contract conditions (SBDs issued by the Bureau) are abridged versions with no detailed information on the procedures for implementation of key aspects of the contract.	Not applicable	Criterion is partially met. Please see 2 (b) (a) above.		Please see 2 (b) (a) above.
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	The standard contract conditions are an integral part of the SBDs (PPL A.28, PPD A.15.3.2) which are included in the Bidding Documents issued to candidates. Charge for bidding documents: Public bodies may charge candidates for bidding documents at a price not exceeding the cost of reproduction and delivery of those documents to the candidate (PPL A.38(1) and PPD para. 18.10).	Not applicable	Criterion is partially met. Please see 2 (b) (a) above.		Please see 2 (b) (a) above.

2 (d) User's guide or manual for procuring entities

Assessment criteria [2 (d) User's guide or manual for procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.	It appears that there is a manual, but the assessment team has not been able to access it.	Not applicable	Criteria is not met. It appears that there is a manual, but the assessment team has not been able to access it.		Ensure accessibility of the manual if it exists. If not, consider preparing a comprehensive manual and user's guide that details the procedures for correct implementation of the rule.
(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	If it exists, the manual was not accessible. No evidence showing the manual was updated.	Not applicable	Criteria is not met. Please refer to gap 2 (d) (a).		Please refer recommendation 2 (d) (a).

3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

3(a) Sustainable Public Procurement (SPP)

Assessment criteria [3(a) Sustainable Public Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has a policy/strategy in place to implement SPP in support of	No evidence of a policy/strategy in place to implement SPP in support of broader national policy objectives. There is, however, in place an incentive scheme for the benefit of MSEs. At the time of the assessment, the Region was considering issuing regulation to provide additional incentives to MSEs.	Not applicable	Criterion is partially met. There is no SPP strategy for promotion of broader national and regional objectives. The MSEs scheme doesn't include	✓ Yes	Develop a policy for promotion of sustainable procurement in accordance with the Transformation and Growth Agenda in the region.

Assessment criteria [3(a) Sustainable Public Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
broader national policy objectives.			all MSEs that fall under the category. The detailed description is available under sub indicator 9 (a) (c).		
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalize, facilitate and monitor the application of SPP.	No evidence of SPP implementation plan.	Not applicable	Criterion is not met. Refer gap 3 (a) (a)	✓ Yes	See 3 (a) (a).
(c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.	Summary: the legal provisions address “lifetime approach” and environmentally friendly procurement only at a high level – see 3(a)(d) below. There is also an incentive to procure locally manufactured goods/ local contractors etc., and the MSEs which is intended to provide jobs to young graduates – see 1(d)(b) and 3 (a) (a), above.	Not applicable	Criterion is partially met. All sustainability factors are not considered. For instance, environment, incentive to marginalized groups in society or women entrepreneurs are not considered in the legal framework.	✓ Yes	See 3 (a) (a). Consider introducing sustainability provisions based on adequate study.
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	Summary: The legal provisions address “lifetime approach” and environmentally friendly procurement only at a high level and do not address the issue of well-balanced application of sustainability criteria to ensure value for money. PPL A.5 provides that one of the principles of procurement is to ensure value for money in the use of public funds. PPL A.54 requires heads of public bodies to adopt a “lifetime approach” to the management of public property. This means a system which takes into account all associated activities and costs including acquisition, maintenance, consumption, disposal and deletion. Similar general provisions are not included in the PPL in the context of public procurement.	Not applicable	Criterion is not met. Well balanced application of sustainability criteria to ensure value for money not considered.	✓ Yes	Ensure that the incentive scheme to MSEs does not have negative impact on other social objectives and value for money. Consider a life cycle costing approach in the procurement and provide adequate guidance.

3(b) Obligations deriving from international agreements

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

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) clearly established	As explained under Indicator 1(a)(a), the PPL confirms in A.6 that to the extent that the PPL conflicts with an obligation of the Region under, or arising out of, an agreement with one or more states or with international organizations, the provisions of that agreement shall prevail. However, the PPL is silent in respect of international obligations attaching to funds passed on to the Region by way of an agreement entered into by the Federal Government. These provisions are unclear.		Criteria is partially met. The PPL is silent in respect to international obligations attaching to funds passed on to the Region by way of an agreement entered into by the Federal Government. Given that it is the federal government that enters into international agreement, it is important to provide clear provision in the primary legislation.		Consider introducing a provision regarding international agreement signed by the federal government. See 1 (a) (a).
(b) consistently adopted in laws and regulations and reflected in procurement policies.	The procurement framework does not make mention of any international agreement or obligations arising from such agreements. Similarly, it is not clear from where the thresholds for international competitive bidding are coming. Ethiopia is a member to the Agreement Establishing the African Continental Free Trade Area (AfCFTA). Member States of AfCFTA are working on harmonization of public procurement policies. Accordingly, a continental procurement policy is planned to be developed to ensure that procurement policies are in harmony. AfCFTA will develop a model law that can be adopted by member states. Ethiopia signed the United Nation Convention against Corruption (UNCAC) on 10 December 2003 and through Proclamation no 544/2007 on 26 November 2007. UNCAC calls for: <ul style="list-style-type: none"> Article 9 (1) (a) of UNCAC, calls for the “public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders.” 	Not applicable	Criterion is partially met. The international agreements are adopted into laws through proclamation ratifying the agreements. However, the procurement policies are not updated for consistency. While UNCAC calls for a defined level of transparency, obligations stemming from these laws are not fully reflected in the specific laws and implemented in practice. The procurement legislation requires disclosure of procurement notices and contract award above a specified threshold, however, the procurement framework does not mandate adequate publication and disclosure of procurement related documents, information, and decisions. UNODC carried out a review of the implementation by Ethiopia of the UNCAC Convention. The government is		Amend the legislation to introduce the level of transparency at a minimum as recommended for different indicators of this assessment and for compliance with UNCAC, also in practice.

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<ul style="list-style-type: none"> Article 9 (1) (b) of UNCAC, calls for the “establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication.” <p>The African Union Convention on Preventing and Combating Corruption is another international agreement with impact on procurement. Member states of this Convention undertake to adopt legislative measures to create, maintain and strengthen their procurement system and management of public goods and services. The UN Convention for Anti-Corruption provides that parties undertake to establish appropriate systems of procurement based on transparency, competition, and objective criteria to prevent corruption.</p> <p>In addition, Ethiopia is also a member state of the African Union whose headquarters are hosted by Ethiopia in Addis Ababa. As its member, Ethiopia can benefit from the AU’s work, for example of the New Partnership for Africa’s Development (NEPAD) Agency which is the implementing arm for the AU’s Agenda 2063 development strategy. NEPAD’s structure includes several committees that are complemented by various panels such as procurement and recruitment, as well as directorate and division level quality assurance task teams.</p>		currently preparing a response to the Country Review Report of Ethiopia by UNODC.		

Pillar II. Institutional Framework and Management Capacity

4. The public procurement system is mainstreamed and well-integrated into the public financial management system

4(a) Procurement planning and the budget cycle

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

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	<p>PPL A.14 requires public bodies to prepare an annual procurement plan prepared in accordance with the PPL and a Bureau Directive. The annual procurement plan must be approved and then communicated to the Bureau by 6 August each year.</p> <p>The PPD provides a dedicated section (Section 3) to the preparation of procurement plans; identification, collection and arrangement of needs; selection of procurement methods; scheduling; content of the plan; approval and updating of the plan, and its publication. Accordingly, the annual plan must be approved and shared with the relevant work units including the Bureau.</p> <p>As per the regional Budget Administration Directive number 2/2005 E.C, Article 7, PBs prepare their annual budget requirements based on information from the:</p> <ul style="list-style-type: none"> The annual work plan of the bureau Historical Unit price Performance on the previous half-year budget utilization <p>The work plan includes procurement and non-procurement activities to be carried out in the given year, including cost estimates.</p> <p>However, the budget estimation depends on historical price data and does not benefit from credible feasibility studies and updated information acquired through market research. After budget is approved, PBs prepare Procurement plans and share them with BoF implying that there is no link between procurement plan and budget preparation process.</p>	Not applicable	<p>Criterion is partially met.</p> <p>There is no requirement and practice of preparing a typical procurement plan (annual or multi-year) to inform the budget preparation process. To a certain extent, information of a procurement planning nature (e.g., cost estimate, market analysis, scheduling) included project feasibility studies is considered in the budget preparation process.</p> <p>There is no legal requirement to submit a feasibility study and its independent verification for quality and realism.</p> <p>The annual procurement plan as required by the PPL and prepared by the Procuring entities is shared with the Regional regulatory agency after the budget has been approved and has no influence on the budget decision.</p>		<p>More explicit provisions that demand the integration of budgeting with procurement plan should be considered.</p> <p>Enacting and implementing the Public Project Administration and Management System Proclamation would help to integrate the budgeting and PPL process, at least for major projects.</p>

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).	<p>The Budget Administration Directive requires public bodies to consider financial requirements for ongoing and new programs while preparing their annual budget requirement. In general, the provisions in the Directive are followed by the public bodies.</p> <p>During budget implementation, the PBs submit three months' cash flow requirements which is updated monthly on a rolling basis. The budget release for capital projects normally takes place at the end of the 1st quarter of the year, impacting payments due during this period of the fiscal year.</p> <p>Because capital projects are not supported by reliable feasibility studies and cost estimates, most of the capital projects run out of resources in the middle of implementation, requiring additional budget and impacting timely payments.</p> <p>The PBs are also required to submit copies of payment documents including invoices and certificates to support payments of all invoices, irrespective of amount. This definitely hampers public bodies' ability to effect payment timely.</p>		<p>Criterion partially met.</p> <p>The delay in budget approval process, the delay in budget transfer to PBs for capital projects, the need to quest for additional budget during implementation affected the performance for timely appropriation of budget in the region. there are delays in budget transfers for capital projects in the first quarter of the year and the transfer does not consider requirements.</p>		Streamline the budget preparation, approval, and transfer process from the federal to regions and from Regions to PBs.
(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.	<p>Article 14 of the ANRS cash administration directive no 3/2005 E.C requires the public body to report the budget fund utilization against the cash requirement plan, for BOF every month.</p> <p>The requirement of monthly reporting is complied with by most of the bureaus, while some bureaus of the region are used to reporting on a quarterly basis.</p>	Not applicable	Criterion is met.		

4(b) Financial procedures and the procurement cycle

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

Assessment criteria [4(b) Financial procedures and the procurement cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	<p>There is a requirement only to abstain from contract signing, not from solicitation before funds are available.</p> <p>The Revised Financial Administration Proclamation 64/2003 A.32 Commitments, provides that no contract or other arrangement shall be entered into by any public body, unless there is sufficient unencumbered balance from the budget to discharge any debt incurred during the fiscal year in which the contract or other arrangement is made. It goes on to provide that for long-term contracting lasting more than one fiscal year, the ascertainment of budget appropriated for the first fiscal year of the project shall be sufficient.</p>	Not applicable	<p>Criterion is not met.</p> <p>The Proclamation provides that no contract shall be signed before certification of availability of budget and not before solicitation of tenders. The legal requirement should look into and address the reputational risk and transaction cost associated with unsuccessful procurement in case of lack of funds at the time of contract signing.</p>	✓ Yes	Consider introducing an explicit provision and practice that provides confirmation of availability of budget before soliciting tenders.
(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.*	<p>PD (A.22.5) sets out the obligations to pay in a timely fashion and sets out a procedure to be followed in processing payment for long-term works contracts. The article requires the consultant to certify the payment requested by the contractor in 7 days and for public bodies to effect the payment in 20 working days from the date they receive the payment request certified by the consultant.</p> <p>Besides, the finance administration proclamation A 31, 311 & 34 stipulates the procedure for processing of payments.</p> <p>However, all payment requests, irrespective of amount, are submitted to the BoF for approval before payment.</p> <p>Most procuring entities of the region use the standard bid document issued by Federal Public procurement agency, which provides a standard timeline for payment which is not consistent with the timeline specified in the region's public procurement directive. Therefore, there is lack of consistency and clarity on the region's payment procedure.</p>		<p>Criterion is not met.</p> <p>The procedures for processing of invoices and authorization of payment are not publicly available. Most importantly, the procedure to submit all payment requests to Bureau of Construction and subsequently to BoF is not consistent with the payment procedures. There is inconsistency in the timeline specified among the different documents.</p>	✓ Yes	Streamline the payment process to improve the timely payment of invoices. Ensure consistency between finance and procurement documents. Consider publishing payment procedures on websites for the bidding community and the public to have easy access.
// Minimum indicator // * Quantitative indicator to		Based on the review, the Team determined that 76% of the invoices were paid on time.			

Assessment criteria [4(b) Financial procedures and the procurement cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
substantiate assessment of sub-indicator 4(b) Assessment criterion (b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.		167 invoices issued under 80 contracts were reviewed.			

5. The country has an institution in charge of the normative/regulatory function

5(a) Status and legal basis of the normative/regulatory institution function

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

Assessment criteria [5(a) Status and legal basis of the normative/regulatory institution function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities' formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	Summary: Proclamation 112/2011 defines Powers and Duties of the Executive Organs of the Regional Government. The regulatory function in Afar is organized as a department /Directorate in BoF and lacks dedicated management focus and resource.	Not applicable	Criterion is met.		Consider enhancing the capacity and structure of the Regulatory function, as appropriate.

5(b) Responsibilities of the normative/regulatory function

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

Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) providing advice to procuring entities	PPL A.13(1) Bureau function: to advise the Regional State on all public procurement and administration policies, principles and implementation.		Criterion is met.		
(b) drafting procurement policies	PPL A.13(1) Bureau function: to advise the State on public procurement policies.		Criterion is met.		
(c) proposing changes/drafting amendments to the legal and regulatory framework	PPL A.13(3) Bureau function: initiate amendment on law and implementation of system improvements.		Criterion is met.		
(d) monitoring public procurement	PPL A.13(3) Bureau function: to monitor and report to the Regional State on the performance of the public procurement system.		Criterion is met.		
(e) providing procurement information	Not specifically provided for in the PPL. However, PPD (A.6.24) assigns the responsibility of providing procurement information, except for information restricted by the PP, to the procurement unit in the public bodies.		Criterion is met.		
(f) managing statistical databases	PPL A.13(8) Bureau function: to set up, develop, maintain and update a database that covers the entire spectrum of public procurement and property administration.		Criterion is met.		
(g) preparing reports on procurement to other parts of government	PPL A.13(13) Bureau function: to submit quarterly and annual reports to the Regional Government regarding the overall functioning of the public procurement administration and provide such data as the Minister requests.		Criterion is met.		
(h) developing and supporting implementation of initiatives for improvements of the public procurement system	PPL A.13(2) Bureau function: implementation of system improvements.		Criterion is met.		

Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement	PPL A.13(4) Bureau function: prepare, update, and issue SBDs, procedural forms and other attendant documents. As regards the integrity training programs, the responsibility lies with the State Ethics and Anti-corruption Commission, which among others, is in charge of overall responsibility for educating citizens on integrity and corruption matters. Ethic officers in public bodies are responsible to coordinate with the Region's Administration's Ethics and Anti-Corruption Commission in providing integrity training relevant to the public body.		Criterion is met.		
(j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)	PPL A.113(3) Bureau function: in collaboration with competent authorities, ensure the setting of training standards, competence levels, certification requirements and professional development paths.		Criterion is met.		
(k) designing and managing centralized online platforms and other e-Procurement systems, as appropriate	Bureau: PPL A.23 provides that the Bureau shall conduct a study and submit a proposal concerning an e-GP system and ensure that public bodies, suppliers and supervising entities develop the necessary capacity. No action appears to have been taken to date.		Criterion is met.		

5(c) Organization, funding, staffing, and level of independence and authority

Assessment criteria [5(c) Organization, funding, staffing, and level of independence and authority]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.	PP: The functions are assigned to the Bureau. However, in practice, the BoF delegated the role to the Public Procurement Administration Directorate organized under BoF. The Directorate is responsible for providing the procurement regulatory functions in the Regional State. The Head of the Directorate is assigned by the Head BoF and has no authoritative standing in government.	Not applicable	Criterion is not met. The Regulatory function is not organized in the appropriate level of structure and the Head has low-level authoritative standing in the Region.	✓ Yes	Consider establishing an independent procurement regulatory body.
(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.	The regulatory function has no dedicated and secured financing.	Not applicable	Criterion is not met.	✓ Yes	See 5 (c) (a).
(c) The institution's internal organization, authority and staffing are sufficient and consistent with its responsibilities.	The PPL assigns the regulatory function to BoF. However, the function is delegated to a unit under BoF which is the Public Procurement Administration Directorate. The directorate technically leads in all procurement regulatory function assigned to the Bureau. Key regulatory responsibilities such as research, policy, advisory service, updating/amending procurement laws and SBDs have no dedicated team/staffs and as a result, are not being performed adequately or at all. At the time of the assessment, only half (7 out of 11) of the approved positions in the Directorate was filled.		Criterion is not met.	✓ Yes	See recommendation provided under 5 (c) (a).

5(d) Avoiding conflict of interest

Assessment criteria [5(d) Avoiding conflict of interest]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations										
<p>(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.</p>	<p>Conflicts of interest – institutional</p> <p>The objectives, functions and activities of the Bureau are wide-ranging but this mix of duties and functions is incompatible in many respects, and in absence of clear rules on separation of duties, the system/structure currently in place is insufficient to avoid conflicts of interest.</p> <p>More specifically, the Bureau is responsible for operating and maintaining the supplier’s list (PPL A.113(17)) but also for the maintenance of the suspension/debarment list (PPL A.13(5)); the Bureau is involved in procurement processes – advice and assistance, authorization – but it also carries out a review of procurement based on a bidder’s complaint (PD A.49). Under PPL A.13.14 the Bureau is given the function of making bulk purchases of vehicles and heavy machinery, so it is also a purchaser and, therefore, subject to complaints which it reviews.</p> <p>Rules of Ethics and Conflicts of interest - personnel PPL A.24 sets out basic Rules of Ethics in Public Procurement, subject to details to be specified in a Bureau Directive. PPL A.24(1)(a) requires persons engaged in public procurement to observe the obligation to notify any actual or possible conflicts of interest.</p>	<p>In the private sector survey, 14 respondents, who operate in Afar, responded as follows:</p> <table border="1"> <caption>Survey Results: Conflicts of Interest in Afar</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>no real or perceived conflict of interest</td> <td>10%</td> </tr> <tr> <td>conflicts of interest rarely appear to be a problem</td> <td>50%</td> </tr> <tr> <td>conflicts of interest are obvious</td> <td>38%</td> </tr> <tr> <td>abundant conflicts of interest</td> <td>2%</td> </tr> </tbody> </table> <p>As shown on the above graph, 43% respondents think that the conflicts of interest are obvious or abundant. 57% respondents think that the regulatory institution at the Federal level is free from conflict of interest or rarely it is a problem. It is noted, though, that some respondents also operate in the Regions and their response may have also considered regulatory institutions across the country.</p> <p>Out of 13 respondents, 62% responded that they experienced a situation where the regulatory institution faced a conflict of interest giving the following reasons:</p> <ul style="list-style-type: none"> Unclear separation of duties between institutions: 50% Unclear competencies of officials: 50% An official positions used for private advantage: 80% An official’s family or other personal relations: 20% An official’s political affinities: 50% <p>(more than one answer was allowed)</p>	Category	Percentage	no real or perceived conflict of interest	10%	conflicts of interest rarely appear to be a problem	50%	conflicts of interest are obvious	38%	abundant conflicts of interest	2%	<p>Criterion is not met.</p> <p>The functions and duties of the Bureau are wide-ranging with insufficient separation of duties to avoid actual or perceived conflicts of interest. For example, regarding procurement, the BoF is given the functions of auditing and monitoring. Whilst auditing would normally feed into a monitoring function, the monitoring function encompasses a much broader need for system measurement and analysis and warrants a separate and dedicated management structure.</p> <p>With regard to procurement audit, there are other authorities responsible for auditing who have more staff, more capacity, and more knowledge of auditing in general. They may not have sufficient capacity in terms of procurement auditing, but that can be learned or provided.</p> <p>Building and maintain auditing capacity within the Regulatory function sufficient to provide more than superficial audit reports (of a limited number of entities/contracts) absorbs a good deal of resources and leads to some duplication.</p>		<p>See recommendation provided under (c) (a). Consider a review and clarification of definition of responsibilities among the institutions for best efficiency and avoiding overlap.</p> <p>For the procurement regulatory function (currently carried out in the BoF) priority may be given preferably to the monitoring function which will also require new approaches, capacity, and possibly tailored software to allow for the collection and analysis of data and production of system reports.</p>
Category	Percentage														
no real or perceived conflict of interest	10%														
conflicts of interest rarely appear to be a problem	50%														
conflicts of interest are obvious	38%														
abundant conflicts of interest	2%														

6. Procuring entities and their mandates are clearly defined

6(a) Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Procuring entities are clearly defined.</p>	<p>PPL A.2 Defines a “public body” (procuring entity) as any public body which is partly or wholly financed by the regional state’s budget...”</p> <p>“Public procurement” means procurement by a public body using public fund.</p> <p>“Public fund” means any monetary resource appropriated to a public body from the treasury of the Afar National Regional State, as well as any federal government subsidies or aid, grants and credit put at the disposal of public bodies by foreign donors put at the disposal of the public bodies through Afar Regional State or internal revenue of the public body.</p>	Not applicable	<p>Criterion is partially met. See gap analysis at 1(a)(b).</p> <p>There is no published list of all public bodies subject to the PPL. The Pool arrangement at sub-city and woreda level is not specified in the primary document. The roles and responsibilities of the centralized (pool) structure at local level are not described in the primary legislation.</p>		<p>It should be considered that the PPL provides a more complete and elaborate definition of “public body”.</p> <p>Also, it should be considered to publish the full list of public bodies subject to the PPL. This would already increase the certainty on the scope of entities included within the scope of the PPL.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>While the definition of “public body” could arguably encompass a wide range of entities, is unclear as to the coverage of utilities, public enterprises/state owned enterprises, resulting in different perception or practical realities.</p> <p>Also, a list of all public bodies subject to the PPL is not published anywhere.</p> <p>Procurement at local level (woreda and zonal level) is organized in a centralized structure in which the respective finance office consolidates requirements of sector office and carry out procurement centrally. This is managed by the Pool Administration Directive issued by MoF which was expected to be endorsed by the Regional council of each region. The assessment team has not been able to access the Pool Directive issued by the Afar Regional State. More importantly, the pool structure at local level is inconsistent with the procurement structure and roles and responsibilities defined in the PPL that should be rectified by revising the primary legislation in line with the pool structure. See notes at indicator 1(a)(b) for more detailed discussion.</p>		<p>The centralized procurement system at Zone and Woreda level is not supported by legal provisions. Both the primary and secondary documents do not stipulate the centralized procurement structure. The assessment team has not been able to access the pool directive issued by the Region. Since the centralized arrangement is not consistent with the arrangement specified in the PPL and PD, it is appropriate to ensure that the arrangement is adequately legalized through legislation preferably in the primary document.</p> <p>The procurement responsibility in case of procurement of works contracts is not clear. While the PPL provides delegation to PBs to carry out procurement of all categories (Goods, Works, Consultancy and Non-consultancy services), the Regional construction Bureau involves in the process of preparation, review and approval of procurement documents including the bidding documents, bid evaluation reports and supervision in case of procurement of works. The practice has a benefit to access the technical expertise available in the construction Bureau. However, the role of the construction Bureau is not clarified in the procurement documents creating inconsistency between the rules and the practice.</p>		<p>Consider covering the centralized procurement arrangement (pool System) in the primary document.</p> <p>Clarify the role of the construction Bureau in the procurement of works contract and specify in the legal documents preferable in the primary legislation.</p>
(b) Responsibilities and competencies of procuring entities are clearly defined.	<p>There is no single list of responsibilities and competencies of procuring entities, but their responsibilities and competencies are set out in the PP.</p> <p>The Responsibilities of the Heads of Public Bodies are listed at PPL A.8. The position of Head of Public Body itself is not defined in the PPL.</p> <p>The Duties and Responsibilities of the Procurement and Property Administration Unit within the public body are listed at PPL A.9; those of the Procurement Endorsing Committee at PPL A.10.</p> <p>PPL A.11 Accountability confirms that heads of public bodies, heads and staff of procurement administration units and endorsing committees are accountable for their actions.</p> <p>Please see 6 (a) (a) regarding procurement responsibilities at local level.</p>	Not applicable	Criterion is partially met. See gap analysis under 6 (a) (a).		See recommendation under 6 (a) (a).
<p>(c) Procuring entities are required to establish a designated, specialized procurement function with the necessary management structure, capacity and capability.*</p> <p><i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities with a designated, specialized procurement function (in % of total number of procuring entities). Source: Normative/regulatory function.</i></p>	<p>The PPL requires Heads of public bodies to establish: (1) a Procurement and Property Administration Unit whose duties and responsibilities are listed at PPL A.9. (2) a Procurement Endorsing Committee (PEC) whose duties and responsibilities are listed at PPL A.10.</p> <p>A.11 of PPL “Accountability” provides that staff from the procurement unit staff, head of such unit and PEC shall be accountable for their actions in accordance with the PPL and PPD.</p> <p>The accountability appears to stop at the technical level of the public body.</p>	All of the 79 PEs including 36 Woredas and 5 City Administrations that follow centralized procurement (pool) have established a procuring unit.	Criterion is partially met. Capacity and capability of the procurement function of public bodies vary and in many cases are insufficient.		Carry out regular audit to assess structure, capacity, and capability of the procurement function of the public bodies to discharge their responsibilities.

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.	The PPL A 10 provides the authority to approve procurement decisions to the Bid Endorsing Committee for all categories of procurements above the threshold specified in the directive. PPD A 7.3 states that the BEC approves procurement above the values stated in A 18/2. However, the public body requires the approval of the bid endorsing committee for procurement of Works Birr 25,000, Goods Birr 5,000, Consultancy Birr 5,000 and Services Birr 5,000. The threshold is expressed under the section for Request for Quotation but is not consistent with the threshold for any of the procurement methods specified. The Head of the public body or his/her delegate has the authority to approve the procurement below the specified threshold. Normally, the Heads of public bodies delegate this authority to the Head of the Procurement Directorate which is a mid-level management structure in public bodies. Thus, lower-level units do not have procurement delegation. Most importantly, the threshold set for review and approval by Bid Endorsing committee appears very low, if intentional.	Not applicable	Criteria is not met. Decision making authority is not delegated to lowest competent level in consistent with the risks. The threshold for BEC is too small requiring the involvement of a committee in almost all procurements.		Ensure that procurement decisions are expedited through delegation to the appropriate level of structure. Ensure the delegation to the Bid Endorsing Committee is clear and balanced with the risk.
(e) Accountability for decisions is precisely defined.	PPL A 11 specifies accountability for decision making. But the accountability provision is limited to few actors only - staff or head appointed to lead procurement and property administration units and members of the procurement endorsing committee in public bodies. Other actors are not covered in the accountability provision.	Not applicable	Criterion partially met. The accountability provision is limited to few actors and does not include all actors that are directly or indirectly involved in procurement.		Consider expanding the accountability provisions to include all actors that are directly or indirectly involved in procurement decisions.

6(b) Centralized procurement body

Assessment criteria [6(b) Centralized procurement body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has considered the benefits of establishing a centralized procurement function in charge of consolidated procurement, framework agreements or specialized procurement.	Yes. See 6(b) below.	Not applicable	Criterion is met.		
(b) In case a centralized procurement body exists, the legal and regulatory framework provides for the following: <ul style="list-style-type: none"> • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is precisely defined. • The body and the head of the body have a high-level and authoritative standing in government. 	Chapter XI of the PPL provides for "Special Procurement", which includes: (i) Large Value Procurement ¹⁴ and (ii) Procedure for Framework Contract. ¹⁵ For that purpose, the PPL foresees the establishment of a central body. More specifically: A.58(1) provides that a central body shall be established by the Bureau when deemed necessary, to be in charge of large-value procurements having national significance and procurement of supplies for which a demand is shown by more than one public body. PPL A.59(2)(b) also envisages that the central body set up in accordance with PPL A.58(1) will coordinate framework contracts, although its precise role is not clear. PPL A.13.14 also gives the Bureau the function of making bulk purchases of vehicles and heavy machinery. During the assessment period, the Region was establishing the central body which is responsible for large-value procurement and framework agreements. The body under	Not applicable	Criterion is met.		

¹⁴ A.50(1) envisages establishment of a central body in charge of procurement of "large value having national significance of supplies for which a demand is shown by more than one public body and sale of public property to be disposed of..."

¹⁵ A.51.1 provides that "framework contracts may be used to fulfill similar procurement requirements of various public bodies or recurrent procurement requirements of a public body."

Assessment criteria [6(b) Centralized procurement body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	formation targeted to start operation in the 2020/21 fiscal year. It is under establishment.				
(c) The centralized procurement body's internal organization and staffing are sufficient and consistent with its responsibilities.	The central body in Afar was under establishment at the end of the assessment. Only a few officials and experts were assigned.		Criterion is not met. The new organization is under establishment and has not yet created a strong internal structure and staffing.		Ensure that the centralized body has internal structure and staffing sufficient to provide the centralized procurement service that addresses the challenges associated with limited local market and petty requirements by PEs.

7. Public procurement is embedded in an effective information system

7(a) Publication of public procurement information supported by information technology

The country has a system that meets the following requirements:

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	The region has no website to publish public procurement laws. This is a noncompliance to the requirement stipulated in Article 7 of the public Procurement proclamation no 65/2003 which stipulates that the procurement proclamation and other documents pertaining to public procurement shall promptly be made accessible to the public. Moreover, publication of proclamations through DINKARA (a newspaper used to publish the regional laws) is usually made after long delay from the date of enactment. The only information publicly available for bidders is the invitation to bid posted in Ethiopian Herald and Addis Zemen Newspapers, which are nationwide accessible media.		Criterion is not met. Information on procurement is not easily accessible to the public. There is a gap in the timely printing of procurement legal documents upon enactment.		In the short term, the Bureau should discuss and consider the use of the federal PPA's website as central portal and ensure that documents are published and made accessible to the public. In the long term, the Bureau should consider developing its own website.
(b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.	See 7 (a) (a).		Criterion is not met. There is no integrated information system or online portal used at regional or national level		See recommendation provided under 7 (a) (a).
(c) The information system provides for the publication of: * <ul style="list-style-type: none"> • procurement plans • information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions • linkages to rules and regulations and other information relevant for promoting competition and transparency. 	See 7 (a) (a).	While there is no centralized online portal or website to publish procurement information, assessment was made of what procurement information is published in other means. The quantitative assessment has shown that none of the PEs publish procurement plans. The only procurement information PEs publish are bid opportunities in the national newspaper. For the contracts covered in the assessment, 74% of procurement opportunities were published in the national newspaper.	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a).

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c): <ul style="list-style-type: none"> • procurement plans published (in % of total number of required procurement plans) • key procurement information published along the procurement cycle (in % of total number of contracts) : • invitation to bid (in % of total number of contracts) • contract awards (purpose, Supplier, value, variations/amendments) • details related to contract implementation (milestones, completion and payment) • annual procurement statistics • appeals decisions posted within the time frames specified in the law (in %). Source: Centralized online portal.					
(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).	See 7 (a) (a) above.	Not applicable	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a).
(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).* * Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e): - Share of procurement information and data published in open data formats (in %). Source: Centralized online portal.	See 7 (a) (a) above.	Not applicable	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a).
(f) Responsibility for the management and operation of the system is clearly defined.	See 7 (a) (a) above.	Not applicable	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a).

7(b) Use of e-Procurement

Assessment criteria [7(b) Use of e-Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) E-procurement is widely used or progressively implemented in the country at all levels of government.*</p> <p><i>// Minimum indicator // *</i> <i>Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a):</i> <i>uptake of e-Procurement</i> <i>- number of e-Procurement procedures in % of total number of procedures</i> <i>- value of e-Procurement procedures in % of total value of procedures</i> <i>Source: e-Procurement system.</i></p>	<p>E-procurement is not considered. The establishment of e-Procurement system is a work in progress and not yet completed at federal level. There is no strategy that shows how the e-GP will be rolled out in regions.</p>	Not applicable	<p>Criterion is not met. The establishment of e-Procurement system is a work in progress and not yet completed at federal level. There is no strategy that shows how the e-GP will be rolled out in regions.</p>		<p>Consider preparing E-procurement strategy aligned with the progress at federal level.</p>
<p>(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.</p>	See 7 (b) (a).		<p>Criterion is not met.</p>		See 7 (b) (a).
<p>(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.</p>	See 7 (b) (a).	Not applicable	<p>Criterion is not met.</p>		See 7 (b) (a).
<p>(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*</p> <p>* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d): - bids submitted online (in %) - bids submitted online by micro, small and medium-sized enterprises (in %) Source: e-Procurement system.</p>	See 7 (b) (a).	Not applicable	<p>Criterion is not met.</p>		See 7 (b) (a).
<p>(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.</p>	See 7 (b) (a).	Not applicable	<p>Criterion is not met. No roadmap for rollout at regional level.</p>		See 7 (b) (a).

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

7(c) Strategies to manage procurement data

Assessment criteria [7(c) Strategies to manage procurement data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.	The region has no system in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology. However, the federal PPA has introduced a procurement performance measurement system using key performance indicators (KPIs) and it is piloted in the regional bureau of health, bureau of Education and bureau of Agriculture. The KPI system is an excel format used to capture procurement data starting from planning until contract completion. The implementation of the KPI system at the regional level is supervised and supported by the BoF (Regulatory function). The KPI report covers performance including share of procurement through open competition, competition level, performance on contract management, price trend, and complaint management in procurement of goods, works, non-consultancy and consultancy service. The KPI system was supposed to capture data in a real-time basis. In practice, the PEs collect the procurement information from contract files after procurement activities are completed. It appears that the PEs implement the KPI system to comply with the requirements from RPPA's and federal PPA's instead of using it as a management tool in the PEs. There was no practice of sharing the report to own management in the PEs, and hence, there has not been any follow-up action to improve procurement performance. The system has not been reviewed or audited by an external party.		Criterion is partially met. The KPI system is not integrated with the procurement system to capture real-time information, the accuracy of the data collected has not been verified, the KPI system has not been audited and it is implemented only in few PEs.		Consider integrating the KPI system with the procurement system, expand its application in all PEs and enhance its quality and use.
(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.	See 7 (c) (a).		Criterion is partially met. See 7 (c) (a).		See 7 (c) (a).
(c) The reliability of the information is high (verified by audits).	See 7 (c) (a). The system has not been audited and there is no evidence that shows the information is reliable.		Criterion is not met. See 7 (c) (a).		See 7 (c) (a).
(d) Analysis of information is routinely carried out, published and fed back into the system. * <i>// Minimum indicator // *</i> <i>Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):</i> • <i>total number and value of contracts</i> • <i>public procurement as a share of government expenditure and as share of GDP</i> • <i>total value of contracts awarded through competitive methods in the most recent fiscal year.</i> <i>Source: Normative/regulatory function/E-Procurement system.</i>	A See 7 (c) (a). Analysis was carried out but not for purpose of improving the procurement system but for complying with requirements imposed by the BoF and federal PPA. The KPI report has not been published.	The team was not able to access any official report or analysis showing public procurement as a share of government expenditure and as share of GDP. No report on total value of contracts awarded through competitive methods in the most recent fiscal year.	Criterion is not met. See 7 (c) (a).		See 7 (c) (a).

8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria [8(a) Training, advice and assistance]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) substantive permanent training programs of suitable quality and content for the needs of the system.	There are no permanent procurement training programs in the region. However, the BoF provides Procurement and Property administration training as part of the PFM Institutionalized training using in-house capacity. The training was designed to create awareness on the procurement rules and regulations. As per the information from BoF, the Institutional training program is conducted regularly, every six months, in collaboration with Afar Management Institute. However, the information from the PEs didn't confirm that the PEs benefited from the training program.		Criterion is not met. There is no permanent procurement training programs of suitable quality in the region.		Consider establishing permanent training programs of suitable quality or work with the federal PPA to access training programs offered at federal level.
(b) routine evaluation and periodic adjustment of training programs based on feedback and need.	There are no training programs. BOF has no practice of conducting routine evaluation and periodic adjustment of training program.		Criterion is not met.		See the recommendation provided under 8 (a) (a).
(c) advisory service or help desk function to resolve questions by procuring entities, suPPiers and the public.	The BoF provides technical clarifications and advice on the procurement rules and procedures when requested. However, there is no dedicated advisory service (Desk or staff) but the service is provided by staff working in the Public Procurement Administration Directorate under BoF.		Criterion is partially met. No dedicated staff to provide advisory service. The service is provided by staff not assigned for this purpose and hence, compromising on quality and accountability.		Improve the capacity and staffing of the procurement regulatory function in Afar.
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	Capacity Building and Good Governance is one of the pillars in the current Growth and Transformation Plan (GTP) II (2016-2021) of Ethiopia. The plan recognizes the need to develop public procurement capacity and strengthen transparency and accountability in the use of public resources. Following the GTP document and based on the prototype from the MoF, the BoF (Afar) prepared the PFM strategy that has also identified public procurement capacity building as one focus area. However, the strategy is not well integrated with other measures for developing the capacity of key functions in public procurement like improving the procurement Regulatory framework. The regulatory function lacks the capacity in terms of qualified staff and structure to deliver its responsibilities but is not covered in the strategy document. Similarly, there is no strategy in place to improve the capacity of the private sector as key players in public procurement despite the challenges PE's face due to limited local market and capacity of the private sector, particularly the small-scale suppliers and contractors.		Criterion is partially met. The PFM strategy document is not comprehensive in addressing the capacity need of key actors in procurement. The capacity of the key actors like the Regulatory function and the private sector is overlooked. The strategy document appears the same in all regional states and may not be adequately customized to the reality of the region.		Update and expand the BoF's PFM strategy to address capacity challenges in key public procurement stakeholders including the regulatory function and the private sector.

8(b) Recognition of procurement as a profession

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

Assessment criteria [8(b) Recognition of procurement as a profession]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Procurement is recognized as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	The civil service bureau has defined procurement as a profession, and it is included in the regional civil Service structure. In most PEs, the procurement function is organized as "team" under the "Procurement Finance and Property Administration Directorate" together with finance and property administration. In addition, the procurement technical positions are graded as Senior and Junior procurement Specialist. Seniority is granted based on years of service. However, the procurement jobs' grading focuses only on educational qualifications and generic experiences and doesn't consider other essential competencies required to deliver procurement responsibility. It specifically misses competence requirements (skill and behavior) required to carry out procurement responsibility successfully.	Not applicable	Criterion is partially met. Procurement job requirements are generic and not based on competencies (technical and behavioral) and not linked with the certification requirements.	✓ Yes	Revise the procurement job requirements to include required technical and behavioral competencies at different levels.

Assessment criteria [8(b) Recognition of procurement as a profession]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(b) Appointments and promotion are competitive and based on qualifications and professional certification.	The procurement job grades are not linked with procurement professional certifications and competency requirements. Instead, they are based on generic educational qualifications and experiences that are not directly relevant to perform procurement tasks under different level of complexities. As a result, though procurement positions are filled competitively, the selection criterion does not allow for identification of the right expert based on skill and competency requirements.	Not applicable	Criterion is partially met. While the appointments are competitive, they are not based on skill and competency requirements specific to the job.	✓ Yes	Revise the procurement job requirements to include technical and behavioral competencies.
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	The regional bureaus have no practice of conducting staff performance evaluation. There is also no staff development and training provided for the staff.	Not applicable	Criterion is not met. There is no practice of evaluating performance of the procurement staff.	✓ Yes	Consider introducing a performance evaluation system specific to public procurement and link with incentives and promotion.

8(c) Monitoring performance to improve the system

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	There is no workable and consistently applicable performance measurement system that focuses on both qualitative and quantitative aspects. However, the federal PPPAA introduced (and adopted by Afar) performance measurement system based on identified Key Procurement Performance Indicators (KPI). The system uses an Excel format to collect, analyze, and report procurement performance against the indicators. The system has not been systematically integrated into the procurement system and hence, the use of the system is left at the discretion of the procuring entities and staff. The system has been introduced in 2015 but the use of the system in SNNPR level is limited to few PBs. There is clear lack of ownership and of high-level commitment to rollout and use the system. It appears that it is implemented largely because it was linked with disbursement in the World Bank-financed PforR project (PBS ¹⁶ III and ESPES ¹⁷).	Not applicable	Criterion is not met. The KPI system is not rolled out successfully. It is not a comprehensive tool in measuring performance in qualitative and quantitative terms. It is important to enhance the KPI system and integrate with the procurement system to allow real-time data collection, analysis and reporting both on qualitative and quantitative terms.		Develop a comprehensive data capture and performance measurement system integrated with the e-procurement system to be introduced. Consider integrating the KPI into the procurement measurement system.
(b) The information is used to support strategic policy making on procurement.	There is no system used for collection and analysis of procurement data to support strategic policy making on procurement. The information collected through the KPI system does not appear to be complete and accurate and used as reliable data for procurement policy making. It appears that the limited report generated from the system is meant to satisfy requirements in the World Bank-financed PforR projects and is not used for procurement strategic policy making decisions.	Not applicable	Criterion is not met. The information generated through the KPI system is not used for strategic policy making.		In addition to enhancing the functioning of the KPI system into a comprehensive data capture and performance measurement system, it is appropriate to establish a procurement policy team that utilizes the data to make procurement policy recommendation. The team should ensure the consistency of procurement system and implementation to the broader policy objectives of the government.
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	No evidence was obtained that supports the existence of strategic plan including results framework.	Not applicable	Criterion is not met. No evidence was obtained that supports the existence of strategic plan including results framework.		Introduce a strategic plan supported by a results framework to improve the procurement system. Consider the recommendation provided under See 8 (c) (a).
(d) Responsibilities are clearly defined.	The procurement proclamation mandates BoF to monitor and report on procurement performance. Within the BoF, the procurement and property administration Directorate is responsible for the implementation of the KPI system at the regional level.	Not applicable	Criterion is partially met. The BoF is tasked with a lot of responsibilities that require close management attention and follow up. The procurement regulatory function, including the		Consider improving the capacity and staffing of the regulatory function.

¹⁶ Promotion of Basic Services phase III program

¹⁷ Enhancing Shared Prosperity for Equitable services Program

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
			responsibility for procurement data management, is delegated to the Procurement and Property Administration Directorate that have limited capacity and staffing.		

Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	Procuring entities do not conduct need analysis and market research to guide a proactive identification of optimal market strategy.	Not applicable	Criterion is not met. There is no mechanism and supporting tools to enable procuring entities to carry out meaningful market assessment that informs selection of the optimal procurement approach. Selection of procurement approaches is basically made based on threshold as provided in the procurement documents instead of market realities and outcomes. In addition to lack of supporting tools, the procurement system is hampered by fear of discretion and risk avoiding behavior. It is key to enhance confidence in the procurement decision making process that focuses on procurement outcome rather than mere compliance to rules.		Consider introducing a requirement and provide tools/templates to support needs analysis and market research for purpose of defining the optimal procurement strategy. Empower procurement decision makers to consider innovative and optimal approaches based on market information.
(b) The requirements and desired outcomes of contracts are clearly defined.	The requirements and desired outcomes of contracts are described in the procurement documents. The PEs specify the requirements in the specifications, Terms of reference, and Bill of Quantities as appropriate. Requirements in the case of works contract are normally defined through cross-referencing the standard technical specification of building works developed by the former Building and transport Construction and Design Authority (BaTCoDA) and standard technical specification of road works developed by Ethiopian Roads Authority (ERA). Procuring Entities use these standards through cross-referencing the name of the standard and as part of the contract. However, it appears that there are problems in practice with the use of discriminatory specifications.	Not applicable	Criterion is partially met. It appears that there are problems in practice with the use of discriminatory specifications, particularly in procurement of goods and services.		Enhance the procurement audit to put emphasis on the technical specifications and follow up to ensure improvement in preparing the specifications. Expand training on the requirements for neutral specifications, functional where appropriate, and based on international norms when possible.
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	The procurement arrangement supports social and economic objectives which are integrated into the procurement legal framework and SBDs. The procurement proclamation article 25 specifies preference for locally manufactured goods and services and Micro and Small Enterprises (MSEs). The Region is in the process of introducing additional schemes to incentivize MSEs through "Set Aside" and Mandatory Subcontracting. However, the definition of MSEs targets only job seeker youths and excludes contractors that are similar in size and capacity but already operating in the market. The preference margin in some sectors appears too high (25% in health sector) to strike a balance between social objectives and value for money in procurement.	Not applicable	Criterion is not met. There is no legal requirement and practice to use sustainability criteria (environmental, social, and economic) to ensure value for money. The only exception is the price preference margin allowed for goods and services manufactured locally or participation of MSEs. It appears that decision for granting price preference (where and how) has not been supported by any analysis that shows the value addition and consistency with the national and regional economic objectives. Thus, it is exposed to risk of misuse.	✓ Yes	Having the history of using the preference schemes, both at the Federal and Regional level, it is recommended to study the use of the requirements and their impact. This study can be carried out jointly as similar schemes are at both levels and the Regions are looking to the Federal government for guidance. Revise the preference schemes based on the evidence of their impact.

9(b) Selection and contracting

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	The procurement documents provide procedure for use of a multi-stage approach. However, there was no practice of using the procedure because, unless for very rare cases, procurements at the regional level are not complex.		Criteria is met.		Consider using multi-stage procedures in case of complex procurement, as appropriate. Prepare guidance on how to use multi-stage procedure.
(b) Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	Public bodies use standard bidding documents (SBD) developed by the federal PPPAA, version 2011. The SBDs incorporate all sections that are found in typical SBDs including Instruction to Bidders, Bid Data Sheet, schedules and templates, Standard Conditions of Contract, Special Conditions of Contract etc. However, it appears that the SBDs are considered complex and disproportional for procurement in some sectors. As a result, response from potential bidders in some sector is very low. The SBDs issued by the BoF are not widely disseminated and in use.		Criterion is partially met. The federal SBDs were issued in 2011 and not updated to meet the current practice and market operation. Besides, the SBDs are considered complex and disproportional in some markets and are not officially endorsed by the appropriate authority for mandatory use.		Discuss with the federal PPPAA and ensure that national SBDs are issued that accommodate the specificity in regions and proportional to the market.
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	The procurement legal framework defines open bidding as the default procurement method which is largely followed by the public bodies. But other procurement methods are also used if the procurement meets the conditions stated in the directive and if the procurement is within the specified threshold. It appears that there is a high tendency of complying with the threshold requirements instead of applying professional judgment in selecting the appropriate procurement method that is relevant to attain successful result in the procurement. There is a trend of contracting State-owned Enterprises (like Afar Design and Supervision Works Enterprise (ADSWE) and Afar Water Works Construction Enterprise (AWWCE)) through single source selection, though contracting of SOEs is not covered in the procurement rule. The Regional council issued a special proclamation applicable for procurement of works and service contracts related to host THE 12 TH ANNIVERSARY OF NATION, NATIONALITIES AND PEOPLES HOLIDAY. The proclamation circumvented the procurement rules, in particular, it lifted the threshold applicable for procurement under restricted tendering. However, no evidence is found for publication of the temporary proclamation in DINKARA.		Criterion is partially met. There is practice of procuring contrary to the rules specified in the procurement rules. In other cases, the choice of procurement methods is guided mainly by the applicable threshold as provided in the procurement legal framework. These thresholds are not always consistent with the development of markets in some sectors like construction. There is a tendency of complying with the threshold requirements instead of applying professional judgment in selecting appropriate procurement method that is relevant to attain a successful result in the procurement. The application of a one-size-fits-all approach in setting thresholds is not working well. The construction sector may need different thresholds, commensurate with the local capacity in the sector.		Consider following the procurement procedures as specified in the legal documents. Ensure accountability for decisions taken otherwise. Provide guidance/tools to guide evaluation and selection of workable procurement options. Consider updating procurement methods thresholds to reflect the capacity of the local market.
(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.	Procedures for bid submission, receipt and opening are clearly described in the procurement documents including PP, PPD and SBDs. The PPD 16.18 specifies that representatives of mass media or any interested observer can attend the bid opening ceremony, as far as practicable as far as it does not interfere with the bid opening process and availability of space. However, the PBs do not specify the actual bid opening date in the Invitation for Bid (IFB) due to uncertainty on the actual date of publication of the IFB on the Newspaper. Instead, they express the number of days that the IFB floats and bidders are required to calculate the bid opening days at their own risk. This has created uncertainty on the actual bid closing/opening day to a risk of rejecting bids due to late submission. The team also came across cases in which the bid opening date was postponed to the following day, after bid was closed, by notifying bidders through notice posted on notice boards; IFBs without specifying the bid opening place, telephone numbers and address, etc.		Criterion is partially met. The IFB does not specify bid closing/opening day. There is practice of following different procedures than what is specified in the IFB.	✓ Yes	Discuss and agree a mechanism with the press agency on how to specify the bid closing/opening day in the IFB. Enhance procurement audit and accountability to ensure compliance to the procurement rules.
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	The PPL A 35 specifies the rule of confidentiality. It requires PEs not to disclose information related to examination, clarification, bid evaluation and award decision until the award is publicly announced. Rules of confidentiality are also expressed in the legal documents as one of the ethical standard expected from persons engaged in public procurement. The same is reflected in the SBDs issued by the federal PPA that requires the process to be confidential and all communication with bidders to be in writing. However, there were cases in which confidentiality requirements were breached. There is no practice of orienting evaluators on the rules of confidentiality and no detailed guidance is provided.	While a quantitative indicator is not envisaged here, the Assessment Team asked the private sector in the survey about their perception of confidentiality of the procurement process. Out of 7 respondents 14% of respondents said that confidentiality is ensured throughout the bid evaluation and award process. 29% said that it is not, and 57% was not sure.	Criterion is partially met. The procurement system does not provide tools to ensure and support maintaining confidentiality which might include requiring evaluators to sign a declaration to uphold confidentiality.		Improve performance on confidentiality. Consider providing tools and templates to enforce confidentiality provisions and accountability mechanisms.

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations												
		<table border="1"> <caption>Survey Results</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>15%</td> </tr> <tr> <td>No</td> <td>29%</td> </tr> <tr> <td>Not sure</td> <td>56%</td> </tr> </tbody> </table>	Response	Percentage	Yes	15%	No	29%	Not sure	56%							
Response	Percentage																
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No	29%																
Not sure	56%																
(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.	<p>The procurement proclamation allows two types of evaluation: least cost and best advantageous bid, which considers quality as one aspect of evaluation. In practice, PEs are inclined to use the least cost evaluation method. The award criteria are specified in the bidding document and team has not come across cases in which it was not complied with. In most cases, award is made by selecting the least cost among bids that meets minimum requirements.</p> <p>Other techniques like Best and Final Offer (BAFO) or competitive negotiation etc., are not accommodated in the procurement legal framework and are not applied.</p>	<p>Percentage of 15 respondents to the private sector survey who think that the following criteria should be the most important is (Q28):</p> <ul style="list-style-type: none"> Combination of quality and price (77%) High quality (54%) Combination of price, quality, favoring MSEs, and environmental aspects (58%). <p>42% of 7 respondents (13 skipped) said that the bidding documents include criteria that allow achieving value for money, 29% said that they do not contain such criteria, and 29% were not sure (Q29).</p>	Criterion is partially met. The award criteria are limited to the least cost and merit point evaluation only. Given the development in the market and the increasing complexity of procurement, other award criteria should be considered in the legal documents and applied in practice.		<p>See the recommendation 1 (f) (b).</p> <p>Ensure that the training program includes how to design and apply the evaluation criteria.</p>												
(g) Contract awards are announced as prescribed.	PPL A 38 stipulates the manner in which the contract award is notified. The PEs comply with the provision by notifying the contract award decision both to the successful and unsuccessful bidders including the reason why the unsuccessful bidders are not considered.	57% of 7 respondents to the private sector survey said that contract awards are published, none said that they are not published, and 43% of respondents are not sure (Q35).	Criterion is met.		Consider publishing contract awards at least for procurement above specified threshold.												
(h) Contract clauses include sustainability considerations, where appropriate.	Procuring entities use the standard bid document developed and issued by PPPAA, version 2011, which has provisions that require suppliers/contractors to respect environmental consideration as stipulated in the Ethiopian law. Section 6 of PPPAA's SBD for WORKS has a detailed requirement that requires the contractor to comply in relation to PROTECTION OF THE ENVIRONMENT. Moreover, Clause 46 of the general conditions of contract includes sustainability consideration through stipulating a requirement to be met in relation to ensuring health and safety requirements on site.	29% of 7 respondents to the private sector survey said that contract clauses include sustainability considerations, none said that not. And 71% are not sure (Q36).	Criterion is partially met. Use of the federal SBDs is not a mandatory requirement in the region.		Consider recommendation provided on SBDs in the matrix.												
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	There are no provisions and practices that provide incentives for exceeding performance levels. However, there is a disincentive clause for failure to meet agreed terms, particularly on slippage from the agreed delivery time. It appears that the PEs are obliged to apply the liquidated damage clauses which is 0.1% for each day of delay. Not applying the liquidated damages is indicated as a non-compliance in audit reports.	Not applicable	Criterion is not met. Contract clauses do not provide incentives for exceeding performance.		Standard contracts may provide for an incentive for timely excellent performance (that exceed expectations above the agreed terms like time, quality) (e.g. a bonus). Consider introducing the value engineering provision that allows enhancing performance, reliability, quality, safety, effectiveness, or other desired characteristics.												
(j) The selection and award process is carried out effectively, efficiently and in a transparent way. * *Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j): - average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each	The selection and award process is not carried out effectively, efficiently and in transparent manner. The assessment team learnt there were various instances in which the procurement processes were nullified due to delays in awarding contracts within the bid validity periods. It is also observed that the process lacks transparency. For instance, it is not a common practice to publish award information in accessible media.	<p>Average time to procure per procurement method:</p> <table border="1"> <thead> <tr> <th>Method</th> <th>Av. time</th> <th>Range</th> </tr> </thead> <tbody> <tr> <td>ICB + NCB</td> <td>200</td> <td>67 – 337</td> </tr> <tr> <td>ICB</td> <td>261</td> <td>50 - 375</td> </tr> <tr> <td>NCB</td> <td>160</td> <td>67 - 284</td> </tr> </tbody> </table> <p>On average, 5 responsive bids were obtained in procurements conducted using both ICB and NCB procedures. This shows that there is quite adequate competition under both ICB and NCB methods, However, the level of competition in different PEs varies. In the visited PEs, the average number of responsive bids is from 1 to 12 for ICB contracts, and 3 to 8 for NCB contracts.</p>	Method	Av. time	Range	ICB + NCB	200	67 – 337	ICB	261	50 - 375	NCB	160	67 - 284	Criterion is not met. The average time to process procurement is significantly longer than the normal bid validity time and international practices. This makes the procurement process inefficient. The level of compliance to publication requirement is also low.	✓ Yes	<p>Regularly review at each public body the procurement processes to identify inefficiencies and bottlenecks, based on which measures to improve the processes are defined and implemented.</p> <p>Monitoring efficiency and transparency of the processes should be incorporated as part of monitoring and reporting function by the PPPAA.</p>
Method	Av. time	Range															
ICB + NCB	200	67 – 337															
ICB	261	50 - 375															
NCB	160	67 - 284															

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>procurement method used)</p> <ul style="list-style-type: none"> - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) <p>Source for all: Sample of procurement cases.</p>		<p>Compliance with publication requirement: The average percentage of the contracts that are fully in compliance with the publication requirement are only 42%. The level of compliance again is quite different in different PEs with a range that varies from 0% to 100% of compliance.</p> <p>Number of successful processes: 94%.</p>			

9(c) Contract management

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Contracts are implemented in a timely manner.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)</p>	<p>Contracts are not implemented timely. Time overrun in the reviewed sample of contracts was significant. The reasons vary.</p>	<p>Time overrun of contracts implementation beyond their original completion date: on average, time overrun for all contracts covered under the assessment is 229 days. The performance significantly varies among PEs – from 7 to 819 days' overrun.</p>	<p>Criterion is not met. Contracts are not implemented timely. In some cases, the time overrun exceeds 2 years.</p>		<p>Public bodies should regularly analyze contract performance and outcome, identify reasons for contract time overrun and implement corrective measures. Consider preparing guidance tools and provide training to staff.</p>
<p>(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)</p>	<p>The General Conditions of Contract in the SBDs provide provisions for Inspection and Tests of items procured and delivered and works performed. The PEs confirmed that they carry out inspection routinely before acceptance of the Goods. But the quantitative data shows that quality control and inspection was carried out in 65% of the contracts reviewed.</p> <p>For works contract, PBs follow established procedures and employ a consultant for supervision of construction projects.</p>	<p>Quality control and inspection work were carried out as per the contract agreement in 65% of the contracts covered in the assessment. However, there was huge heterogeneity in the performance of the PEs covered in the assessment. The analysis shows that there were PEs that carried out quality control and inspection in all the contracts sampled in the assessment as compared to PEs that carried out quality control and inspection in none of the contracts reviewed.</p>	<p>Criterion is partially met. Quality control and inspection work were not routinely carried out in all contracts.</p>		<p>Public bodies should regularly monitor contract management, identify reasons for non-compliance and implement corrective measures.</p>
<p>(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.</p> <p>Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).</p>	<p>Payments are not made on time.</p> <p>Payment request for construction work is examined and certified by the supervision consultant, while payment request for supply of goods is examined by procurement case team of procuring entities and payments are processed as stipulated in the contract. Procuring entities usually effect payments in less than 10 days after getting the payment certificate for works contract or after getting the store head's confirmation for receiving of the goods. The practice is in line with the requirement stipulated under Article 22.5 (e) of the ANRS public procurement directive that requires the consultant to certify the payment requested by the contractor in 7 days while Article 22.5 (e) requires public bodies to effect the payment in 20 working days from the date they receive the payment request certified by the consultant.</p>	<p>On average, 78 % of the invoices were paid on time. The performance varies between PE that paid all invoices on time to PE that paid only 43% of the invoices on time.</p>	<p>Criterion is partially met. Invoices are not paid on time. This is related to weak contract management capacity and follow-up mechanisms that lead to delays in contract completion, as observed above, and consequential costs to the government.</p>	<p>✓ Yes</p>	<p>Review the invoice verification process and payment obstacles, to optimize the payment process and minimize delay due to unavoidable reasons such as prevalent shortage of Forex that cannot be mitigated at the time of payment.</p>
<p>(d) Contract amendments are reviewed, issued and published in a timely manner.*</p>	<p>Contract amendments are prepared and reviewed by the relevant work unit in the PBs in consultation with the procurement team. In case the amendment requires additional budget, the request for amendment, and after approval by the Bureau Head, shall be forwarded to the BoF for review and approval. The timeliness of issuing the amendment depends on availability of additional budget. In most cases</p>	<p>On average, 5% of the contracts covered in the assessment were amended. The average increase in contract amount due to amendment is only 3%. The maximum increase in contract amount was 5% which was observed in one of the</p>	<p>Criterion is partially met. While the contract amendments are normally issued, they are not prepared timely.</p> <p>The approval process established for procurement is not followed as it may not be clear in the legal framework.</p>	<p>✓ Yes</p>	<p>Streamline the procedure and decision structure for contract amendment.</p>

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)	amendments were not issued timely and there is no practice of publishing contract amendments.	PEs while there was no cost amendment in all contracts managed by two-third of the visited PEs.			
(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.	There are no procurement statistics available that could be used to measure and improve procurement performance. The KPI system is designed to collect key procurement data against the KPIs with the intention of measuring performance throughout the cycle. But the system is not rolled out in all PEs in the region and the data collected through the system is not reliable. Most importantly, it is not reported to the management and used to improve the procurement performance.	Not applicable	Criterion is not met. The KPI system is not fully functional and integrated with the procurement system in capturing procurement data, measuring, and improving procurement practices. It is also not used by all public bodies.		Please see the recommendation under 7 (c) (a).
(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.* Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.	There is no practice of involving relevant external stakeholders in public procurement and contract management.	There was no direct involvement of Civil society organizations in any of the contracts covered in the assessment.	Criterion is not met. There are no opportunities for direct involvement of external stakeholders in procurement. The procurement system has not reached at the level of maturity that encourages stakeholders' participation in the procurement process. Even though engagement of external stakeholders is not prohibited, they are not engaged because there are no CSOs working in the procurement area.	✓Yes	Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.
(g) The records are complete and accurate, and easily accessible in a single file.* <i>// Minimum indicator //</i> * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g): - share of contracts with complete and accurate records and databases (in %) Source: Sample of procurement cases*	Records are not accessible in a single file. In most of the PEs, the records are incomplete and not kept in easily accessible manner. Except in few cases, procurement and payment documents are kept separately in different files and accessing the documents depend on the memory, availability and willingness of staff involved in the process. In all of the PEs, the payment documents are kept in the finance unit/archive and procurement records up to contract signing are kept in procurement unit. Accessing and relating the procurement document and the payment documents have been difficult. There is no reliable data retrieval system. The assessment team was forced to drop sampled procurement contracts, due to incomplete and inaccessible data.	Not applicable. Record management is a systemic challenge across all public bodies. Procurement records are not complete and accessible and supported by databases. Thus, the team dropped the quantitative analysis as it is not possible to make a meaningful comparison and a different result is not expected.	Criterion is not met. Procurement records are not kept in a complete and accessible manner. The assessment team dropped review of some contracts due to incomplete and inaccessible records.	✓Yes	Given how widespread a problem with record keeping appears to be, a special attention is recommended during the next year procurement review to review the record keeping arrangements held by the public bodies and follow up within let's say 3 months in case of negative findings (not awaiting the next audit). Special attention should be maintained until significant improvement.

10. The public procurement market is fully functional

10(a) Dialogue and partnerships between public and private sector

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other	The BoF signed a Memorandum of Understanding with the Regional Chamber of Commerce and conducted a joint consultation forum twice. But the practice has not continued due to budget shortage. The BoF confirmed that there has not been any experience of consulting the private sector during changes in the procurement system.	Out of 19 respondents to the private sector survey, 21% responded that the private sector is sometimes consulted before changes are introduced to the procurement rules and procedures. 63% responded that such consultation is made rarely or never. 16% are not sure.	Criterion is not met. There is no consultation with the private sector.		BoF should consider reinstating the consultation forum with the private sector and ensure participation of all relevant association/groups including MSEs .

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations				
<p>means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a): - perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.</p>		<p>Out of 10 respondents who responded to the question whether opinions of the private sector are considered. (i) none of them said that yes; (ii) 40% said no; and (iii) 60% were not sure.</p>							
<p>(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.</p>	<p>The BoF does not have a formal training program for the private sector except the forum with the private sector described above.</p> <p>In the survey conducted on private sector, the following results were obtained:</p> <table border="1"> <tr> <td>Are you aware of capacity building programs being run by the government for private contractors?</td> <td>Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	Are you aware of capacity building programs being run by the government for private contractors?	Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?			Not applicable	<p>Criterion is not met. There is no regular capacity building program to the private sector.</p>		BoF should monitor capacity and competitiveness of the private sector, and introduce a procurement training program, as necessary.
Are you aware of capacity building programs being run by the government for private contractors?	Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?								

10(b) Private sector's organization and access to the public procurement market

Assessment criteria [10(b) Private sector's organization and access to the public procurement market]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The private sector is competitive, well-organized, willing and able to participate in the competition for public procurement contracts.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a): • number of registered suppliers as a share of total number of suppliers in the country (in %)</p>	<p>The participation and organization level of the private sectors varies from sector to sector and based on procurement volume. In procurement of high-value works contract and consultancy services, the level of participation is relatively high, and the contractors are better organized as compared to small-value works procurements. Most importantly, the local market at Regional, zonal and woreda level are limited and not responsive even for small-value procurements conducted through RFQ. It was learnt that the PBs should travel to the center (Addis Ababa) to carry out procurement including small value items leading to very high transaction cost and inefficiency to the Regional government.</p>	Not applicable	<p>Criterion is not met. Due to the limited local market, procurement is not efficient and cost effective.</p>	✓ Yes	Consider the use of innovative procurement arrangements to mitigate the impact of limited markets at local level including enhanced use of centralized procurement arrangement.

Assessment criteria [10(b) Private sector's organization and access to the public procurement market]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations																																																
<ul style="list-style-type: none"> share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) total number and value of contracts awarded to domestic/foreign firms (and in % of total) Source: E-Procurement system/Supplier Database.																																																					
<p>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b): - perception of firms on the appropriateness of conditions in the public procurement market (in % of responses). Source: Survey.</p>	The local market at Regional, zonal and woreda level is very limited as described under 10(b) (a). Bidders are largely located in Addis Ababa and participation in a bidding process requires travel to the Region, Zones and woredas to purchase bidding documents, submits bids and follow up on matters of contract. The distance and leniency to use other means of communication including electronic means to deliver bidding documents and collect bids from bidders inhibits many of the potential bidders from participating. It was learnt that there is a tendency of similar bidders participating in procurement opportunities in the region which leads to risk of collusion and reduce competitiveness. The other systemic constraint is related to shortage of foreign currency. The private sector is hesitant to participate in bids that involve import from abroad. There are some other constraints raised by the private sector such as unclear evaluation criteria, delay in procurement processing etc.	Based on the private sector survey, appropriateness of conditions in the public procurement is shown in the table below. 16 respondents responded to the question whether the below listed conditions to participate in competition for public contracts are met:	<p>Criterion is not met.</p> There are major systemic constraints inhibiting private sector access to the public procurement market. The main systemic constraint is associated with limited local markets, distance from the center and absence of alternative arrangement and shortage of foreign currency that limits the private sector's capacity to bid and honor contractual commitments.		Consider alternative procurement arrangement including enhanced use of centralized procurement to minimize the impact of limited local market, distance from the market center, shortage of foreign currency and inflation on participation of the private sector. Address other constraints as reflected by the private sector including defining proportional procurement methods, simplifying rules, streamlining payment provisions, contract conditions etc., which are included in the relevant section in the matrix.																																																
		<table border="1"> <thead> <tr> <th></th> <th>Always</th> <th>Sometimes</th> <th>Rarely</th> <th>Never</th> <th>Not sure</th> </tr> </thead> <tbody> <tr> <td>Access to financing</td> <td>11%</td> <td>13%</td> <td>44%</td> <td>25%</td> <td>25%</td> </tr> <tr> <td>Procurement methods are proportionate to the risk and value</td> <td>6%</td> <td>25%</td> <td>56%</td> <td>6%</td> <td>6%</td> </tr> <tr> <td>Procurement rules are simple and flexible</td> <td>6%</td> <td>19%</td> <td>44%</td> <td>25%</td> <td>6%</td> </tr> <tr> <td>Contracting provisions help distribute risk fairly</td> <td>13%</td> <td>20%</td> <td>47%</td> <td>20%</td> <td>0%</td> </tr> <tr> <td>Payment provisions are fair</td> <td>7%</td> <td>40%</td> <td>40%</td> <td>13%</td> <td>0%</td> </tr> <tr> <td>Effective mechanism for appeals and dispute resolution</td> <td>6%</td> <td>31%</td> <td>38%</td> <td>25%</td> <td>0%</td> </tr> <tr> <td>Conditions are conducive to win contracts in the public procurement market</td> <td>14%</td> <td>43%</td> <td>29%</td> <td>14%</td> <td>0%</td> </tr> </tbody> </table>		Always	Sometimes	Rarely	Never	Not sure	Access to financing	11%	13%	44%	25%	25%	Procurement methods are proportionate to the risk and value	6%	25%	56%	6%	6%	Procurement rules are simple and flexible	6%	19%	44%	25%	6%	Contracting provisions help distribute risk fairly	13%	20%	47%	20%	0%	Payment provisions are fair	7%	40%	40%	13%	0%	Effective mechanism for appeals and dispute resolution	6%	31%	38%	25%	0%	Conditions are conducive to win contracts in the public procurement market	14%	43%	29%	14%	0%			
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10(c) Key sectors and sector strategies

Assessment criteria [10(c) Key sectors and sector strategies]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Key sectors associated with the public procurement market are identified by the government.</p>	The regional government identified five development sectors specifically Agriculture, Education, Health, Road and Water sectors as key sectors. The Regional government allocates close to 70% of the budget in these five development sectors implying their significance for public procurement market.	Not applicable	<p>Criterion is met.</p>		As part of the recommendation under the indicator 10 (a) (a), BoF should ensure that the key sectors are engaged in the dialogue on procurement with the government.
<p>(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.</p>	There is no practice of undertaking procurement risk assessments centrally or at the sector level.	Not applicable	<p>Criterion is not met.</p> There is no practice of assessing risks associated with key sectors.		BoF should carry out regular assessments of risks associated with the identified key sector to ensure collaboration of the sector markets in specific areas to support the procurement policy objectives.

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

11. Transparency and civil society engagement foster integrity in public procurement

11(a) Enabling environment for public consultation and monitoring

Assessment criteria [11(a) Enabling environment for public consultation and monitoring]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	There is no practice of consulting the public when formulating changes to the public procurement system.	Not applicable	Criterion is not met.		BoF should monitor that a transparent and consultative process is followed when formulating changes to the public procurement system by any public body that issues such changes.
(b) Programs are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.	There is no regular and comprehensive capacity building program established to build the capacity of relevant stakeholders.	Not applicable	Criterion is not met. There is no capacity building program established to build the capacity of stakeholders.		Consider a more comprehensive capacity building program which includes private sector and CSOs to enhance their role and participation in procurement. Consider continuous engagement with the public through mass media similar to the practice in the federal and SNNPR.
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	The participation of Civil Society in the region's public procurement is missing.		Criterion is not met.		See recommendation under 11 (c) (a).

11(b) Adequate and timely access to information by the public

Assessment criteria [11(b) Adequate and timely access to information by the public]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	The procurement proclamation article 7 obliges procurement proclamation and directives and other procurement documents to be promptly made accessible to the public. However, the procurement documents are not easily accessible to the public. As described under 7 (a) (a), publication of proclamations through DINKARA (a newspaper used to publish the regional laws) is usually made after long delay from the date of enactment.	Not applicable	Criterion is not met. No adequate and timely access to procurement information by the public.		Consider a requirement to publish key procurement information in an easily accessible manner. Consider the use of the centralized federal PPPAA's website to publish procurement information. Streamline the process required to publish proclamations and other legal documents in DINKARA.

11(c) Direct engagement of civil society

Assessment criteria [11(c) Direct engagement of civil society]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: • the planning phase (consultation)	The procurement regulatory framework does not specifically mention and allow participation of citizens in the procurement system. The new Organization of Civil Society Proclamation No 1113/2019 opened a new era in the establishment and operation of CSOs in Ethiopia. The new law, inter alia, allowed all CSOs to engage in any lawful activities and relaxed the distribution of funds between administrative and operational costs. While there is relatively conducive environment created for the operation of CSOs, the procurement	Not applicable	Criterion is partially met. While it does not prohibit, the legal framework does not explicitly state that participation of CSOs in the procurement process is allowed. In practice the public bodies do not prohibit their participation. However, there are no active CSOs working in public procurement in the Region and country wide.		Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.

Assessment criteria [11(c) Direct engagement of civil society]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<ul style="list-style-type: none"> • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local law • contract management and completion (monitoring). 	environment has no procedure to encourage the involvement of CSOs in public procurement. The effect of this proclamation is yet to be seen.		Restrictive provisions and practices in the past may have created a non-conducive environment for CSOs in Ethiopia and subsequently lack of their involvement in procurement.		
(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.	The participation of Civil Society in the region's public procurement is missing.	Not applicable	<p>Criterion is not met.</p> <p>While it does not prohibit, the legal framework does not explicitly state that participation of CSOs in the procurement process is allowed.</p> <p>In practice, the public bodies do not prohibit their participation. However, there are no active CSOs working in public procurement in the Region. Restrictive provisions and practices may have created a non-conducive environment for CSOs in Ethiopia and subsequently a lack of their involvement in procurement.</p>		Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.

12. The country has effective control audit systems

12(a) Legal framework, organization and procedures of the control system

The system in the country provides for:

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies	<p>Proclamation 122/2011 reestablished the office of the Auditor General of the Afar Regional state and sets out its functions. It covers external audit.</p> <p>Its main function is to investigate that the activities of all covered public entities in Afar are carried out effectively, economically and in accordance with the rules and regulations of finance and notify the results to the head of the audited entity for response. Where the response is unsatisfactory, the discovered failures will be recorded in its annual report. Curiously, it is also given the power to audit the accounts of private contractors relating to government contractual work involving sums in excess of Birr 250,000.</p> <p>Audits may be carried out over all entities or by spot check. The audits cover the two previous fiscal years only except that if the Auditor General suspects failures before then, he may perform audits covering earlier years. Penalties are foreseen for lack of cooperation by the entities being audited.</p> <p>Internal audit is provided for in the Afar Regional State financial administration proclamation and gives the head of the Bureau the power to conduct audit of public bodies 'if it deems necessary'. It is also given power to oversee the internal audit function of those public bodies; develop appropriate standards of work and conduct to be applied by public bodies in internal audit functions; develop internal control standards and assist in building the capacities of internal audit.</p> <p>Accountability for public funds is vested in the heads of the public bodies and these must ensure, inter alia, that the internal audit systems are properly staffed and trained so that internal audits are carried out efficiently, effectively and</p>		Criterion is met.		

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>economically; the timely preparation and dissemination of reliable financial information; and submission of a financial report to the Bureau.</p> <p>The internal audit bodies are made responsible for conducting internal audits at specific intervals and submitting audit reports to the head of the body and the Bureau and to follow up on measures based on the audit findings; develop appropriate audit programs and procedures; develop a monitoring system which regularly reports to management on regulatory compliance; and advise management on internal practices and controls.</p> <p>BoF also provides procurement audit function as part of the overall oversight framework.</p>				
(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations	<p>The procurement function and decision-making structure in PEs is organized in a manner that provides internal control and provide checks and balances. Procurement decisions above a specified threshold are reviewed and approved by a bid endorsing committee established as an independent body from the procurement unit which is involved in day-to-day management of procurement activities. Besides, the Head of the PE, who has no involvement in the procurement award decision, is responsible to review and respond on complaints. The decision-making arrangement provides checks and balances within the system and enhances internal control. Besides, there is an internal audit function established in every procuring entity that carry out audit and report to the management. The internal conduct financial audit which is compliance audit including procurement compliance against the rules.</p>		<p>Criterion is partially met. The threshold for BEC is too low impacting efficiency in decision making.</p>		<p>Check and revise the level of delegation of the BEC again in consideration of control and efficiency.</p>
(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	<p>The procurement decision making authority is assigned to the Bid Endorsing Committee which is authorized to approve procurement decisions above a specified threshold. The Head of the PE is authorized to approve or delegate for procurement below the threshold that falls under the authority of the Bid Endorsing Committee. However, as described above 12c(a) (b) (gap) and relevant section in the matrix, the threshold for review and approval by the Bid Endorsing Committee is too small, reducing efficiency of decision making even in small value procurements.</p>		<p>Criterion is partially met. The threshold for BEC is too high, reducing the involvement of the BEC and creating imbalance between efficient decision making and adequate control.</p>		<p>See recommendation under 12 (a) (b).</p>
(d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management	<p>External audit is conducted every year by the regional Office of auditors General (ORAG). The Office of the Regional Audit General carries out procurement audit as part of compliance audit. ORAG shares the audit report with the auditee, president's office and the regional council. A consolidated audit report is submitted annually to the regional council. The major focus areas of the Audit according to the ORAG reestablishment proclamation are procurement, financial, performance, environmental, information technology and special. In practice, the audit currently focuses on the first three including procurement even though it was not verified. In addition, the BoF conducts procurement compliance audit and provide findings and recommendation to the PEs.</p>		<p>Criterion is met.</p>		
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	<p>The report of the Auditor General of the region is submitted to the regional council for feedbacks, comments and proposing further remedial actions on the Audit findings. The BoF - Procurement Directorate reports the procurement audit findings to the Head of BoF. There is no evidence of actions taken on procurement audit report.</p>		<p>Criterion is partially met. There is no requirement to submit procurement audit reports to a higher organ in the Region that has a supervising authority on all procuring entities.</p>	<p>✓ Yes</p>	<p>Ensure enforcement of actions and addressing the audit findings by the public bodies.</p>
(f) clear mechanisms to ensure that there is follow-up on the respective findings.	<p>Yes, both the internal and external audits have clear follow up mechanisms on the audit findings:</p> <p>A) The findings on the external audit are followed up by the Office of the Auditor General which checks implementation of audit recommendation as part of the audit in the subsequent year. It is considered as a finding and reported in case the PEs failed to implement the audit recommendation. Besides, the public accounts and budget standing committee monitors the</p>		<p>Criterion is partially met. See 12 (a) (e).</p>		<p>See recommendation under 12 (a) (e).</p>

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>implementation of the audit recommendation through close supervision and follow up on the PEs.</p> <p>B) The internal audit recommendation is monitored by the internal audit department in the PEs. In case the PE has not been able to address recommendations, the BoF Inspection Department undertakes its own follow-up mechanism.</p> <p>Procurement audit – the follow-up on matters which are significant and reporting structure after the BoF is not clear.</p>				

12(b) Coordination of controls and audits of public procurement

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations												
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	The finance administration proclamation significantly covers the requirements for the internal control and audit including the responsibility of the head of the Public Body and the regularity of the audit. In addition, the Internal Control Directive no 8/2005 E.C provides detailed procedures for conducting internal audits including preparation, implementation, reporting and follow up on audit actions.		Criterion is met.														
(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.	The ORAG uses a Regularity Audit Working Directive developed to ensure consistency of Audit Approach throughout the region. External audit is conducted following the international audit standards as specified in the AFROSAI-E Regularity Audit Manual 2013 version. The audit covers both compliance audit and performance audit and a joint annual audit report is submitted to the Regional Council.		Criterion is partially met. There is no manual specific to procurement audit.		Consider preparing procurement audit manual specific to the context in the region.												
(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c): - number of specialized procurement audits carried out compared to total number of audits (in %). - share of procurement performance audits carried out (in % of total number of procurement audits). Source: Ministry of Finance/Supreme Audit Institution.	<p>The Auditor General carries out financial audits annually by taking samples. The ORAG audit coverage shows that in 2016/17 85% and in 2017/18 68% of the public bodies were audited on regular/financial audit.</p> <p>Procurement audits were conducted by the BoF as part of the procurement regulatory function. The Bureau conducted procurement audit in 2016/17, 2017/18 and 2018/19 in 15, 17, and 42 procuring entities respectively.</p>	<p>The percentage of specialized procurement audit against total audit in the region during the three years assessment period looks like as follows:</p> <table border="1"> <thead> <tr> <th>Audit Type</th> <th>2016/17</th> <th>2017/18</th> </tr> </thead> <tbody> <tr> <td>External audit</td> <td>67</td> <td>53</td> </tr> <tr> <td>Procurement audit</td> <td>17</td> <td>42</td> </tr> <tr> <td>%age</td> <td>25%</td> <td>79%</td> </tr> </tbody> </table> <p>The specialized procurement audit covers a good share of the total audit.</p>	Audit Type	2016/17	2017/18	External audit	67	53	Procurement audit	17	42	%age	25%	79%	Criterion is met.		
Audit Type	2016/17	2017/18															
External audit	67	53															
Procurement audit	17	42															
%age	25%	79%															
(d) Clear and reliable reporting lines to relevant oversight bodies exist.	<p>As per the provision specified in the Region's Constitution, the report from ORAG is submitted to the Regional Council. The budget, finance and audit standing committee is responsible for closely reviewing the report and undertaking follow-up action on behalf of the Council.</p> <p>The internal audit reports are normally submitted to the head of the public body. During the time of the assessment, BoF has been working to revise the reporting line</p>		Criterion is partially met. BoF is responsible for carrying out procurement audit and the final destination of the report is not specified and clear.		Consider the option of addressing procurement audit to the oversight body beyond BoF.												

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	of the Internal Auditors to be directly accountable to the BoF, similar to the arrangement at federal level. Once implemented, this could help to enhance the independence of the internal auditors.				

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

Assessment criteria [12(c) Enforcement and follow-up on findings and recommendations]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Recommendations are responded to and implemented within the time frames established in the law.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.</p>	The audit proclamation states that the time for responding to the audit finding recommendations are 15 and 30 days from the date of receipt of the audit report for regional institution and woredas, respectively. There was no evidence obtained showing timely implementation of audit recommendations. The discussion with the ORAG shows that enforcing audit recommendation is the main challenge hampering audit performance in the region.		<p>Criterion is not met. Actions on audit reports are not taken timely.</p>	✓ Yes	Enhance the enforcement mechanism.
<p>(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.</p>	Please see 12 (a) (f).		<p>Criterion is partially met. It appears that there is a system in place for audit follow up particularly external carried out by ORAG and internal audit. But no significant changes due to weak or lack of enforcement. BoF procurement audit has no clear mechanism.</p>	✓ Yes	Consider strong accountability and enforcement mechanism. Define the enforcement mechanism to ensure that the findings of the procurement audit are addressed timely.

12(d) Qualification and training to conduct procurement audits

Assessment criteria [12(d) Qualification and training to conduct procurement audits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) There is an established program to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits.</p>	There is no established program to train internal and external auditors to ensure that they are qualified for conducting high-quality procurement audits, including performance audits.		<p>Criterion is not met. There is no regular training to auditors to equip them with knowledge and skills required to carry out procurement audit.</p>		Establish effective procurement training program targeting to auditors.

Assessment criteria [12(d) Qualification and training to conduct procurement audits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.</p>					
<p>(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>	<p>Auditors are not specifically required to have procurement knowledge to carry out procurement audit. Rather, their educational background is largely on accounting and auditing. There is neither experience in supporting auditors with service from procurement specialists or consultants while undertaking procurement audit. As a result, there is growing concern among procurement staff that the audit carried out both by internal and external auditors lack the benefit of good understanding of the procurement environment and there is a tendency to overly rely on compliance.</p>	Not applicable	<p>Criterion is not met.</p> <p>The selection of auditors does not require procurement knowledge. Even the auditors in RPPA who are fully engaged in auditing procurement contracts and processes are not required to have a procurement knowledge. Most of the auditors join the agency directly from university with no prior working experience. With limited or no training, the auditors carry out procurement audit without adequate knowledge and skills on public procurement.</p>	✓ Yes	<p>Consider revising job requirements to include procurement knowledge and introduce a competitive scheme to attract qualified and experienced staff.</p>
<p>(c) Auditors are selected in a fair and transparent way and are fully independent.</p>	<p>The selection of the auditors (internal or external) follows an open competitive procedure in accordance with the HR recruitment procedure.</p>	Not applicable	<p>Criterion is met.</p>		<p>Ensure that the proposed changes to the HR management of Internal Auditors are enacted and implemented.</p>

13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Decisions are rendered on the basis of available evidence submitted by the parties.</p>	<p>Summary: There is no explicit requirement in the legal framework that decisions are required to be rendered on the basis of available evidence submitted by the parties which may include an oral hearing.</p> <p>The main provisions in the legal framework on the right of appeal and appeal process are set out in PPL A.67 to A.69.</p> <p>Under its general functions, the Bureau may (PPL A.13.18) summon witnesses and record statements of relevant parties but, under PPL A69.5, it is entitled when it finds appropriate to consult pertinent bodies or request and obtain further information or professional opinion or support.</p> <p>In the last three years, only three appeal cases were submitted to the BoF.</p>		<p>Criterion is partially met</p> <p>The assessment team was provided with evidence showing decisions were provided based on available evidence.</p>		<p>Improve the appeal system, create awareness among bidding community and enhance bidders' confidence to use the system without fear of reprisal. Provide explicit provision in the legal document showing that the appeal decision should be based on evidence.</p>
<p>(b) The first review of the evidence is carried out by the entity specified in the law.</p>	<p>PPL A.68 provides that, in the first instance, candidates submit a complaint to the public body.</p> <p>The head of the public body is responsible for receipt review and responses of complaints from the bidders.</p>		<p>Criterion is met.</p>		<p>Ensure that the complaint is responded to by the Head of the public body and not delegated to the unit that had carried out the process concluded with the decision complained about. The response should be provided timely.</p>

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p> <p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.</p>	<p>There is no specific statement in the PPL that the decisions of the Bureau are final and binding (enforceable). However, the PPD stipulates that a bidder or a supplier that is not satisfied with the decision of the BoF can take the case to the competent court of law. This implies that the decision of the appeal body is final & enforceable if no further complaint is submitted by the complainant to the court.</p>	<p>There is no statistically meaningful data to carry out analysis on enforced decisions. Only three appeal cases were reviewed over the three years period.</p>	<p>Criterion is partially met. There is no specific statement in the PPL that the decisions of the Bureau are enforceable.</p>		<p>Introduce provision in the PPL showing that the CHC's decision is enforceable.</p>
<p>(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.</p>	<p>Summary: The timeframes for submission and review of challenges, appeals and issuing of decisions set out in the legal framework do not unduly delay the procurement process or make an appeal unrealistic.</p> <p>Timeframe for submission of challenges and appeals: PPL A.68(2) requires the candidate to submit the complaint to the head of the public body within five working days from the date he knew, or should have known, the circumstances giving rise to the complaint.</p> <p>Timeframe for issuance of decision by the head of the public body: PPL A.68(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons.</p> <p>Timeframe for complaint to the Bureau: PPL A.68(4) If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Bureau. The complaint to the Bureau must be submitted within 3 (three) working days from the date on which the decision had been or should have been communicated to the candidate.</p> <p>Timeframe for issuance of decision by the Bureau: PPL A.69(4) requires the Bureau to issue its decision within 5 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any.</p> <p>The PPD (A.18.27(5) & (6)) provides for maximum days for signature of the contract following notification. The bidders are given 7 working days which will be counted for the date of receipt of the bid results by them. The bidders have a right to lodge the complaints that they may have on the bidding processes within the 5 days of after they are aware of or should have been aware of the bid result. The public body has to respond the complaints from the bidders within 10 working days of receipt of the same. The decision of the public body shall be received by the bidders within 5 working days of such decision.</p> <p>The appeal system is not accessible for bidders located at woreda and zonal level. Aggrieved bidders should travel to Addis Ababa to submit and follow up its appeal.</p>	<p>Not applicable</p>	<p>Criterion is partially met. The timeline in the legal document doesn't unduly delay procurement. But the practice is not clear as the BoF received only three cases in three years which implies that the appeal system requires changes and improvement.</p> <p>Physical distance limits the capacity of bidders from zones and woredas to submit and follow up on appeal who are required to submit appeal within the same time frame as bidders located in Addis Ababa where the BoF is located.</p>		<p>Revise the appeal system to have capacity, competence and credibility within the bidding community</p> <p>Establish practical and accessible appeal system for procurement at local level.</p>

13(b) Independence and capacity of the appeals body

The appeals body:

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions	The Bureau is also the complaints review body and, to the extent that the Bureau is implicated in the decision-making process or in procurement (e.g. bulk purchases), there is a direct conflict.		Criterion is not met. The Bureau is also the Review Body: This dual role creates the potential for conflict with other advisory, regulatory and monitoring roles of the Bureau in relation to procurement and contracts and undermines bidders' confidence in the review mechanism.		Review Body: a separate Review body should be formed within the Bureau, ideally be supported by its own secretariat, so that decisions can be taken independently of the Bureau and other bodies.
(b) does not charge fees that inhibit access by concerned parties	No fees are levied on complaints.		Criterion is met.		
(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available <i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c): - appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %). Source: Appeals body.</i>	The procedures for review are clearly defined in the PPL and PPD. The PPD is not publicly available.	There is no statistically meaningful data to carry out analysis on enforced decisions. Only three appeal cases were reviewed over the three years period.	Criterion is partially met.		Ensure that the procedure is publicly available. Follow the recommendation provided on accessibility of documents in the relevant section of the matrix.
(d) exercises its legal authority to suspend procurement proceedings and impose remedies	Suspension: PPL A.69(2) provides that upon receipt of a complaint the Bureau shall promptly give notice of the complaint to the public body concerned and that notification automatically suspends further action by the public body until the Bureau has settled the matter. Remedies: PPL A.69(3) and (6) lists the remedies which may be imposed by the Bureau. It is unclear why there should be two lists which are not the same. The remedies of PPL A.69.6 appear to be directed towards bidders but there is no assigned function under PPL A.13 for that task. According to Article 52 (2) of the proclamation, the BoF has legal authority to suspend the procurement proceedings and impose remedies. According to this provision, unless the BoF dismisses the complaint, it has the authority to render one of the following decisions: a) Suspend the public body from taking any further action or decision in contravention with the law; b) Issue decision for full or partial annulment of the action or decision taken by the public body in contravention with the law.		Criterion is met.		Ensure consistency between the relevant provisions in the PP.
(e) issues decisions within the time frame specified in the law/regulations*	No sufficient cases to determine the timeliness of the appeal decision. The appeal system is not functional.		Criteria is not met.		
(f) issues decisions that are binding on all parties	There is no specific provision in the PPL stating that decisions are binding on all parties. Please see the assessment under 13 (a) (c).		Criteria is partially met. There should be a provision in the PPL stating that decisions are binding on all parties.		Include specific provision in PPL dealing with binding nature of decisions.

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(g) is adequately resourced and staffed to fulfil its functions.	The appeal system is not functional.		Criteria is not met.		

13(c) Decisions of the appeals body

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

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations										
(a) based on information relevant to the case.	<p>The PPL and PPD do not specify the documents that should be used as a base to make decisions which is commonly found in the procurement rules of the federal and the other regions covered in the assessment.</p> <p>Based on the private sector survey, the perception on challenges of the appeals system is as follows:</p> <table border="1"> <thead> <tr> <th>ANSWER CHOICES</th> <th>RESPONSES</th> </tr> </thead> <tbody> <tr> <td>The system acts in accordance with rule of law and is predictable</td> <td>0.00% 0</td> </tr> <tr> <td>Most actions within the system are in accordance with rule of law and are predictable</td> <td>28.57% 2</td> </tr> <tr> <td>Only a very limited number of actions is in accordance with rule of law and predictable</td> <td>57.14% 4</td> </tr> <tr> <td>The actions do not seem to be in accordance with rule of law and are not predictable</td> <td>14.29% 1</td> </tr> </tbody> </table> <p>Total Respondents: 7</p>	ANSWER CHOICES	RESPONSES	The system acts in accordance with rule of law and is predictable	0.00% 0	Most actions within the system are in accordance with rule of law and are predictable	28.57% 2	Only a very limited number of actions is in accordance with rule of law and predictable	57.14% 4	The actions do not seem to be in accordance with rule of law and are not predictable	14.29% 1		Criterion is not met. The procurement rules lack specificity regarding documents to be referred as a base for appeal decision. The perception among the private sector is that the decisions are not in accordance with rule of law.		Improve the structure and capacity of the appeal system. Provide specific procedures in the procurement rules. Improve transparency of the appeal decisions and sensitize the private sector to establish positive perception.
ANSWER CHOICES	RESPONSES														
The system acts in accordance with rule of law and is predictable	0.00% 0														
Most actions within the system are in accordance with rule of law and are predictable	28.57% 2														
Only a very limited number of actions is in accordance with rule of law and predictable	57.14% 4														
The actions do not seem to be in accordance with rule of law and are not predictable	14.29% 1														
(b) balanced and unbiased in consideration of the relevant information.* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.	<p>In principle, the respondents to the private sector survey do not see the appeal system as fair and trustworthy or consistent. The results of the survey are presented in the column on the right.</p> <p>The private sector responded suggesting the following areas for improvement:</p> <ul style="list-style-type: none"> • Transparency • Timeliness • Professionalism • Fairness • Audit 	<p>50% of the 8 private survey respondents responded that their complaints were not resolved timely. 88% of the respondents said they were not satisfied with the outcome of the complaints review mechanism.</p> <p>100% of the 8 private survey respondents said that they do not consider the system as fair and trustworthy.</p> <p>44% of the 9 private survey respondents have not appealed the decision of public body to the complaints review Board.</p> <p>88% of the 8 private survey respondents said they did not appeal the decision by the appeals body (i.e. Board) because they thought the system would not be trustworthy.</p>	Criterion is not met. The private sector does not consider the Complaint Handling system as trustworthy and fair. This is mainly due to: 1) the BoF is considered impartial and independent with multiple conflicting roles 2) the limited capacity in delivering its decisions within the time frame, and Capacity in BoF including lack of minimum qualification and experience requirement as limiting factors in delivering responsibilities capably and independently.		See the recommendation under 13 (c) (a).										
(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favor of procuring entity; decision in favor of applicant) (in %).Source: Appeals body.	<p>BoF has legal authority to suspend the procurement proceedings and impose remedies. According to this provision, unless the BoF dismisses the complaint, it has the authority to render one of the following decisions a) Suspend the public body from taking any further action or decision in contravention with the law;</p> <p>b) Issue decision for full or partial annulment of the action or decision taken by the public body in contravention with the law.</p> <p>In practice, on average, only one appeal request per year has been handled by Bureau which implies a lot of effort required to restore bidders' confidence in the system.</p>		Criterion is not met.												
(d) decisions are published on the centralized government online portal within specified	There is no legal requirement to publish full decisions and currently no Bureau portal on which to do so.		Criterion is not met. Publication of full decisions: In order to ensure transparency and an effective complaints system, all		Include a provision in primary legislation requiring publication of full decisions within a specified time period.										

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>timelines and as stipulated in the law.*</p> <p>// Minimum indicator //</p> <p>*Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d):</p> <p>- share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralized online portal.*</p>	<p>PD A.54.2 requires the Bureau to make the decision available to the applicant and the Government.</p>		<p>decisions should be published in full on a central online portal.</p>		<p>Ideally this should be in a user friendly and easily searchable format.</p>

14. The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

The legal/regulatory framework provides for the following:

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.</p>	<p>There are no definitions of these terms in the legal framework and thus no means of assessing whether the terms are consistent with obligations deriving from legally binding international anti-corruption agreements.</p>		<p>Criterion is not met. No definition of the relevant terms.</p>	<p>✓ Yes</p>	<p>In the next round of reforms, provide consistent definition in the public procurement legislation with other laws.</p>
<p>(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.</p>	<p>Responsibility/accountability of government employees: PPL A.24(1)(e) requires personnel engaged in public procurement to observe rules of ethics which include the requirement to report to the law enforcement agencies any intended or completed action of corruption and contribute to the effort to fight corruption and malpractice.</p> <p>PPD A 27.1 and 27.2 (Ethics for procurement staff) provide procedures for notifying and handling potential conflict of interest.</p> <p>Penalties for government employees: PPL A.70 sets out offences and punishments for persons appointed to or employed by a public body and procurement and property administration officers. The penalties for offences under these provisions, which include fraudulent and corrupt practices as well as bribery, include fines and terms of imprisonment</p> <p>Responsibilities of private firms: PPL A.24(2) requires that any candidate or supplier shall refrain from any act contravening the public procurement process. Candidate or supplier is prohibited, in summary, from actions intending to influence the public body, and must not make gifts or offer other forms of inducement. (PPL A.22(2)(a)).</p> <p>Rejection of bid: PPL A.22(1)(f) provides that a public body may reject a bid in whole or in part where it is proved that the bid is not sufficiently competitive as a result of collusion (connivance) or unethical conduct.</p> <p>Fines and imprisonment: PPL A.70.5 provides that any candidate who, with the intention of deriving unlawful advantage, presents falsified documentary evidence,</p>		<p>Criterion is partially met. There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law which define fraud & corruption in different ways, and set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations may contradict each other, such as, for example, application of the specific law above general while the specific law does not provide for specific issues up to the professional standard. For example, the PPL is a specific law but its definition of offenses lacks a standard required for prosecution e.g., intent of the wrongdoing.</p> <p>In addition, the offences set up in the PPL mix criminal and administrative wrongdoing with criminal penalties for all of them.</p>	<p>✓ Yes</p>	<p>In the next round of reforms, ensure consistency of the public procurement legislation and other laws.</p>

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	conceals information or colludes (connives) shall, upon conviction be punishable with a fine and imprisonment.				
(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	Legal input Responsibility/accountability of government employees: PPL A.24(1)(a) requires personnel engaged in public procurement to observe rules of ethics which includes the obligations to notify any actual or possible conflict of interest and isolate oneself from any processes involving such conflict. The PPD A.27 requires employees directly or indirectly related to procurement to notify in writing any activities that benefit himself/herself or families and isolate himself/herself from the process. The PPD further provides how the conflict of interest should be managed by the public body.		Criterion is met.		

14(b) Provisions on prohibited practices in procurement documents

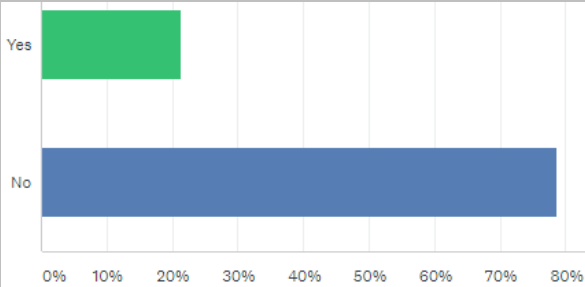
Assessment criteria [14(b) Provisions on prohibited practices in procurement documents]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.	The PPL para 65 specifies prohibited practices that should be observed both by public officials and procuring entities. Standard Bidding Documents: (example used is SBD for Works, National Competitive Bid (NCB)) The Instructions to Bidders (clause 3 in SBD Works NCB)) include a section which refers to the requirement on both public bodies and bidders to observe the highest standard of ethics. It uses the definitions of corrupt, fraudulent, collusive, coercive and obstructive practices referred to in the Manual (see 14(a)(a) above). It confirms that the public body will reject a recommendation for award if it determines that the bidder has been engaged, directly or indirectly, in one of these practices. It also refers to the debarment process and list of debarred bidders held by the Agency and published on the Agency's website. It states that the public body may terminate a contract if at any time it determines that corrupt or fraudulent practices have been engaged in. Bidders are required to indicate their acceptance of the provisions on fraud and corruption through the statement in the Bid Submission Sheet. (Part 1, section 4 : Bidding Forms, Form A) Bidders must permit the Agency to inspect their accounts, records and other documents. The PPD (para 15.4) requires the Instruction to Bidders prepared by the public bodies to include a provision that requires the bidders to respect Ethiopian law with regard to corruption and fraudulent practices and fill and sign the template provided in the bidding document pledging not to involve themselves in corrupt activities.		Criterion is partially met. SBDs are used in limited categories of procurement and use of federal SBDs is not mandatory.		Consider recommendation given on SBDs under the relevant section in this matrix.
(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.	The Federal General Conditions of Contract (clause 5 in the example used; SBD for Works, National Competitive Bid (NCB)) includes provisions on fraud and corruption including reference to contract cancellation and debarment. The General Conditions of Contract are part of the SBD and may not be altered.		Criterion is partially met. See 14 (b) (a).		Consider recommendation given on SBDs under the relevant section in this matrix.

14(c) Effective sanctions and enforcement systems

Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.	<p>PPL A.22(1)(e) Rules of Ethics, requires personnel engaged in procurement to report to law enforcement agencies any intended or committed act of corruption. The legal documents refer only one aspect of malpractice “corruption” and are lenient on the other aspects of malpractices including fraud. There is also inconsistency between the proclamation and the directive regarding whom to report in which the proclamation specifies “law enforcement authorities” while the Directive refers to “relevant authorities”. Besides, there is no clear procedure to report allegation of fraud and corruption to the law enforcement authorities.</p> <p>The legal framework also requires e.g., public bodies reporting corruption to provide evidence. Given that non-professionals are not in a position to do it, many allegations may go unreported. Staff in PEs do not appear to understand the requirement to report cases of malpractices. For instance, the practice of rejecting bidders alleged with forged documents (fraud) from the bidding process without reporting to the law enforcement authorities.</p>		<p>Criterion is partially met.</p> <p>The reporting structure on fraud and corruption and other illegal practices has to be clearly established and communicated to all parties including staff in procuring entities. The languages between the directive and the proclamation and other documents including the SBDs have to be consistent and comprehensive that avoids misconception or misinterpretation.</p>	✓ Yes	<p>Establish clear reporting structure on issues of malpractices and ensure clarity and consistency within the public procurement legal framework and with other laws.</p> <p>Consider providing training and guidance to staff on how to report on cases of corruption and other malpractices anonymously.</p>
(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.	<p>There is no clarity to whom corruption allegations are to be reported, as explained above. In practice, they are reported to BoF, REAC, Regional Attorney General and police commission. However, it is not clear whether all allegations are directed to the agency responsible for acting on them. Cross-check did not provide such assurance.</p>	Not applicable	<p>Criterion is partially met. See 14 (c) (a).</p>	✓ Yes	<p>The working relationship among the relevant agencies in particular among BoF, REAC, ORAG, Regional Attorney General and police commission has to be worked out together with clarity and consistency of the legal framework for reporting corruption.</p> <p>See recommendation under 14 (c) (a).</p>
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	<p>The PPL mandates BoF to review and decide on the complaint from public bodies submitted on the conduct of bidders or suppliers. It provides the procedure in reviewing and deciding on complaints includes requirement on the BoF to notify and take into account information and argument presented by the parties before reaching at decision. The list of debarred companies/individuals is communicated to the federal PPPAA for purpose of cross-debarment and communication to all PBs at federal and Regional level. Currently, there are 108 companies debarred from participation in public procurement across the country but none has been debarred by Afar BoF.</p>		<p>Criteria is met.</p>		<p>Improve coordination and information flow among the procurement regulatory bodies and law enforcement authorities to ensure malpractices are legally addressed.</p>
<p>(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d): - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory function/anti-corruption body. - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.</p>	<p>The Assessment Team was not able to obtain data on enforcement of the laws on fraud, corruption, and other prohibited practices. Information obtained from the federal AG informs only about the recent 7 cases of indictment for fraud and corruption. The Team was not able to verify whether these cases were reported to PPPAA and Regions to act on debarment.</p> <p>The Team reviewed the Reports of FEAC which provide a lot of information including performances in Regions. In the Reports issued at the time when the investigation and prosecution functions were with FEAC, data related to fraud and corruption were aggregated and the Team was not able to establish the number related to fraud and corruption in procurement.</p> <p>Based on public information, it is known that from time to time, public officials are detained on suspicion of corruption and many of them are released after varied time counted in months without indictment.</p>	<p>In the private sector survey, out of 14 respondents 50% said that they believe that the companies are expected to give a gift to secure a contract in the public sector. 6 respondents skipped this question.</p>	<p>Criterion is not met.</p> <p>There is no access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.</p>	✓ Yes	<p>Ensure availability and access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.</p>

Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>Source: Normative/regulatory function/anti-corruption body.</p> <p>- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %).</p> <p>Source: Survey.</p>					

14(d) Anti-corruption framework and integrity training

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The country has in place a comprehensive anti-corruption framework 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.*</p> <p>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):</p> <p>- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).</p> <p>Source: Survey.</p>	<p>The country has in place a comprehensive anti-corruption framework. The anti-corruption responsibility is divided among three entities established at federal level and in each of the regions (except Addis Ababa which shares the federal agencies). The anti-corruption commission is responsible for preventing and fighting corruption through public education and awareness. The law enforcement responsibility is placed in the Attorney General (prosecution and overseeing investigation) and Police (investigation).</p> <p>In addition, different arrangements were established and are running with the purpose of creating awareness and fighting corruption at national level. The anti-corruption commission formed 14 coalitions at national level with different groups and interested parties including youth, women, religious groups, teachers, students etc. They have also established a joint platform with the Federal Auditor General to plan and tackle corruption based on audit findings and recommendations. There is a plan to hire a consultant and prepare a national anti-corruption policy.</p> <p>However, the capacity of the anti-corruption commissions is limited. The commissions lacks the technical competence and budget to deliver its responsibility. FEAC undertook a survey to understand the nature of corruption in procurement. The survey was conducted in collaboration with Transparency International on the construction sector.</p>	<p>In the private sector survey, out of 14 respondents 21% said that they believe that the anti-corruption measures undertaken by the Government are effective and 79% that they are not.</p>  <p>64% of 14 respondents chose from the proposed options law enforcement as a very effective measure to reduce corruption, and 57% of 14 respondents said e-procurement is a very effective measure.</p> <p>Asked to indicate their priorities to enhance anti-corruption measures the respondents most often indicated:</p> <ul style="list-style-type: none"> • Transparency • Appropriate staff • Law enforcement • Channels to report misconduct • E-procurement • Proper controls • Staff compensation • Fair bid criteria <p>69% out of 13 respondents responded positively to the question whether they think that introduction of e-procurement will lead to reduction in corruption. 0% responded negatively, and 29% were not sure.</p> <p>89% of 9 respondents said that CSO involvement in overseeing procurement contracts would be beneficial in future.</p>	<p>Criterion is partially met.</p> <p>While Ethiopia has in place a comprehensive anti-corruption framework 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, the legal framework lacks transparency in the first place. The private sector indicated some features they believe should be improved to support the existing system.</p>	<p>✓ Yes</p>	<p>Review factors that help prevent corruption and improve them both in the legal framework and practice.</p>
<p>(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying</p>	<p>There are certain mechanisms that are in place to detect and mitigate corruption risks in the public procurement cycle. The procurement organizational structure that provides segregation of roles and responsibilities with fairly adequate internal control and checks & balances is one of the mechanisms to detect and mitigate</p>	<p>Not applicable</p>	<p>Criterion is met.</p>		

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
corruption risks and for mitigating these risks in the public procurement cycle.	corruption risks. In addition, each procuring entity has established an ethics office that is closely accessible to report corruption allegations. The Regional government identified procurement as one of the sectors vulnerable to corruption. As a result, all government officials and employees in the Region that are involved in procurement activities are required to declare and register their assets at the Regional Ethics and Anti-Corruption Commission and update every two years. Assets that are acquired above the official income are considered as obtained through corruption and can lead to prosecution. Besides, the region's anti-corruption commission identified included in the training manual procurement phases which are vulnerable to corruption.				
(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	There is no practice to adequately compile statistics on corruption related legal proceedings. However, the assessment team came across reports that were annually issued by FEAC before the mandate was transferred to Federal Attorney General. FEAC compiled information from the federal and regions and issued annual reports covering the performance on training and awareness, prevention, investigation and prosecution including information on number of allegations received, investigation done, prosecution and conviction. It appears that the good experience in FEAC has not continued by the Attorney General.	Not applicable	Criterion is not met. Statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	✓ Yes	Ensure that statistics on corruption related legal proceedings and others are compiled and published.
(d) Special measures are in place for the detection and prevention of corruption associated with procurement.	There is no special mechanism in place for detecting and preventing corruption in procurement.	Not applicable	Criterion is partially met. There are no special measures other than what is described under (b) above.	✓ Yes	Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system.
(e) Special integrity training programs are offered and the procurement workforce regularly participates in this training.	There is no regular integrity training program on procurement. But the corruption prevention Department provides dedicated support on integrity training. Also, REAC provides anti-corruption awareness to the public and training to public bodies when requested.	Not applicable	Criterion is not met. There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.	✓ Yes	Incorporate integrity training session in the PFM training program or as a standalone program delivered on a regular basis.

14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are strong and credible civil society organizations that exercise social audit and control.	There are no strong and credible civil society organizations that exercise social audit and control.	Not applicable	Criterion is not met. There are no strong and credible civil society organizations that exercise social audit and control.		See indicator 9 (c) (f).
(b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.	The new Organization of Civil Society Proclamation No 1113/2019 opened a new era in the establishment and operation of CSOPs in Ethiopia. The new law, inter alia, allowed all CSOs to engage in any lawful activities and relaxed the distribution of funds between administrative and operational costs. While there is a relatively conducive environment for the operation of CSOs, the procurement environment has no procedure to encourage the involvement of CSOs in public procurement. As a result, there are no practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.	Not applicable	Criterion is partially met. The new CSO law provides opportunities to enhance the role and operation of CSOs in Ethiopia. However, the procurement procedure has not identified and provided guidance on the involvement of CSOs in public procurement.		See indicator 9 (c) (f).
(c) There is evidence that civil society contributes to shape and	There are not many CSOs that are working on public procurement in Ethiopia. The Construction Sector Transparency Initiative (CoST Ethiopia) is the only active CSO	7 respondents out of 20 responded to the question whether civil societies are allowed to monitor bid	Criterion is partially met.		See indicator 9 (c) (f).

Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>improve integrity of public procurement.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil society organizations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement. Source: Survey/interviews.</p>	<p>working on the transparency aspect of procurement related to construction contracts. CoST provides for the disclosure of project information on a selection of construction projects and the procurement aspect. PPPAA redesigned its website for purpose of publication with support from CoST Ethiopia. The main benefit of enhancing transparency in the sector is to improve the integrity and accountability in the system. However, this is only a single CSO and its engagement is limited to construction projects. There is no evidence of its involvement at the regional level.</p>	<p>submission, receipt, and opening, and 29% said that they are allowed. 43% said that they are not allowed, and 29% were not sure.</p> <p>Out of 14 respondents who responded to the question whether they are aware of any CSO providing an oversight in procurement 7% said that they are aware and the remaining 93% said that they are not aware.</p> <p>.....</p> <p>Out of 9 respondents who responded to the question whether they think that CSO involvement in overseeing procurement contracts could be beneficial 89% said yes, 0% said no, and 11% were not sure.</p> <p>Asked to tell about obstacles for CSO participation in public procurement the respondents indicated lack of funding, lack of commitment, lack of trust in government institutions.</p>	<p>The procurement legal framework should encourage the involvement of CSOs in public procurement as oversight and monitoring partners. PPPAA should establish closer working relationship with relevant CSOs to attract their interest and support their involvement on public procurement.</p>		
<p>(d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.</p>	<p>There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement</p>		<p>Criterion is not met.</p>	<p>✓ Yes</p>	<p>BoF should work with the business associations to promote adopting internal compliance measures by private firms to support integrity and ethical behavior in public procurement.</p>

14(f) Secure mechanism for reporting prohibited practices or unethical behavior

Assessment criteria [14(f) Secure mechanism for reporting prohibited practices or unethical behavior]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.</p>	<p>The information regarding the suspected fraud/corruption/prohibited practice cases can be channeled to the anti-Corruption Office/Police through telephone, unidentified papers, email, or physical reporting anonymously. The reporting is kept confidential.</p>	<p>Not applicable</p>	<p>Criterion is met.</p>		
<p>(b) There are legal provisions to protect whistle-blowers, and these are considered effective.</p>	<p>As per the amended Ethics and Anti-Corruption Commission Establishment Proclamation no. 14/2012, one of the Powers and Duties of the Commission is to provide protection to informants and witnesses. This same responsibility is also described as one of the responsibilities of the Region's Justice Bureau. Legal provisions provide penalty on officials who directly or indirectly take any reprisal measure against a whistle-blower or witness. There is no evidence presented during the assessment of its applicability.</p>	<p>Not applicable</p>	<p>Criterion is met.</p>		
<p>(c) There is a functioning system that serves to follow up on disclosures.</p>	<p>No evidence has been submitted that shows a functioning system to follow up on disclosures.</p>	<p>Not applicable</p>	<p>Criterion is not met.</p>		<p>Introduce a system for follow up on disclosure. Create a collaborative arrangement among the relevant offices (REAC, Police and Attorney General) to follow up and report on disclosure.</p>

14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a): - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.</p>	<p>The PPL A 32 provides Rules of Conduct required from personnel engaged in public procurement and candidates or suppliers on public procurement. In addition, the procurement directive Article 33 and 34 provides relatively expanded provisions on ethics or code of conduct expected from employees or public officials and candidates engaged in public procurement. The code of conduct is mandatory and applicable in all PEs and staff involved in procurement. In addition, there is Ethics Directive issued from the Region's Bureau of Finance.</p> <p>The code of ethics for internal auditors is available in the Inspection and Internal Audit Ethics Directive. <i>But</i> no code of conduct has been found for staff involved in Public Financial management activities.</p>	Not applicable	<p>Criterion is partially met. No Code of Conduct applicable for staff working in PFM.</p>		Consider developing a Code of Ethics applicable to staff and officials working on PFM area.
<p>(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.</p>	<p>Accountability for decision making is clearly stipulated in the procurement Proclamation. Article 11 of the procurement proclamation states that "Procurement and property administration staff or heads of procurement and property administration units and members of the procurement endorsing committee in public bodies shall be accountable for their actions in accordance with this Proclamation and the directives to be issued by the BoF."</p> <p>In addition, the regional government issued a proclamation to provide Disclosure and Registration of Asset No 107/2012 that obliges public officials to disclose their asset and register at the regional ethics and anti-corruption commission. The asset registration law is enforced on all relevant staffs throughout all public bodies and is consistently applied.</p>	Not applicable	<p>Criterion is partially met. Accountability provision is limited to few staff and doesn't cover employees directly or indirectly involved in procurement activities and decisions.</p>		Consider expanding accountability provision to cover all involved in procurement activities and decisions.
<p>(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</p>	<p>The code of ethics in procurement is mandatory. It is stipulated in the procurement Proclamation and Directive that are applicable in all PEs and procurement staff involved in public procurement.</p>	Not applicable	<p>Criterion is met.</p>		
<p>(d) Regular training programs are offered to ensure sustained awareness and implementation of measures.</p>	<p>The Regional Ethics and anti-corruption commission established a dedicated Unit that organizes and provides training. The ethics officers in each of the PEs are also responsible to coordinate with REAC and ensure that employees receive trainings. However, there is no regular training program related to code of ethics. The Commission mentioned budget and technical constraints in providing regular trainings.</p>	Not applicable	<p>Criterion is partially met. There is no regular training program.</p>	✓ Yes	Ensure regular training of ethics. Besides delivery by REAC, it can be jointly organized either as part of the PFM training or standalone program.
<p>(e) Conflict of interest statements, financial disclosure forms and information on</p>	<p>There is no requirement to capture information on beneficial ownership. There is also no system to systematically capture and maintain information on conflict of interest. Thus, the information on beneficial ownership, conflict of interest or asset</p>		<p>Criterion is not met.</p>		Ensure that Conflict of interest statements, financial disclosure forms and information on beneficial

Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.	disclosure are either not available or not systematically captured, maintained, utilized for decision making.		There is no established procedure and practice to capture information on beneficial ownership. Similarly, there is no established procedure to notify, address and capture information on conflict of interest.		ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

The Federal Democratic Republic of Ethiopia

Assessment of the Public Procurement system 2021

Volume II.1

Indicator Matrix for the Federal level



MAPS assessment in: Ethiopia

Name/organization: The World Bank in cooperation with the Ministry of Finance and the Public Procurement and Property Administration Agency of the Government of Ethiopia

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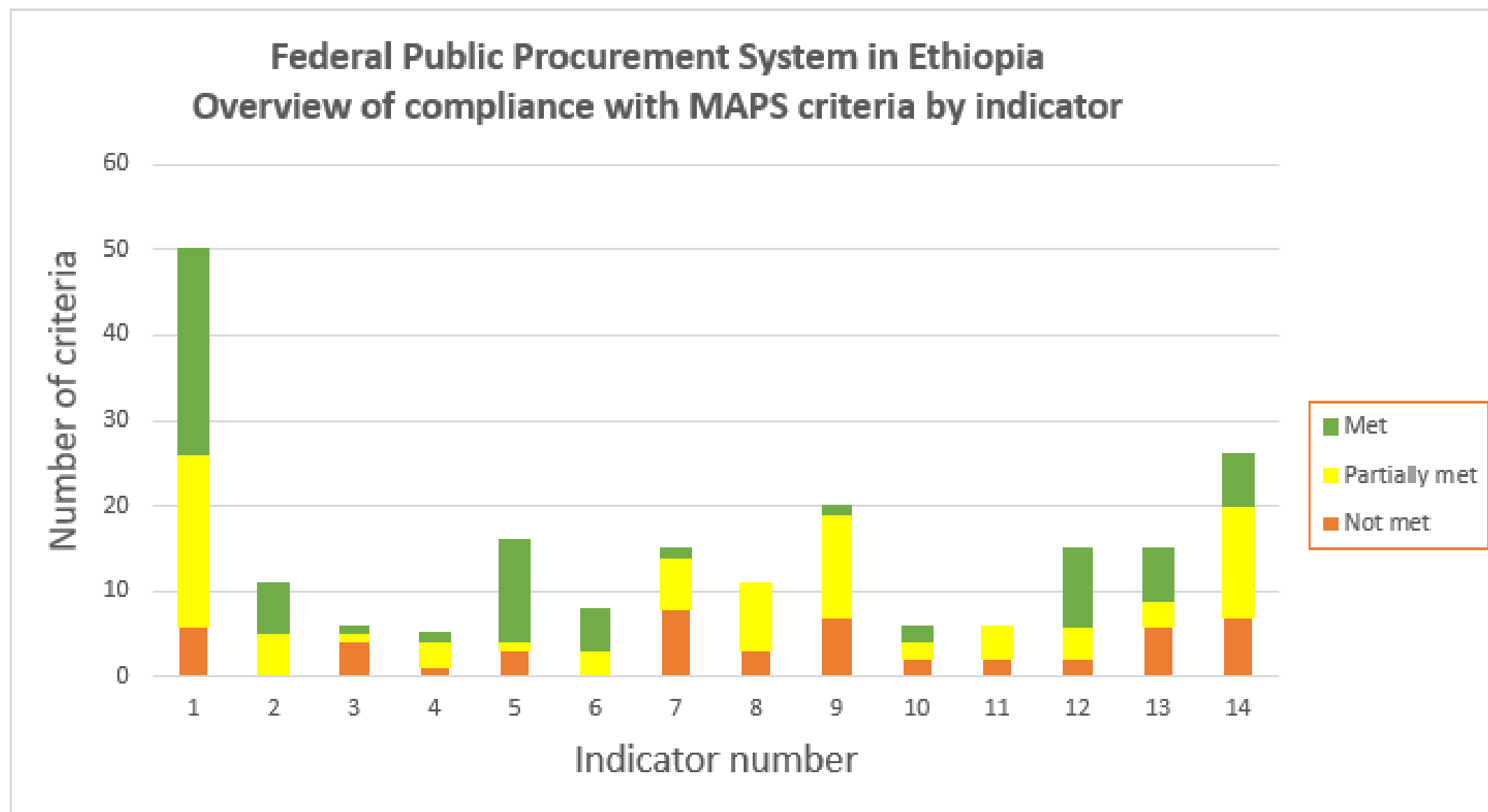
Table ES1: Federal public procurement system of Ethiopia: Overview of compliance with indicators of the Methodology for Assessment of Procurement Systems

Red flags raised ✓	Non-compliance	Partial compliance	Compliance
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Indicators are assessed against several criteria. Non-compliance with an indicator is considered if at least one criterion is not met. Partial compliance is considered if at least one criterion is partially met. Compliance is considered if all criteria are met.

	Pillar I		Pillar II		Pillar III		Pillar IV
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	✓ 1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well-integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	✓ 9(a) Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring
	1(b) Procurement methods		✓ 4(b) Financial procedures and the procurement cycle		✓ 9(b) Selection and contracting		11(b) Adequate and timely access to information by the public
	✓ 1(c) Advertising rules and time limits	5. The country has an institution in charge of the normative / regulatory function.	5(a) Status and legal basis of the normative / regulatory institution function		✓ 9(c) Contract management		11(c) Direct engagement of civil society
	1(d) Rules on participation		5(b) Responsibilities of the normative / regulatory function	10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	✓ 12(a) Legal framework, organisation and procedures of the control system
	1(e) Procurement documentation and technical specifications	✓ 5(c) Organisation, funding, staffing, and level of independence and authority	✓ 10(b) Private sector's organisation and access to the public procurement market		12(b) Coordination of controls and audits of public procurement		
	1(f) Evaluation and award criteria	5(d) Avoiding conflict of interest	10(c) Key sectors and sector strategies	✓ 12(c) Enforcement and follow-up on findings and rec.			
	1(g) Submission, receipt, and opening of tenders	6. Procuring entities and their mandates are clearly defined.	6(a) Definition, responsibilities, and formal powers of procuring entities	✓ 12(d) Qualification and training to conduct procurement audits			
	1(h) Right to challenge and appeal		6(b) Centralized procurement body	13. Procurement appeals mechanisms are effective and efficient.	13(a) Process for challenges and appeals		
	1(i) Contract management	7. Public procurement is embedded in an effective information system.	7(a) Publication of public procurement information supported by information technology		13(b) Independence and capacity of the appeals body		
	1(j) Electronic Procurement		7(b) Use of e-Procurement		13(c) Decisions of the appeals body		
	1(k) Norms for safekeeping of records, documents, and electronic data.	8. The public procurement system has a strong capacity to develop and improve.	7(c) Strategies to manage procurement data	14. The country has ethics and anticorruption measures in place.	14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties		
	1(l) Public procurement principles in specialized legislation		8(a) Training, advice, and assistance		✓ 14(b) Provisions on prohibited practices in procurement documents		
	2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures	✓ 8(b) Recognition of procurement as a profession		✓ 14(c) Effective sanctions and enforcement systems		
2(b) Model procurement documents for goods, works, and services		8(c) Monitoring performance to improve the system	✓ 14(d) Anti-corruption framework and integrity training				
2(c) Standard contract conditions			✓ 14(e) Stakeholder support to strengthen integrity in procurement				
3. The legal framework reflects the country's secondary policy objectives and international obligations	✓ 3(a) Sustainable Public Procurement (SPP)		14(f) Secure mechanism for reporting prohibited practices or unethical behaviour				
	3(b) Obligations deriving from international agreements		✓ 14(g) Codes of conduct / codes of ethics and financial disclosure rules				

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



Explanation for the Matrix:

PPL – the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 dated 9 September 2009

PPD – the Federal Public Procurement Directive, Ministry of Finance, issued in June 2010, revised in December 2015 and December 2016

Procuring entity (PE) = public body (PB)

1. In accordance with the MAPS methodology, “red flags” are factors likely to prevent appropriate action to improve the public procurement system. These are used to highlight any element that could significantly impede the main goals of public procurement and that cannot be mitigated directly or indirectly. They can be factors that lie outside the sphere of public procurement.
2. The MAPS methodology defines the minimum requirements for all criteria under its indicators. The Assessment Team assessed whether the public procurement system in Ethiopia meets the required minimum and based on the results concludes on each criterion that “Criterion is met”, “Criterion is not met” or “Criterion is partially met”. There are criteria which meet the required minimum and are indicated as “Criterion is met”. However, in some cases, the Team sees the possibility of improving the aspect of the public procurement covered by such criterion. In such cases, the Team offered a recommendation for such improvement proposed in addition to the conclusion that “Criterion is met”.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Pillar I. Legal, Regulatory, and Policy Framework

Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.

1(a) Scope of application and coverage of the legal and regulatory framework

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

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	<p>Summary: The legal and regulatory framework is adequately recorded and is organized hierarchically with precedence clearly established.</p> <p>Constitution: The 1995 Constitution of the Federal Democratic Republic of Ethiopia¹ is the supreme law. Any law including state law, customary practice, or decision of an organ of state or a public official which contravenes the Constitution shall have no effect (Constitution A.9(1)).</p> <p>International agreements: At federal level, all international agreements ratified by Ethiopia are an integral part of the law of the land (1995 Constitution A.9(4)). PPL A.6 confirms that to the extent that the PPL conflicts with an obligation of the Federal Government under or arising out of an agreement with one or more states or with international organizations, the provisions of that agreement shall prevail.</p> <p>The highest legislative authority is vested in the House of Peoples Representatives (HPR).</p> <p>Primary legislation – Proclamations: Decrees of the House of Peoples Representatives become Proclamations once adopted.</p> <p>Secondary legislation – Regulations and Directives:</p> <p>The Council of Ministers of the Federal government can issue Regulations.</p> <p>Federal Ministries issue Directives. In practice, most Directives concerning federal level procurement are issued by the Ministry of Finance.²</p> <p>The key primary legislation on federal public procurement is currently the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 (“PPL”), which came into force on 9 September 2009.³</p> <p>This is supported by a comprehensive procurement Directive⁴, the Federal Public Procurement Directive, Ministry of Finance, June 2010 (“PPD”)⁵, revised in December 2015⁶ and December 2016.⁷</p> <p>The Federal Public Procurement and Property Administration Agency (“Agency”) publishes Manuals, including the Public Procurement Manual (December 2011) (“PP Manual”), Manual on</p>	Not applicable.	<p>Criterion is partially met.</p> <p>International agreements, PPL A.6 The drafting of this provision creates uncertainty in terms of identifying which provisions are conflicting and it does not make clear which set of obligations apply in the first place.</p> <p>Alignment between PPL and PPD It is appropriate that the PPD (as secondary legislation) elaborates on the provisions of the PPL. However, in some cases the PPL lacks provisions which we would usually expect to see in primary legislation, such as candidates’/bidders’ rights to clarification and the right to judicial appeal. On other occasions, the PPD introduces a wide interpretation or additional provisions on important issues which are probably better placed in primary legislation, such as a full list of grounds for exclusion. Examples of particular note are highlighted in this assessment.</p> <p>Publication of Directives, Circulars, letters, and similar advisory documents For transparency, clarity, and legal certainty, it is important to ensure that all documents forming the legal and advisory framework for public procurement are published on a single, central, and easily accessible</p>	✓ Yes	<p>International agreements A new provision more explicitly regulating procurement funded through loans by international financing institutions could be considered.</p> <p>Alignment between PPL and PPD Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, ensure that PPD and the circulars do not introduce provisions that materially limit or inappropriately expand the provisions of the PPL.</p> <p>Publication of Directives, Circulars, letters, and similar advisory documents Require that all Directives, circulars, letters, and similar advisory documents are</p>

¹ <http://www.ethiobar.net/constitution>

² Proclamation No. 1097/2018 A Proclamation to provide for the definition of the powers and duties of the executive organs [sic.] [organs] of the Federal Democratic Republic of Ethiopia.

This also provides (1) for the Ministry of Finance to establish the procurement and property management system of the Federal Government and supervise the implementation of the same (A.16(f)), and (2) confirms accountability to the Ministry of Finance of the executive organs: Public Procurement and Property Administration Agency and Public Procurement and Property Disposal Service (A.33(7)).

³ Available in English from AGENCY Website: http://www.Agency.gov.et/index.php?option=com_joomdoc&view=documents&path=legislation%5Cproclamations&Itemid=157

⁴ PPL A.78(2) provides that the Minister of Finance may issue directives enabling the realization of objective and implementing the provisions of the PPL.

⁵ Available in English from AGENCY Website: http://www.Agency.gov.et/index.php?option=com_joomdoc&view=documents&path=legislation%2Fdirectives%2Fprocurement%2Fpublic-procurement-directive-englishpdf

⁶ Available in Amharic from AGENCY Website: http://www.Agency.gov.et/index.php?option=com_joomdoc&view=documents&path=legislation%2Fdirectives%2Fprocurement%2Fprocurement-directive-revised-on-dec-2015-on-focus-of-construction-bids-threshold-amounts-and-experiences-requiredpdf

⁷ Available in Amharic from AGENCY Website: http://www.ppa.gov.et/index.php?option=com_joomdoc&view=documents&path=legislation%2Fdirectives%2Fprocurement%2Fprocurement-directive-revised-on-dec-2015-on-focus-of-construction-bids-threshold-amounts-and-experiences-requiredpdf

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>Public Procurement Complaint Procedure (April 2011) (“Complaints Manual”) and Manual on the use of Framework Agreements (May 2011). It also publishes Circulars, FAQs, and Standard Bidding Documents (SBD) as well as the e-GP strategy on its website⁸.</p> <p>Circulars issued by the Agency include: a Circular requesting public bodies to rectify gaps on procurement and property administration (Amharic), issued Nov 2018; a Circular notifying companies that are blacklisted; a Circular requesting public bodies to publish procurement information on the website; a Circular sharing a template for reporting defaulted suppliers/contractors; and a Circular on use of PPA’s website and Supplier’s Registration list.</p> <p>In practice, some Ministries (Ministry of Finance and Economic Development) and other public bodies (e.g., National Bank of Ethiopia, Pharmaceutical Fund and Supply Agency) also issue Circulars, letters or similar advisory documents concerning public procurement issues or having a direct impact on public procurement system in general or for the issuing procuring entity itself. Some of these acts are not aligned or consistent with the PPL. In some cases, they compel a more restricted application of the PPL such as, for example, a letter not allowing the use of Requests for Quotations without approval of the high management and as a result even very small procurement is carried out by the National Competitive Bidding (NCB). In other cases, the circulars introduce significant deviations to the PPL. For example, a letter providing that certain procurement can be done through restricted bidding if they are manufactured by more than one manufacturer in Ethiopia, and through direct procurement if the above-mentioned items are manufactured by one supplier only.</p> <p>Other examples: the National Bank of Ethiopia issued a Foreign Exchange Directive limiting the period for opening the Letter of Credit (L/C) to 5 months that has impact on procurement and contracting.</p> <p>Another example: The Ministry of Urban Development and Construction issued Directive for Registration of Construction Professionals and Contractors (amended) No. 19 and Directive for Registration of Design Professionals and Consultants (amended) No. 22 that limits access to the procurement market based on the assigned grade.</p> <p>In addition, these circulars or advisory documents are not all published on the Agency website, making it harder for the users and for the public at large to see the full picture of the procurement framework.</p> <p>There are provisions on administrative contracts in Proclamation No. 165/1960 (as amended), the Civil Code Proclamation, which entered into force on 5 May 1960 (“the Civil Code”). Civil Code Title XIX contains General Provisions on the formation of administrative contracts, including the procedure for allocation of contracts by tender, as well as on the effects of administrative contracts. It also contains specific provisions on “concession of public service” and contracts for public works and supplies.</p> <p>The extent to which the provisions in Title XIX of the Civil Code are in force and/or applied in practice in public procurement and to contracts awarded under the procurement legal framework is unclear. The interplay between the Civil Code and the specialized public procurement legal framework including the PPL, PPD and PPP Proclamation is ambiguous. This creates legal uncertainty.⁹ Due to this lack of clarity on the standing of the civil code in the overall procurement framework of Ethiopia, we have not analyzed or commented in detail on the provisions of the Civil Code.</p>		<p>repository. This includes all documents issued by the Agency but also those issued by other Ministries and other public bodies (e.g., National Bank of Ethiopia, Pharmaceutical Fund and Supply Agency, Ministry of Urban Development and Construction). It is also essential that any such documents are consistent and in line with primary legislation. They should not, as a general rule, create exceptions to the application of the public procurement legal framework, which would carry the risk of, at least, fragmentation and the possibility of undermining the operation of the public procurement system as a whole.</p> <p>Non-alignment with other laws Some proclamations provide provisions discrepant with each other. Definitions of anti-corruption in the Anti-corruption law and in the public procurement legislation are an example. Another example is an apparent lack of alignment between the public procurement legal framework, anti-corruption law, and the criminal law. For example, corruption-related offenses within three different pieces of legislation and the corresponding criminal and civil punishments are not consistent.</p> <p>Almost all recent laws have provisions which make other laws inapplicable on matters that they have provided. Such problems are solved using interpretation rules. The most common interpretation rules are i) the specific overrules the general and ii) The latest prevails over the former. Both are Proclamations enacted by Parliament and have equal status.</p>		<p>published on a single, central, and easily accessible repository. This could be the Agency website. The repository must be kept up to date. Ideally, the repository should also be easily searchable using a range of search terms so that all users can easily identify advisory and other documents of relevance to them.</p> <p>Ideally, the central repository should be comprehensive and thus also include sectoral specified documents, including on defense and health-related procurement; links to PPP legislation and guidance; and links to relevant websites.</p> <p>Non-alignment with other laws Consider additional Agency function to screen all circulars, letters, and similar advisory documents from all sources, to ensure that they are consistent and in line with primary legislation. This needs to be combined with an obligation on issuing bodies to submit such documents to the Agency for checking.</p> <p>In the next round of reforms, ensure consistency of the public procurement legislation and other laws.</p>

⁸ AGENCY Website accessed 25 September 2019.

⁹ For further discussion on this issue see article by: Bahta, Teclé. (2018). Conflicting Legal Regimes Vying For Application: The Old Administrative Contracts Law Or The Modern Public Procurement Law For Ethiopia. African Public Procurement Law Journal. 4. 10.14803/4-1-23.

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	See also the note at indicator 1(a)(c) on the legal framework for public private partnerships.				
(b) It covers goods, works and services, including consulting services for all procurement using public funds.	<p>Summary: The legal and regulatory framework covers the procurement of goods, works and services including consulting services, for procurement using public funds. The definition of a “Public Body” is not sufficiently clear and creates legal [and practical] uncertainty as to coverage. Defense and security procurement is generally excluded from the coverage of the PPL, as are contracts between public bodies.</p> <p>PPL A.2 (on Definitions) defines “procurement” as “obtaining goods, works, consultancy or other services through purchasing, hiring or obtaining by any other contractual means”. The terms “goods”, “works”, “services” and “consultancy services” are defined.</p> <p>“Public procurement” is defined as “procurement by a public body using public fund”. “Public fund” is quite broadly drafted to mean “any monetary resource appropriated to a public body from the Federal Government treasury”, as well as aid grants and credit from foreign donors through the Federal government or internal revenue of the public body.</p> <p>PPL A.3(1) states that the PPL applies to “all Federal Government procurement and property administration”.</p> <p>Bodies subject to the PPL Public body: PPL A.2 Defines a “Public Body” (procuring entity) as “any public body, which is partly or wholly financed by the Federal Government budget, higher education institutions and public institutions of like nature”.</p> <p>“Public Fund” means any monetary resource appropriated to a public body from the Federal Government treasury or aid grants and credits put at the disposal of the public bodies by foreign donors through Federal Government or internal revenue of that public body.”</p> <p>Public enterprises, state owned enterprises¹⁰ and other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage of the PPL, though, from the definition of “Public Body”, any public enterprises using public funds should be subject to the PPL. However, the general perception and feedback from stakeholders in Ethiopia is that public enterprises are excluded from the scope of the PPL.¹¹</p> <p>Special or exclusive rights – including Utilities: The PPL does not use the term “utilities” and it does not contain specific provision concerning the status of utility companies or other organizations with special or exclusive rights. It is not immediately apparent from the primary legislation what, if any, the nature and extent of coverage of the PPL is in relation to utilities and/or the extent to which they may fall within the definitions of public, state owned or other enterprises.</p> <p>Exemptions There are stated exemptions from the PPL:</p> <ol style="list-style-type: none"> 1. Defense/security related procurement (PPL A.3(3)(a)): the Minister in consultation with heads of public bodies may, in the interest of national security or national defense, decide to use a different procedure of procurement in which case the Minister shall define the method by way of a Directive. The Directive for Implementation of Procurement of Federal Defense (Ministry of Finance and Economic Development, February 2012) has been issued pursuant to PPL A.3(2)(a) & 78(2) and A.18(8) Proclamation 691/2010. Procurement “for food stuff consumables, military uniforms and other related supplies, which cannot be supplied through defense military 	Not applicable.	<p>Criterion is partially met.</p> <p>Bodies subject to the PPL The definition of “Public Body” appears unclear, as it does not define the specific entities subject to the PPL.</p> <p>Public enterprises, state owned enterprises, other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage by the PPL. The drafting of the definition of a “public body” is not sufficiently clear on the question of whether, or when, these enterprises or organizations are subject to the PPL. Nor is it clear what the position is regarding bodies granted special or exclusive rights, which may include utilities. In addition, it is not clear whether an organization not generally within the scope of the PPL but in receipt of public funds for a specific project is required to comply with the PPL for the contracts awarded using those public funds.</p> <p>There is, therefore, a general lack of transparency and clarity, as well as significant uncertainty, regarding the scope of the PPL in terms of which bodies are required to comply with it.</p> <p>Exemptions</p> <p>Contracts between public bodies for the provision of goods, works, consultancy or other services at cost. PPL A.3(3)(b)) is a broadly drafted provision which has the potential to reduce transparency and competition, if over-used. The impact of this provision is unclear, particularly as there is a lack of clarity as to which bodies fall within the definition of “Public Body”.</p>	✓ Yes	<p>Bodies subject to the PPL For legal certainty, it is desirable to list the categories of public bodies in the procurement legislation itself. Additionally, a list of designated public bodies, state enterprises and other bodies subject to PPL could be put together by the Agency and published on the Agency’s website for transparency and certainty.</p> <p>Exemptions It may be advisable to consider more detailed provisions. One possibility is requiring public:public arrangements to be subject to the PPL, save in specified circumstances. Examples of such excluded circumstances could include genuine co-operation between public bodies to deliver public</p>

¹⁰ State owned enterprises are administered under the Public Enterprise Proclamation No. 25/1991.

¹¹ The explanation for this seems to be that public enterprises are established with authorized capital provided by Government but with managerial autonomy and the expectation that they will operate on market principles. See: Public Procurement Regulation in Africa, Eds. Quintot & Arrowsmith, Cambridge University Press 2013, Country Study on Ethiopia, Teclé Hagos Bahta and further explanation by the same author at paragraph II.2, Framework Procurement Contracts in the Ethiopian Public Procurement Law, PPLR 2016 No.2, pp35-50.

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	<p>stores and clubs, may be made through direct procurement method with defense military stores and clubs".¹²</p> <p>Proclamation 1100/2019 on the Defense Forces of the Federal Democratic Republic of Ethiopia, dated 19 January 2019, provides that the Council of Defense Commanders may make recommendations concerning strategic defense procurement requirements (A.26(3)). A.70 provides that the Ministry of Defense shall, by itself "procure, administer and dispose [of] property in accordance with the federal procurement and property administration laws."</p> <p>and</p> <p>2. Contracts between public bodies for the provision of goods, works, consultancy or other services at cost. PPL A.3(3)(b)) excludes from the coverage of the PPL "contracts a public body enters into with another public body for the provision of goods, works, services, consultancy or other services at cost".</p>				<p>services/tasks at cost; direct award of contracts between public bodies; or assignment of tasks/functions where the direct award or assignment of tasks/functions and participating bodies are designated by specific laws. Similarly, it may be appropriate to consider clear provisions dealing with the situation where an entity is wholly owned by a public body, carries out public tasks and is not active on the market.</p>
<p>(c) PPPs, including concessions, are regulated.</p>	<p>Summary: The award of Public Private Partnership contracts for a wide scope of infrastructure facilities and assets are regulated by a specific law, the PPP Proclamation, which requires, in general, the conduct of a competitive procedure to award a PPP contract.</p> <p>With the introduction of the new Proclamation on PPPs in 2018 (see below) there is a period of transition during which two sets of legislative provisions apply, depending upon the date when procurement of the PPP was concluded, or procurement of the PPP commenced. The cut-off date is 22 February 2018.</p> <p>Provisions on PPPs in the PPL for PPPs concluded or under negotiation before 22 February 2018: Provisions on PPPs in the PPL and any Directives issued pursuant to the PPL, are applicable to PPPs concluded before 22 February 2018 or which were under negotiation prior to that date. PPL A.2(25) defines "Public Private Partnerships" as a contractual arrangement between a public body and a private sector enterprise, as a "concessionaire" (also a defined term, in which, in summary (1) the concessionaire undertakes to perform a construction project or service or lease; a (2) where it assumes substantial financial, technical and operational risk; and (3) it receives consideration by way of fees from public funds, user levies or a combination of both.</p> <p>PPL A.34 provides that the Minister may issue a Directive prescribing the rules governing the formation of PPPs and modes for implementation of PPPs.</p> <p>A PPP Directive issued to implement Public Private Partnership, directive No. 55/2010/2018 ("PPP Directive") entered into force on July 19, 2018. The Amharic version is stamped by the Ministry of Finance and Economic Cooperation, but it does not contain a date and number for the legal instrument.</p> <p>Proclamation 1076/2018 on Public Private Partnership ("PPP Proclamation") applies to PPP projects of public bodies and public enterprises from 22 February 2018 (PPP Proclamation A.67).¹³</p> <p>The PPP Proclamation defines forms of PPPs and establishes a PPP Board with, amongst other things, powers of approval of PPP projects. It also establishes a PPP Directorate General within the Ministry of Finance and Economic Cooperation whose role is to ensure that PPPs are carried out in accordance with the PPP Proclamation. For example, the PPP Directive requires the PPP Directorate to provide technical support to the contracting authorities (PPP Proclamation A.12(2)) and requires it to develop manuals on the implementation of PPPs (PPP Directive A.8).</p>	<p>Not applicable.</p>	<p>Criterion is met.</p> <p>PPP Proclamation and PPP Directive The PPP Board includes members from the private sector. The potential for conflicts and for disclosure of confidential information is acknowledged (see, for example PPP Directive A.5 & 6 and Ethics provisions in [draft] PPP Directive A.29), but, in light of the role of the PPP Board and high profile/value of projects, it is advisable to have a very clear and specific ethics policy, accompanied by ethics training, register of interests and signed statements.</p>		<p>PPP Proclamation and PPP Directive: PPP Board – conflicts and ethics Consider developing a clear, specific ethics policy for PPPs, accompanied by ethics training, register of interests and signed statements, in light of the role of the PPP Board and profile/value of projects.</p>

¹² See Ministry of Finance and Economic Development Directive dated 19/07/2018 to Ministry of National Defense Ref F/E/1/2/191, amending the Federal Defense Procurement Directive, for an example of an amendment to favour award of contracts directly to certain public enterprises under the supervision of the Ministry of Defense, without competition.

¹³ <http://www.mofed.gov.et/web/guest/public-private-partnership-directorate> & <http://www.mofed.gov.et/web/guest/ppp>

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	<p>The PPP Proclamation sets out the duties and responsibilities of contracting authorities (see also PPP Directive A.9) as well as the approvals and procurement processes to be followed (also covered in the PPP Directive).</p> <p>PPP Procedure: The PPP Proclamation generally requires a competitive procurement procedure for the award of a PPP using an open bidding process with pre-qualification (A.19). Other procurement processes are permitted, including competitive dialogue. Direct Negotiation is permitted, where specified conditions are met (A.39-A.40). There are provisions covering unsolicited proposals (A.41-A.43). Contract opportunities arising from unsolicited proposals must be awarded using a competitive procurement procedure unless the conditions for direct negotiation are met. The PPP Proclamation goes on to cover the content and implementation of PPP.</p> <p>Definition of PPP: The PPP Proclamation applies to PPP, which is a defined term. The definition is not the same as in the PPL, and the specific term “Concession” is not used. However, the definition of “Public Private Partnership” in the PPP Proclamation A.2 (12) sets out the elements commonly used to define a PPP concession type arrangement: provision of a public services activity, benefit by way of compensation from the contracting authority (public body or state enterprise), or third-party sources or a combination, plus assumption of performance risk or use risk.</p> <p>The following activities are expressly excluded from coverage by the PPP Proclamation: oil, mines, minerals, rights of air space; and privatization or divestiture of public infrastructure or public enterprises.</p> <p>A.66 of PPP Proclamation provides that the PPL does not apply to PPP, except for specific provisions referred to in the PPP Proclamation (see note on complaints below). It also provides that no law, regulation, directive, or practices inconsistent with the PPP Proclamation shall have effect with respect to matters provided for in the PPP Proclamation.</p> <p>PPP Complaints subject to PPL: A.64 PPP Proclamation provides that the complaints and review mechanisms provided for in the PPL are applicable to PPPs and allows for the possibility of Directives to be issued to adapt the relevant articles for application to PPPs.</p> <p>The PPP Directive A.30 provides that complaints are made by a PPP’s “competing private capital owner” (the term is not consistent with the PPP Proclamation, but this may be a translation issue although it appears to be equivalent to a bidder) “to the PPP Directorate General or hierarchically to the board”. There are provisions in the PPP Directive on the right of appeal, conduct of the appeal process, decision making and remedies. There are also provisions (PPP Directive A.33) on the complaint by the PPP Directorate General to the Complaints Board concerning the participants in the PPP process and remedies.</p> <p>PPP Directive A.30(2) provides that no complaint may be made concerning (1) methods of selection of the private capital owner; and (2) rejection of bid or competition idea.</p> <p>PPP Regulations and Directives: A.65 of PPP Proclamation provides that the Council of Ministers may issue Regulations for implementation of the PPP Proclamation and the Ministry shall issue Directives, and this PPP Directive has been issued, whereas the PPP regulations are under preparation.</p>		<p>PPP Directive A.30 – Route for complaint The provision providing for appeal “to the PPP Directorate General or hierarchically to the board” is not sufficiently clear. It appears that bidders have the option to make a complaint either to the PPP Directorate or the Board.</p>		<p>PPP Procedure - Competitive Dialogue: Both the concept and methods of procurement of PPPs are likely to be a novelty for many public bodies and so specialist support from the PPP Directorate will be critical. Before using procedures such as competitive dialogue the Government may, if it has not already done so, wish to review and understand practices and experiences in countries where this method is used or originated since there are mixed experiences about the successful use of the method in practice.</p> <p>PPP Complaints: It would be helpful to have a direct reference in the PPL to the fact that PPP complaints fall within the scope of the complaints provisions in the PPL and fall within the jurisdiction of the Complaints Handling Board.</p>
<p>(d) Current laws, regulations and policies are published and easily accessible to the public at no cost</p>	<p>Summary: Public procurement Proclamation, Directive and Regulations are published on the website of the Public Procurement and Property Administration Agency. The Agency website is a free to access on-line portal. There is a dedicated tab on the Agency homepage providing a link to “Legislation”. There are also tabs providing links to Standard Bidding Documents and Manuals.</p>	<p>Not applicable.</p>	<p>Criterion is partially met</p> <p>Comprehensive up to date information is not available at the PPA’s website. (See also indicator 1(a)(a).)</p> <p>The PPA’s website is not available reliably.¹⁴</p>		<p>Improve coverage and functionality of the PPA website and ensure that its contents is up-to-date.</p>

¹⁴ On several occasions the Bank MAPS team was unable to access all of parts of the Agency website in Amharic and/or in English when accessing from within and outside Ethiopia.

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	<p>There is a link on the home page to Circulars, addressed to public bodies and issued by the Agency. These are not all published on the Agency website. For example, circulars such as those addressed to health-related procurement to Pharmaceuticals Fund and Supply Agency (PFSA), food procurement to higher education institutions, etc., are not posted online.</p> <p>The primary and secondary legislation is available for download in PDF searchable format (in Amharic). The website is active, but not fully updated.</p>				

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.</p>	<p>Summary: The PPL provides that public procurement contracts shall be awarded through Open Bidding, unless otherwise provided for in the PPL. The PPL defines situations where alternative procurement methods can be used, with grounds for justification clearly specified.</p> <p>General note: use of terms “candidate” and “bidder”. In the English language version of the PPL, both “candidate” and “bidders” are defined terms. A candidate is a “natural or juridical person invited to take part in public procurement or seeking to be so invited”. A “bidder” is a “natural or juridical person submitting a bid”. However, the use of these defined terms within the PPL is not always complete or correct. For example, in the definition of the Complaints Board, there is reference to the Board being established in order “to review and decide on complaints from “candidates””, with no mention of bidders. Similarly, PPL A.26 refers to communications between candidates and public bodies being in writing, with no reference to bidders and PPL A.30 (2) refers to informing “candidates” of reasons for rejection of bids.</p> <p>Open Bidding: PPL A.33(2) provides that public procurement contracts shall be awarded through open bidding, except as otherwise provided for in the PPL. Open bidding is thus the presumed form of procurement method, at the top of the hierarchy of procurement methods. This is confirmed in PPD 15.2 and Manual 4.1.1.1.</p> <p>Other competitive methods: PPL A.33(1) lists a range of other competitive methods and non-competitive awards. These methods are permitted only where conditions set out in the PPL are satisfied (PPL A.33(3)). Where a public body uses a method of procurement other than open bidding, PPD A.15.4 provides that they shall record a statement of the grounds and circumstances on which it relied to justify use of that method.</p> <p>Other competitive methods laid down in the PPL are Request for Proposals (consultancy services), Two stage Tendering, Restricted Tendering and Request for Quotation.</p> <p>The conditions for use of methods other than the open bidding method are listed in the PPL.</p> <p>PPL A.56 Request for Quotations (RFQ) may be used for (1) the purchase of readily available goods, or (2) for procurement of works or services for which there is an established market; so long as the estimated value of the contract does not exceed the specified threshold (the current maximum thresholds¹⁵ for use of RFQ are Ethiopian Birr: Works 500,000; Goods 200,000; Consultancy Services 120,000; Services 150,000).</p> <p>Selection of suppliers to whom RFQ is issued: Request for Quotation does not require publication of an advertisement, although some level of competition is envisaged. Requests are issued to at least 3 suppliers selected from the supplier list, “if possible”.</p>	Not applicable.	Criterion is met.		Use of supplier list to select suppliers in Request for Quotations (PPL A.56) and

¹⁵ PPD A. 24(2), as amended by Ministerial Directive with effect from 22 December 2015.

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Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>Restricted Tendering does not require public advertisement of the restricted tender process, although some level of competition is envisaged. Restricted Tendering is permitted where one of three conditions is met: (1) PPL A.49(1) where the required object of the procurement is available only with limited suppliers; (2) PPL A.49(2) where the cost of the procurement is below specified thresholds (the maximum threshold¹⁶ for use of Restricted Tendering is Ethiopian Birr: Works 6,000,000; Goods 1,500,000; Consultancy Services 900,000; Services 1,200,000); or (3) PPL A.49(3) where a previous competitive procurement failed (PPD A.23.4 sets out further detailed conditions to be met).</p> <p>In the case of condition 1, the invitation is sent to all known suppliers. In the case of conditions 2 and 3, the invitation to bid is sent to suppliers chosen from a suppliers list. This approach has significant potential for favoritism, and may result in less-than-optimal outcomes if enforcement of conditions of entry to the suppliers list is not sufficiently rigorous.</p> <p>PPL A.53 Requests for Proposals may be used where a public body seeks to obtain consultancy services or contracts for which the component of consultancy services represents more than 50% of the contract.</p> <p>PPL A.57 Two-stage bidding may be used, in summary, (1) where it is not feasible for the public body to formulate detailed specifications, to identify the characteristics of the requirements in order to obtain the most satisfactory solutions; (2) for genuine research and development; (3) where there is a failure in a previous bid procedure due to failure to clearly describe the object of the procurement or absence of clear and complete specifications; (4) where technical characteristics or nature of services make it necessary for the public body to negotiate with suppliers. The negotiations provisions are quite problematic. Though they are permitted with the successful bidder only (PPL A.58(7)¹⁷), the wording of the PPL is quite broad (A.45), allowing the public body to (1) negotiate on matters of contract performance not dealt within the bidding document; and (2) except in a single source procurement, the public body may not negotiate on the price offered by the successful bidder and on other issues related to price. The PPD A. 16.22 refers to "Discussion with Bidders" and it is not clear whether this is another term for "negotiations". This is another example of inconsistencies between the primary (PPL) and secondary legislation (PPD).</p> <p>PPL A.59 requires international competitive bidding in specified cases including where the value of the contract exceeds specified thresholds. The thresholds are¹⁸ Ethiopian Birr: Works 150,000,000; Goods 50,000,000; Consultancy Services 7,500,000; Services 21,000,000. Below these thresholds, the procurement shall be carried out based on national competitive procurement (PPD A. 16.1.1).</p> <p>Non-standard procedures: PPD A.31 permits public bodies to use non-standard procedures, not laid down in the Proclamation/Directive, upon securing prior approval of the Agency. The PPA's power to give such approval is provided for in PPL A.15(5). PPD A.31.2 lists information to be provided by the public body to the Agency. The Manual at 4.1.1.2 indicates that use of non-standard procedures is only permitted on technical and/or economic grounds.</p> <p>The Circular dated 1 August 2018 and issued by PPA refers to problems with applications to the Agency for approval of use of non-standard procedures (Numbered paragraph 2, "special procurement permission"). The Circular states that most of the cases could use available procurement methods. The circular then goes on at point D to set out requirements concerning the approvals process.</p> <p>Non-competitive method: The non-competitive method is Direct Procurement (single source).</p>				<p>Restricted Tendering (PPL A.49) Ensure that operation of, and admission to, Suppliers lists is transparent and efficient.</p> <p>Ensure that the use of the Supplier's list does not create an additional layer of bureaucracy, with suppliers required to submit information twice, once for inclusion in the Suppliers List and another time as part of the bid.</p> <p>Negotiations with Successful Bidder Current provisions of the PPL and PPD that provide for a wide interpretation and significant flexibility and variations to be negotiated may need to be reviewed, as this raises serious concerns on the transparency of the procurement process.</p> <p>Non-standard procedures Upon review of the procurement legislation whether it provides for a wide and fit-for-purpose menu of procurement methods, reconsider eliminating or restricting the possibility for the use of non-standard procedures. Consider also introducing methods for complex procurements such as Best and Final Offer (BAFO), negotiations or competitive dialogue.</p>

¹⁶ PPD A.23(3), as amended by Ministerial Directive with effect from 22 December 2015.

¹⁷ PPL A.58(7) "The public body may engage in negotiation with the first ranking bidder concerning any aspect of its bid, except price."

¹⁸ PPD A.17.2, as amended by Ministerial Directive with effect from 22 December 2015.

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Assessment criteria [1(b) Procurement methods]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>PPL A.51 Direct Procurement (without competition)/single source is permitted in eight specified circumstances, listed at PPL A.51(1)(a) to (h), subject to satisfaction of conditions, including in some cases financial caps, set out in PPL A.51 and further elaborated in PPD A.27 (Single Source).</p> <p>The eight specified circumstances are, in summary: absence of competition for technical reasons; additional requirements which are intended as replacement or extension of existing supplies; additional necessary works required due to unforeseeable circumstances; repetition of similar works; continuation of consultancy services; emergency; special procurement needs of the public body; and purchase in advantageous conditions.</p> <p>PPL A.51(2): Direct procurement is also permitted for small value procurement. In this context, PPD A.25 (7) permits direct award for low value travel costs to solve problems encountered on mission (1500 Birr, subject to aggregated total limit in one fiscal year of 30,000 Birr) and low-value purchases by diplomatic missions (300 US dollars, subject to annual aggregated total limit in one fiscal year of 6,000 US dollars).</p> <p>PPL A.51 does not state that Direct Procurement)/single source is to be used only exceptionally. The Procurement Manual does state (4.1.3.1) that direct procurement may under no circumstances be used as a means of avoiding competition, favoring a particular bidder, or creating discrimination.</p> <p>No contract required in some cases: PPL A.51(3) there is no requirement to conclude a contract in writing in respect of direct procurements effective in accordance with PPL A.51(1)(g) in two cases:</p> <ol style="list-style-type: none"> 1. “where situations arise in which shopping becomes necessary to meet the special procurement needs of public bodies”. PPD A.25.6 elaborates on A.51(1)(g) and refers to this being used for “an item needed for study or research, and which is not available from regular suppliers or open market procurement is economical. It is not clear whether this is an exhaustive description of the situations where “special procurement needs” arise. 2. A.51(2) low value procurements. PPD A.25(7) (as amended) describes low-value procurement for the purposes of PPL A.51(2) as low value travel costs to solve problems encountered on mission (1500 Birr, subject to aggregated total limit in one fiscal year of 30,000 Birr) and low-value purchases by diplomatic missions (300 US dollars, subject to annual aggregated total limit in one fiscal year of 6,000 US dollars). 				<p>PPL A.51 does not state that Direct Procurement is to be used only exceptionally. It is recommended that the exceptional nature of direct procurement is made explicit in primary legislation.</p> <p>A.51(3) No contract required in some cases: It is not clear whether the PPD sets out an exhaustive description of the situations where “special procurement needs” arise. Even if it is limited to this one case, it does seem unusual not to require some form of written contract for items purchased, not least for audit purposes. Consider addressing this issue.</p>
<p>(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.</p>	<p>Summary: The PPL sets out conditions for use of procedures other than the open bidding procedure which are generally linked to the nature, complexity or risk involved in the contract which is the subject of the procurement. The PPD sets out thresholds applying to the use of the competitive procedures, with the lightest methods of procurement permitted for low-value tenders. The procurement methods and processes are proportional to the value and risks of the underlying project activities. The range of options does provide, in theory, for a procurement system in which value for money, fairness, transparency, proportionality and integrity are achieved. Direct award (single-source procurement) is permitted only where specified grounds for justification are satisfied.</p> <p>“Lighter” methods of procurement are available where the benefits of “process-heavier” methods are not evident or necessary.</p> <p>For example, Request for Quotation, without publication of a notice, is permitted for contracts for (1) the purchase of readily available goods or (2) for procurement of works or services for which there is an established market; so long as the estimated value of the contract does not exceed the specified thresholds¹⁹ of Ethiopian Birr: Works 500,000; Goods 200,000; Consultancy Services 120,000 and Services 150,000.</p> <p>More process-heavy methods are permitted in specified cases, in particular for more complex contracts. For example, two-stage tendering is permitted (1) where it is not feasible for the public body to formulate detailed specifications to identify the characteristics of the requirements in order to obtain the most satisfactory solutions; (2) for genuine research and</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		

¹⁹ PPD A.24(2), as amended by Ministerial Directive with effect from 22 December 2015.

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Assessment criteria [1(b) Procurement methods]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	development; (3) where there is a failure in a previous bid procedure due to failure to clearly describe the object of the procurement or absence of clear and complete specifications; (4) where technical characteristics or nature of services mean it is necessary for the public body to negotiate with suppliers (PPL A.57).				
(c) Fractioning of contracts to limit competition is prohibited.	<p>Summary: Fractioning of contracts to avoid open competition is prohibited when it aims at circumventing competitive rules.</p> <p>PPL A.33(4) provides that public bodies shall not split procurement requirements for a given quantity of goods, works or services with the intention of avoiding the preferred procurement procedure.</p> <p>PPD A.24.12 provides that public bodies may not split procurement merely to take advantage of provisions governing procurement by request for quotation. In this context, the Manual at 4.1.7.3 notes that there is a risk of abuse in procurement under RFQ processes and refers to the risk of splitting to avoid more competitive methods.</p> <p>PPD A.13 provides that public bodies shall not split procurement nor deviate from the annual procurement plan once it is approved by the head of the public body and a copy is sent to the Agency.</p>	Not applicable.	Criterion is met.		
(d) Appropriate standards for competitive procedures are specified.	<p>Summary: The PPL requires use of Open Bidding as the default procedure but permits public bodies to use other competitive procedures subject to meeting conditions set out in the PPL as described in (a)(b)(c) above, which generally reflect the nature and complexity of the contract concerned.</p> <p>Where the procuring entity wishes to use a non-standard procedure not provided for in the PPL or PPD, prior approval from the Agency is required (see comments for the criterion 1 (b) (a)).</p>	Not applicable	Criterion is met.		

1(c) Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criteria [1(c) Advertising rules and time limits]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).	<p>Summary: The legal framework requires that procurement opportunities are publicly advertised, at least in one national newspaper, and, for contracts over specified thresholds, on the Agency website. The PPL sets out circumstances where advertisement is not necessary.</p> <p>Publication: PPL A.35 requires advertisements for open and restricted bidding (where advertisement of a restricted process is required (A.50)) to be advertised in at least one national newspaper of general circulation. Where necessary, the public body may, in addition, advertise on national radio or television.</p> <p>Publication on Agency website: In addition, PPD A.6 (5) requires public bodies to publish advertisements on the Agency website at the same time as publication in newspapers for all procurements (including international procurements) where the value of the contract corresponds to or is greater than Ethiopian Birr²⁰: Works 20,000,000; Goods 6,000,000; Consultancy Services 4,000,000; Services 2,000,000.</p> <p>Publication of an advertisement is not required in circumstances specified in the PPL. These include Request for Quotations, and Restricted Bidding (in some cases) (see comment at 1(b)(a)).</p>	Not applicable	<p>Criterion is partially met.</p> <p>Publication of notices is done primarily through newspapers, which does not provide full transparency of procurement procedures. This, in combination with the high thresholds for publication on the Agency's website, seriously impairs the transparency and full disclosure of the procurement information.</p> <p>Financial Thresholds for publication in the Agency's website appear high, specifically:</p> <p>Works eq. \$ 677,303; Goods eq. \$ 203,192; Consultancy Services eq. \$ 135,460 Services eq. \$ 67,730.</p>		It may be inefficient and technically difficult, in absence of an e-procurement platform to publish all notices, but adoption of an e-procurement platform where the procurement information is transparently disclosed, is absolutely critical for increasing the transparency and disclosure of procurement information.
(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for	<p>Summary: Publication of opportunities provides sufficient time, consistent with the method, nature, and complexity of the procurement, for potential bidders to obtain documents and respond to the advertisement.</p>	Not applicable	Criterion is met.		


²⁰ PPD A.6(5), as amended by Ministerial Directive with effect from 22 December 2015.

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Assessment criteria [1(c) Advertising rules and time limits]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations																																																																								
<p>potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.</p>	<p>The minimum time periods are defined in PPD Annex 3 and are extended when international competition is solicited.</p> <p>PPD A.11 requires the public body to fix the timetable for the procurement process. In doing so, it must take into consideration matters including the nature of the market, time required for preparation of bid documents and compliance with the minimum “floating bid periods” (see below). Public bodies should allow, as far as possible, additional time for bidders to prepare bid documents to create a conducive environment for wide competition.</p> <p>PPD Annex 3 (extract below) sets out the “Floating Period of Bids”. These are minimum bid periods and Annex 3 confirms that depending on the type of procurement and the conditions of the market, public bodies may allow bidders extra time.</p> <p>The floating bid periods distinguish between works, goods, consultancy services and other services and in each case having longer time periods for submission of bid documents where the procurement is complex. Additional time is also provided for where there is international competitive bidding (ICB). Terms Limited International Bidding (LIB) and Limited National Bidding (LNB) do not appear anywhere else in the procurement legislation.</p> <table border="1"> <thead> <tr> <th rowspan="3">S.No</th> <th rowspan="3">Procurement Type</th> <th rowspan="3">Complexity</th> <th colspan="4">Mode of Procurement</th> </tr> <tr> <th rowspan="2">ICB</th> <th rowspan="2">NCB</th> <th colspan="2">Restricted Bidding</th> </tr> <tr> <th>LIB</th> <th>LNB</th> </tr> </thead> <tbody> <tr> <td rowspan="2">1</td> <td rowspan="2">Works</td> <td>Complex</td> <td>45 days</td> <td>30 days</td> <td>45 days</td> <td>30 days</td> </tr> <tr> <td>Non-Complex</td> <td>35 days</td> <td>21 days</td> <td>35 days</td> <td>21 days</td> </tr> <tr> <td rowspan="2">2</td> <td rowspan="2">Goods</td> <td>Complex</td> <td>45 days</td> <td>30 days</td> <td>45 days</td> <td>30 days</td> </tr> <tr> <td>non-Complex</td> <td>35 days</td> <td>15 days</td> <td>35 days</td> <td>15 days</td> </tr> <tr> <td rowspan="2">3</td> <td rowspan="2">Other Services</td> <td>Complex</td> <td>45 days</td> <td>30 days</td> <td>45 days</td> <td>30 days</td> </tr> <tr> <td>Non-Complex</td> <td>35 days</td> <td>15 days</td> <td>35 days</td> <td>15 days</td> </tr> <tr> <td rowspan="4">4</td> <td rowspan="2">Consultancy service (EOI)</td> <td>Complex</td> <td>14 days</td> <td>10 days</td> <td>-</td> <td>-</td> </tr> <tr> <td>Non-Complex</td> <td>10 days</td> <td>7 days</td> <td>-</td> <td>-</td> </tr> <tr> <td rowspan="2">Request for proposal</td> <td>Complex</td> <td>45 days</td> <td>30 days</td> <td>35 days</td> <td>30 days</td> </tr> <tr> <td>Non-Complex</td> <td>35 days</td> <td>15 days</td> <td>21 days</td> <td>15 days</td> </tr> </tbody> </table> <p>PPD Annex 3 also requires that for single source procurements and RFQs, public bodies shall set deadlines for submission of bid documents taking into account the type, urgency and complexity of the procurement as well as the scope of participation of bidders in that procurement and other relevant considerations.</p>	S.No	Procurement Type	Complexity	Mode of Procurement				ICB	NCB	Restricted Bidding		LIB	LNB	1	Works	Complex	45 days	30 days	45 days	30 days	Non-Complex	35 days	21 days	35 days	21 days	2	Goods	Complex	45 days	30 days	45 days	30 days	non-Complex	35 days	15 days	35 days	15 days	3	Other Services	Complex	45 days	30 days	45 days	30 days	Non-Complex	35 days	15 days	35 days	15 days	4	Consultancy service (EOI)	Complex	14 days	10 days	-	-	Non-Complex	10 days	7 days	-	-	Request for proposal	Complex	45 days	30 days	35 days	30 days	Non-Complex	35 days	15 days	21 days	15 days				
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2	Goods	Complex	45 days	30 days	45 days	30 days																																																																							
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3	Other Services	Complex	45 days	30 days	45 days	30 days																																																																							
		Non-Complex	35 days	15 days	35 days	15 days																																																																							
4	Consultancy service (EOI)	Complex	14 days	10 days	-	-																																																																							
		Non-Complex	10 days	7 days	-	-																																																																							
	Request for proposal	Complex	45 days	30 days	35 days	30 days																																																																							
		Non-Complex	35 days	15 days	21 days	15 days																																																																							
<p>(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g., technological barriers).</p>	<p>Publication in national newspaper: PPL A.35 requires tenders for open bidding to be advertised in at least one national newspaper of general circulation. Where necessary, the public body may, in addition, advertise on national radio and television. The advertisement may also be posted on the website of the procuring public body (Manual 4.2.1.2).</p> <p>Publication on Agency website: In addition, PPD A.6 (5)²¹ requires public bodies to publish advertisements on the Agency website at the same time as publication in newspapers for all procurements (including international procurements) the value of which corresponds to, or is greater than, Ethiopian Birr: Works 20,000,000; Goods 6,000,000; Consultancy Services 4,000,000; Services 2,000,000.</p> <p>It appears that access to Agency’s website where advertisements are posted is unfettered. However, it is not clear whether all notices by all public bodies are published.</p>	Not applicable	<p>Criterion is partially met.</p> <p>While advertised procurement opportunities are free of cost to the bidders, there is a significant constraint to placing the ads for the public bodies. The public bodies have to place them in person with the office of the national newspaper. This process is very inefficient and increases the transaction cost.</p> <p>PPD requires that the Invitation for Bids contains the deadline for bid submission, and the date and hour of bid opening. However, because the newspaper does not provide the date of publishing, public bodies indicate in the ad the period from the publication of the opportunity after which the bids must be submitted and will be opened. This may lead to errors in determining the bid submission and opening dates.</p>	✓ Yes	The process of placing an ad in the newspaper should be streamlined and simplified to enable the public bodies to meet the requirements of the PPD and avoid unnecessary transactional cost.																																																																								

²¹ PPD A.6(5), as amended by Ministerial Directive with effect from 22 December 2015.

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Assessment criteria [1(c) Advertising rules and time limits]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.	<p>PPD A.16.2.3 sets out the information to be included in the invitation to bid advertisement for national and international competitive bidding. This includes a description of the requirement, qualification criteria and amount of bid security. In the case of international competitive bidding the invitation to bid advertisement and bidding document must be prepared in English.</p> <p>The following cover page of the advertising format is inbuilt template on the website.</p> 	Not applicable	<p>Criterion is partially met.</p> <p>When placing an advertisement of procurement opportunities in the newspaper, public bodies receive no planned date of publishing. Therefore, the published invitation does not include the exact date for submission of bids. Instead, the period for preparation of bids is included.</p>	✓ Yes	The process of placing an ad in the newspaper should allow agreeing on the publishing date thus enabling the public bodies to calculate and include dates of submission of bids and their opening.

1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criteria [1(d) Rules on participation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.	<p>Summary: The legal framework requires candidates to satisfy qualification requirements set out in the bidding documents. A non-exhaustive list of qualification criteria is set out in the PPL. The principles of non-discrimination, transparency and fairness are underlying requirements.</p> <p>Non-discrimination - General principles PPL A.5(2) refers to the principle of “non-discrimination among candidates on grounds of nationality or any other criteria not having to do with their qualification, except in case of preference specifically provided for [in the PPL]”.</p> <p>PPL A.5(3) refers to the principles of transparency and fairness, on the basis of which decisions are given.</p> <p>Exclusion See comment at 1(d)(c).</p> <p>Qualification PPL A.24 refers to the principle of non-discrimination, providing that candidates shall not be discriminated against “on the basis of nationality, race or any other criterion not having to do with their qualifications”. This is subject to price preference provisions in PPL A.25.</p> <p>PPL A. 28 provides that, in order to participate in public procurement, candidates must meet criteria listed in PPL A.28 “and such other criteria, as the public body considers appropriate under the circumstances”.</p> <p>The criteria listed in PPL A.28(1) require candidates to have relevant professional and technical qualifications and competence, financial resources, equipment and other facilities, capability, experience, reputation, and personnel. Candidates must have legal capacity to tender the contract, have a bank account and not be insolvent or bankrupt or in analogous situations. They must not be subject to a suspension from participation in public procurement and must have the relevant trade license and have paid taxes according to Ethiopian tax laws.</p>	Not applicable	<p>Criterion is not met.</p> <p>Overall, the currently existing procedures and requirement do not offer full fairness with respect to the participation of bidders.</p> <p>Qualification of foreign bidders: The obligations on foreign bidders in terms of qualification requirements and evidence (other than in the case of trade licenses PPD A.16.4.2)) including acceptance of equivalent qualifications and/or documents is not expressly provided for.</p> <p>PPL A.28 provides that public bodies may use additional qualification criteria “as they consider appropriate under the circumstances”. The general principles in PPL A.5 should apply to the setting of additional qualification criteria. PPL A.28 does, however, provide a potentially wide margin of discretion to public bodies and, if not carefully monitored, it raises the possibility of inappropriate, disproportionate, or discriminatory qualification criteria, which cannot be challenged anyway through the complaints review mechanism.</p> <p>The grounds for eligibility and disqualification of the bidders in the PPL and PPD are very different, creating confusion as to which list applies and or all requirements should be cumulatively met.</p> <p>Amendment No/.2 of the PPD dated December 15, 2016, clarifies and amends further the requirement for annual turnover and past experience for “domestic contractors”, all provided under Annex 6 of the PPD.²²</p>		Ensure consistency of all levels of legislation with the requirement of the PPL that public procurement will comply with the principle of non-discrimination and remove the provisions that differentiate the qualification criteria depending on the bidder’s nationality. The bidder/candidate should not be denied qualification for reasons unrelated to its capability and resources to successfully perform the contract. The qualification requirements should be defined as skills, experience, and resources necessary to perform the contract.

²² Replaced by item 3(c).

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Assessment criteria [1(d) Rules on participation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>However, the PPD provides a completely different list for disqualification of the bidders, which includes the following grounds: when bidder supplies goods, works or services originating from a country with which Ethiopia has a boycott/embargo; bidder provides goods, works or services originating from a country that is in the UN Security Council list of sanctions; bidder commits an act violating the provisions of the PPL and PPD; when the bidders is debarred by Agency; bidder has offered bribe to an official or procurement staff to influence the public body's decision; bidder has committed embezzlement, fraud or connivance (collusion) with other bidders.</p> <p>Suppliers list: They must also be registered on the suppliers list (A.28(1)(d)). There are some references in the PPL to the suppliers list: PPL A.15(1)(6) Agency function: introduce an efficient system of listing of interested suppliers and receive, review, and record applications by candidates and distribute the suppliers list. PPL A.28(1)(d) Pre-qualification requirements. PPL A.50(2) Restricted tenders - selection of bidders from the suppliers list. PPL A.56(1) RFQ process – selection of bidders from the suppliers list.</p> <p>PPL A.28(5) provides that the public body shall disqualify a candidate who submits a document containing false information for the purposes of qualification or if qualification information is materially inaccurate or materially incomplete.</p> <p>PPL A.28(2) A public body may require candidates to provide appropriate documentary evidence or other information so that the public body may satisfy itself that candidates meet the qualification criteria. PPL A.28(3) requires qualification requirements to be set out in the bid documents and apply equally to all candidates (see also PPD A.16.8. Evaluation of qualification must be based on published criteria and procedures (PPL A.28(4) PPL A.24 specifically refers to the principle of non-discrimination applying to qualification.</p>		<p>The above raises questions as to what the qualifications for foreign bidders are. Are they different from those for “domestic contractors”? This approach would be quite discriminatory in contravention of the principle of fairness and non-discrimination proclaimed in the PPL.</p>		
<p>(b) It ensures that there are no barriers to participation in the public procurement market.</p>	<p>Summary</p> <p>Qualification criteria: PPL A.28(1)(f) Qualification requires that candidates have renewed their trade license and have fulfilled their obligations to pay taxes according to Ethiopian laws. PPD A.16(4) confirms these requirements and requires domestic bidders to present tax and registration certificates. It provides at 16(4)(2)(b) that foreign bidders may submit registration certificates or trade license issued by the country of establishment.</p> <p>Foreign bidders PPL A.28(1)(f) Qualification requires candidates to demonstrate that they have renewed trade licenses and fulfilled their obligations to pay taxes according to Ethiopian tax laws. PPD 16.4.2(b) clarifies that in the case of foreign bidders they must submit business organization registration certificate or trade license issued by the country of establishment.</p> <p>Price preference PPL A.25 sets out preference provisions. It allows for a price preference margin, to be determined by Ministerial Directive, for goods produced in Ethiopia, for works carried out by Ethiopian nationals and for consultancy services rendered by Ethiopian nationals. In addition, further preference margin may be allowed for small and micro-enterprises.</p> <p>Any goods to which more than 35% of the “value added” occurs in Ethiopia shall be deemed to be one which is produced in Ethiopia.</p> <p>PPL A.25 also provides that where evaluation of bids results in the award of equal percentage points for bidders offering similar price and quality, preference shall be given to local goods, services, or companies.</p> <p>Preferences must be clearly stated in the bidding documents.</p> <p>PPD A.16.20 goes into further detail. It provides that the margin of preference applied when comparing prices during evaluation of bids is:</p>	<p>Not applicable</p>	<p>Criterion is not met.</p> <p>Please see the gap explained under the criterion 1 (d) (a) above.</p>		<p>The recommendation proposed under the criterion 1 (d) (a) above applies.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>25% for drugs, pharmaceutical products, medical equipment (provided for in the Directive, and not in the PPL) 15% for other products 7.5% for construction and for consultancy services.</p> <p>Additional price preference for small and micro enterprises is 3% where such enterprises compete with local suppliers in national competitive bidding. This additional price preference does not apply to international competitive bidding. Small and micro enterprises may submit a letter of guarantee in lieu of bid security, performance security or advance payment guarantee. The small and micro enterprises shall be entitled to obtain bidding documents free of charge.</p> <p>PPD A.16.20 also sets out details on conditions which must be satisfied, such as on the calculation of the 35% of value added in Ethiopia, and how local companies engaged in construction or consultancy services qualify for preference.</p>				
<p>(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.</p>	<p>PPL A.28 sets out requirements for bidder qualification. See the criterion 1 (d) (a) above.</p> <p>Grounds for exclusion from qualification include debarment PPL A.28(1)(e).</p> <p>Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for: participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings, or the equivalent of those offences.</p> <p>PPD A.16.21 Disqualification of bidders lists additional grounds for disqualification of bidders (not candidates). The list covers: where the supply is of objects originating in a country in respect of which the Federal Government of Ethiopia has imposed a trade ban, countries under UN trade embargo, where the bidder violates a provision of the PPL and PPD, where a bidder is debarred for breach of obligation under a previous contract, where bidder is proven to have offered an inducement or bribe, and where the bidder has committed an act of embezzlement, fraud or connivance.</p> <p>PPL A.30 Rejection of bids, proposals, and quotations The grounds for rejection of bids, proposals and quotations are numerous and broadly drafted providing ample opportunity for public bodies to reject bids but also abandon procurement processes in both appropriate and inappropriate circumstances. Public bodies are required to disclose, but not justify, the reasons for rejection and this lacks transparency. Public bodies shall incur no liability for rejection in accordance with PPL A.30(1) which reduces accountability.</p> <p>PPL A.30 provides that public bodies may reject bids, proposals, or quotations where there is proof of concerted practices, collusion [connivance] and the bidding is not sufficiently competitive as a result. There is little clarity as to how this article relates to A.16.19.2.9 and A.16.19.3 of the PPD.</p> <p>Suspension (otherwise known in other jurisdictions as “Debarment”)</p> <p>PPL A.76 Review by the Agency establishes a process which may lead to a decision by the Agency to suspend a supplier from participation in public procurement for a definite or indefinite period (debarment).</p> <p>The process is triggered when the Agency receives a notification from a public body of alleged misconduct by bidders or suppliers. The circumstances of misconduct include violation of the procurement law, refusal to sign a contract, fraud, falsifying documents, collusion [connivance], corruption and damage due to failure in contract delivery.</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for specified offences.</p> <p>PPL and PPD Alignment It appears that PPL and PPD are not fully aligned in terms of eligibility criteria (PPL A.28) and grounds for disqualification of bidders (PPD A.16.21). More importantly, all grounds for eligibility and qualifications of the bidders should be set out in detail in primary legislation, the PPL.</p> <p>Suspension (debarment) PPL A.76 Use in the English language version of the PPL of the term “complaint” in the context of suspension/debarment is potentially misleading as the term is commonly understood to refer to procurement review and remedies.</p> <p>Suspension (debarment) Right of referral to Agency: it appears from the PPL that the trigger for investigation leading to possible suspension/debarment is limited to where a public body</p>		<p>Include specific exclusion provisions in PPL for criminal and corrupt activities</p> <p>All grounds for the eligibility and qualifications of the bidders should be set out in detail in the primary legislation, the PPL.</p> <p>Suspension (debarment) Consider use of alternative term to “complaint” in the context of suspension/debarment.</p> <p>Right of referral to Agency: widen right of referral to cover other stakeholders</p>

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Assessment criteria [1(d) Rules on participation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>The Agency must send a written notice of the complaint to the supplier, and it may require the person concerned to appear in person and give evidence or to seek professional assistance. The Agency is required to review and make a decision within 15 working days of receipt of such complaint. The complaint may result in debarment, but also a written warning.</p> <p>PPD A.50 sets out a right of appeal against a debarment decision to the competent court.</p> <p>PPD Part A.48 sets out in more detail the grounds for debarment, and process for review. It also details the penalties, including periods of debarment which range from 6 months to 2 years (A.48.5.1 of PPD), depending on the nature and gravity of the default/offence committed. There is the potential in some cases, including fraud, corruption, collusion [connivance], for permanent debarment. Notice of debarment is posted on the Agency website.</p>		<p>notifies the Agency and that other stakeholders are not afforded the right of referral. Whilst procuring entities are generally best placed to identify problems, the right to referral should be widened in the PPL to cover other stakeholders such as auditors, regulatory authorities, private sector, and civil society.</p> <p>There is no clarity on what resources and skills the Agency has to investigate and prove corruption, bribery, fraud, collusion or coercion. With respect to debarment for nonperformance or poor performance, it is not clear whether one case is sufficient to debar a firm. Additionally, it is not clear whether debarment extends to affiliates and parents of debarred entities.</p> <p>Reference to a right of appeal against a debarment decision and venue for appeal should be included in the PPL (primary legislation).</p>		<p>such as auditors, regulatory authorities, anti-corruption commission, private sector, and civil society.</p> <p>Include reference to a right of appeal against a debarment decision and venue for appeal in the PPL (primary legislation; currently such right is provided for under PPD A.50)</p>
(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.	The legal framework does not establish rules for participation of state-owned enterprises in public procurement.	Not applicable.	Criterion is not met. PPL does not establish rules for participation of state-owned enterprises in public procurement.		Amend PPL to include provisions on rules for participation of state-owned enterprises in public procurement.
(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.	<p>Summary: The legal framework details procedures used to determine eligibility and ability to perform a specific contract. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. Multistage procedures are permitted for specified types of contracts and circumstances for use are defined.</p> <p>In general, bidders are required to submit qualification information with their bids.</p> <p>The Standard Bidding Documents (SBD) published by the Agency include Instructions to Bidders setting out requirements concerning eligibility and section/s with a form or forms for completion by bidders and the provision of specified information which is used for the purposes of assessing suitability/qualification. See, for example, SBD for Goods NCB Section 1, Instructions to Bidders paragraphs; Section 4 Bidding Forms – A. Bid Submission Sheet and C. Bidder Certificate of Compliance.</p> <p>For more complex procurements, Prequalification proceedings may be used, with an initial evaluation stage focused on evaluation of a bidder's suitability and ability to perform a specific contract (PPD A.20). In this case, only prequalified bidders are invited to submit a tender. PPD A.20(2) provides that prequalification proceedings may be used for procurement of high value or complex works, turnkey contract for works, acquisition of machinery or information technology; supply and installation of goods or equipment of considerable importance; and where the cost of drawing up bidding documents is so high that only pre-qualified bidders should participate in the bid.</p> <p>The legal framework also allows for post-qualification verification.</p>	Not applicable.	Criterion is met.		

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1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
<p>(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.</p>	<p>Summary: the legal framework establishes the minimum content of the procurement documents and requires that the procurement documents must contain sufficient and relevant information to permit suppliers to respond to the requirement.</p> <p>PPL A.36 lists information which must be included in the Invitation to Bid. It requires public bodies to prepare bidding documents using the standard bidding documents (SBD) developed by the Agency. The Agency has SBDs on its website which can be downloaded in Word format.</p> <p>PPL A.37 requires that bidding documents shall contain sufficient information to enable competition among bidder based on complete, neutral and objective terms. PPL A.37 goes on to list the required minimum content of the bidding documents.</p> <p>PPD A.16.2 to 16.4 sets out further detail on the Invitation to Bid and bidding documents.</p> <p>The Manual, section 4.2, further elaborates on these requirements, including emphasizing the need for close collaboration with the beneficiary and end user when preparing bidding documents and noting that the detail and complexity of the documents may vary according to the subject matter of the procurement (4.2.5.2). The manual explains that the bidding documents should be worded so that they permit and encourage open competition and set out clearly and precisely a number of elements including, for example, the work, location, place of delivery, minimum performance requirements, warranty and maintenance and other relevant terms and conditions (4.2.5.8).</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		
<p>(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.</p>	<p>Summary: The legal framework requires the use of neutral specifications, cites international norms, and provides for the use of functional (performance) specifications as far as possible.</p> <p>PPL A.29(3)(c) requires technical specifications prescribed to invite open competition and for them to be devoid of any statement, which would have the effect of restricting competition.</p> <p>PPL A.29(3)(b) requires technical specifications to be based on national standard where such exist or otherwise on internationally recognized standards or building codes. PPD A.16.5(g) refers to use of standards set by the Ethiopian Quality and Standard Authority (now the Ethiopian Standards Agency²³) (which is an ISO member²⁴) or by other similar institutions.</p> <p>The Manual sets out the precedence of standards in a different order. It explains that technical specification should be based upon recognizable international standards, where these exist or otherwise on recognized national standards or codes.</p> <p>PPL A.29(3) (a) provides that technical specifications shall, as far as possible, be in terms of performance rather than design or descriptive characteristics.</p> <p>These provisions are expanded upon in PPD A.16.5 and Manual section 2.7.</p> <p>Agency Circular dated 1 August 2018 notes that there are problems in practice with the use of discriminatory specifications. Numbered paragraph 5 highlights problems considered by the complaints Board, noting that they are increasing year on year. The final point under paragraph 5 refers to increased complaints to the Board in relation to technical specifications, including the requirement for specified brands.</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		

²³ Ethiopian Standards Agency website, accessed 4 October 2019 <http://www.ethiostandards.org/>

²⁴ ISO website membership list, accessed 4 October 2019 <https://www.iso.org/member/1725.html>

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Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	<p>PPL A.29(4) provides that there shall be no requirement or reference in technical specifications to a particular trademark, name, patent, design or type or a specific producer/provider. Where this is not possible, the words "or equivalent" must be included in the specification.</p> <p>These provisions are expanded upon in PPD A.16.5 and Manual section 2.7.</p>	Not applicable.	Criterion is met.		
(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)	<p>Summary: the legal framework does not include a specific provision confirming potential bidders that they are entitled to request clarification. The legal framework does require public bodies to inform bidders of their right to seek clarification of the procurement documents. It sets out details of how and where such clarification may be made, the timescales for providing responses and a requirement to inform all participating bidders in writing.</p> <p>PPD A.16.4.2(a) requires a public body to ensure that the Instructions to Bidders include information on when and where to submit requests for clarification in writing.</p> <p>PPL A.39 provides that the public body may modify the bidding documents in response to an inquiry from a candidate by issuing an addendum which must be communicated at the same time to all candidates who purchased the bidding documents. The time limit for submission of bids may be extended where there is not enough time for bidders to take account of the amendments in their bid.</p> <p>PPD A.16(12) provides more detail on clarification and modification. It confirms that a public body must consider requests for clarification or modification of bidding documents from candidates and specifies relevant timescales. It also allows for the possibility of the public body convening a meeting of bidders concerning clarification, discussion, or modification of bidding documents.</p> <p>There are also specific provisions on the clarification of pre-qualification documents where a pre-qualification stage is used (Manual 4.2.3.3) and in the context of RQP (Manual 5.5.12).</p>	Not applicable.	<p>Criterion is partially met.</p> <p>The right of potential bidders/bidders to seek clarification is not explicitly set out in the PPL. It is implied through the article PPL A.39. This is an important right for bidders and so it is advisable to include explicitly at least the principle of the right to seek clarification in clear terms in primary legislation.</p>		Include clear provision in the PPL confirming that potential bidders/bidders have the right to seek clarification.

1(f) Evaluation and award criteria

The legal framework mandates that:

Assessment criteria [1(f) Evaluation and award criteria]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.	<p>Summary: The legal framework requires the evaluation to be objective and relevant. There are clear provisions requiring that criteria, and also methodologies and weightings, where used, are disclosed in advance in bidding documents. The award decision must be made only based on pre-disclosed criteria.</p> <p>PPD A.7 provides that it is the duty of the public body's Procurement Endorsing Committee to ensure that the evaluation criteria are non-discriminatory, transparent, and achievable.</p> <p>PPD A.16(8) covers the Setting of Criteria for Bid Evaluation including requirements for advance disclosure, the objective nature of the criteria, and achieving maximum value for money.</p> <p>PPL A.37(i) requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents. PPD A.16.4.2 (i) and PPD A.16(8) expands on these requirements and includes reference to disclosure of methodology and weightings.</p> <p>PPL A.43(6) provides that in selecting the successful bidder the public body shall only consider substantially responsive bid and shall evaluate on the basis of the criteria set out in the bidding documents. No criterion shall be used that is not set out in the bidding documents. This is covered further in PPD A.16.9.</p> <p>There are additional provisions specifically addressing the procurement of consultancy services (PPD A.34).</p>	Not applicable.	Criterion is met.		

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Assessment criteria [1(f) Evaluation and award criteria]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>The SBDs include sections on evaluation criteria and statements confirming that evaluation will be carried out using published criteria only. See, for example, SBD for Textbooks, Part 1, Section 1, paragraphs 20.4 and 38 of Instructions to Bidders and Section 3 Evaluation Methodology and Criteria.</p> <p>Agency Circular dated 1 October 2018 refers to cases where criteria have been used which have been developed after tenders have been opened, in violation of the law.</p>				
(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.	<p>Summary: Objectivity is an underlying principle; the use of price and non-price attributes are permitted and value for money is a consideration in the award of contracts.</p> <p>PPD A.16(8) covers the Setting of Criteria for Bid Evaluation including requirements for advance disclosure, the objective nature of the criteria, and achieving maximum value for money. In the case of procurement of services, the relative weighting ascribed to price must be no less than 50% of the total merit points.</p> <p>PPL A.43(8)/PPD 16(8)(2): There are two bases for award of contract: (1) lowest evaluated bid from among bidders meeting technical requirements; and (2) highest scoring bid against ascribed criteria which may include both quality and cost/price.</p>	Not applicable	<p>Criterion is partially met.</p> <p>While there is the possibility of using combined price and non-price attributes, life cycle costing seems to be focused on property/assets management.</p> <p>In practice, setting a standard minimum weighting for price criteria may not deliver the best value for money outcome. It is also understood that procuring entities are unclear whether the same minimum weighting should be applied to goods and works procurement. This indicates a need for further clarity and emphasizes that the use of quality criteria, weightings and methodologies including life-cycle costing requires substantive practical guidance and training for public bodies conducting evaluation.</p>		<p>Make it clear that the use of life cycle cost applies also to procurement evaluation where this may give better outcome of the process.</p> <p>Consider preparing substantive practical guidance and provide practical training for public bodies conducting evaluation using quality and other criteria.</p>
(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.	<p>Summary: Quality is a major consideration in evaluating Requests for proposals for consulting services and clear procedures and methodologies are defined.</p> <p>PPL A.53 & A.54 and PPD A.21 concern the use of the Request for Proposals Method. The selection of consultants can be made in several ways but, with the exception of contracts for standard, simple requirements, the focus of evaluation is on qualitative factors. The Manual at 5.6.1 states “the most important consideration in selection of a successful Consultant in the procurement of intellectual and professional services shall be given to the quality of the ... technical proposal.”</p> <p>There are clear and detailed procedures as well as methodologies for assessment of technical capacities in the PPD A.21 and the Manual in section 5.</p>	Not applicable	Criterion is met.		See comment at 1(f)(b) on need for substantive practical guidance and training for public bodies using quality criteria in evaluation.
(d) The way evaluation criteria are combined, and their relative weight determined should be clearly defined in the procurement documents.	<p>PPL A.37(i) requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents.</p> <p>PPD A.16.4.2 (i) and PPD A.16(8) expand on these requirements and include reference to disclosure of methodology and weightings.</p> <p>SBD include separate section on Evaluation Criteria and Methodology.</p>	Not applicable	Criterion is met.		
(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.	<p>Summary: The legal framework provides that information on examination, clarification and evaluation of bids is not disclosed to participants during the evaluation period.</p> <p>PPL A.44 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced. (See also PPD A.34(6)(c) and Manual 4.2.12).</p>	Not applicable	Criterion is met.		

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1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	<p>Summary: Opening of tenders, immediately following the closing date for bid submission, is a proceeding defined and regulated by the legal framework. Information on time limits and the process must be included in the bidding documents.</p> <p>PPL A.36 and A.37 require the Invitation to Bid/Bidding documents to include information on the place and time for opening of bids, along with an announcement that bidders or their representatives may be present.</p> <p>PPL A.42 requires that, at the time stipulated in the bidding document, the public body shall open all bids received before the deadline, and it specifies the information to be read out at the bid opening.</p> <p>PPD A.16(18) provides further detail on the process of bid opening, including number of representatives from the procurement unit, the presence so far as possible of a representative of internal audit, plus media representatives and others.</p> <p>There are special provisions concerning two-stage tendering and requests for proposals.</p>	Not applicable	Criterion is met.		
(b) Records of proceedings for bid openings are retained and available for review.	<p>Summary: The legal framework details the process for bid opening and requires records of the process to be maintained, with copies of those records to be made available to any bidder on request.</p> <p>PPL A.9(c) lists the responsibilities of the procurement unit as including maintaining complete records for each procurement. PPL A.23 sets out a non-exhaustive list of the records required to be kept.</p> <p>PPD A.6(9) lists the responsibilities of the procurement unit as including maintaining minutes of the bid opening.</p> <p>PPD A.16(18)(4) specifies information to be included in the bid opening minutes, being the names of bidders, their bid price, and any other salient points. A signed attendance sheet is also required. There are standard form Minutes of public opening of bids, a checklist on the procedure for opening bids, and a Bid Opening Attendance Sheet (Manual Appendix 8).</p> <p>PPL A.42 (2) requires that a copy of the record of the bid opening is made available to any bidder on request.</p>	Not applicable	Criterion is met.		Introduce a provision in the PPL/PPD requiring public bodies to send the minutes of bid opening to all bidders who submitted bids, as opposed to sharing upon request.
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	<p>Summary: The legal framework requires that security and confidentiality of bids is maintained until after award of contracts.</p> <p>PPL A.44 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced. (see also PPD A.34(6)(c) and Manual 4.2.12).</p> <p>PPD A.16(17) includes further detail on receipt and safekeeping of bid document.</p> <p>The Manual provides that submitted bids shall always be kept under lock outside working hours and shall not be removed from the office of the public body.</p>	Not applicable	Criterion is met.		
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	<p>PPL A.23(2)(a)) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would “prejudice legitimate commercial interest of the parties or would inhibit fair competition”.</p>	Not applicable	Criterion is partially met. Legitimate commercial interest is not defined in the PPL, and it is not clear how it is applied in practice.		Define the commercial interest for the purpose of non-disclosure of information, which would “prejudice legitimate

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Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	PPL A.23(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals, or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body - (See also Manual 2.2.4). See 1(k)(a) for comment on the impact of this provision on the overall transparency of the procurement system.				commercial interest of the parties or would inhibit fair competition".
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	<p>PPL A.41 sets out basic provisions concerning the submission and receipt of bid proposals.</p> <p>The PPD and PP Manual include provisions on submission of bids, including rejection of bids submitted late.</p> <p>The SBDs contain detailed instructions and clear rules on bid submission. For example, SBD for procurement of Information Systems under NCB, Section D Submission and Opening of Bids.</p>	Not applicable	Criterion is met.		

1(h) Right to challenge and appeal

The legal framework provides for the following:

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	<p>Summary: Participants in procurement have the right to challenge decisions or actions taken by the procuring entity in the conduct of public procurement, subject to specified exclusions. In the English language version of the PPL, the right to challenge is given to "candidates". The Manual refers to "candidates" and "bidders", and also broadens the right to cover other stakeholders. There is no linked requirement for a complainant to demonstrate that they suffered, or risk suffering, loss, or injury because of the alleged breach, which would open the complaints mechanism up for complaints by anyone.</p> <p>Standing to make a complaint PPL A.73(1) provides that a "candidate" shall be entitled to submit a complaint to the head of the public body or the complaints review Board "against an act or omission of the public body regarding public procurement...where he believes that such act or omission violates this Proclamation or the directives." PPD A.43 refers to this right being available to "a candidate or bidder". "Candidate" is defined in PPL A.2 as "a natural or juridical person invited to take part in public procurement or seeking to be so invited."</p> <p>The Manual on Procurement Complaints ("Complaints Manual") defines the "complainant" as meaning "bidder or candidate submitting a complaint." The Complaints Manual goes further and explains that the PPL and PPD "ensure protection of rights not only of the bidders that participated in the procurement procedure, but also natural or juridical persons that would be interested in taking part in the procurement procedure and being awarded the contract, but due to some actions or failure to take an action by the public body they have been prevented from application for a contract in a public procurement procedure."</p> <p>As noted earlier, the use of terms candidates and bidders is not always used consistently.</p> <p>There is no requirement for a complainant to have suffered or risk suffering loss or injury because of the alleged breach. This is a common requirement included, for example, in the UNCITRAL model law on public procurement (A.64). The threshold for standing is therefore relatively low and increases the risk of complaints and thus disruptions in the procurement process.</p>	Not applicable	<p>Criterion is partially met.</p> <p>Board jurisdiction for PPP complaints: The Board is also responsible for review of complaints concerning procurement of PPPs. It would be helpful to include a direct reference to PPP complaints in the PPL.</p> <p>Standing to make a complaint: PPL A.73(1) refers to "candidates" having standing to make a complaint. Standing to make a complaint should also be expressed to be available to "bidders." There is an inconsistency between the PPL and the Manual. The latter seems to extend the right to make a complaint to prospective bidders too, beyond the intention of the PPL. This is unsatisfactory and creates legal uncertainty.</p>		<p>Board jurisdiction for PPP complaints: Include a direct reference to PPP complaints in the PPL.</p> <p>Standing to make a complaint: Amend PPL to provide clarity and certainty on who has standing to make a complaint.</p> <p>Amend the Manual to align with the PPL.</p>
(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the	<p>Summary: the legal framework allows for challenge to be brought before the Board for Review and Resolution of Complaints in Procurement and Property Disposal ("the Board"), which is a body independent of the procuring entity. The Board has authority to suspend the award decision and grant a range of remedies. There is a right of judicial review.</p>	Not applicable	<p>Criterion is partially met.</p> <p>Right of judicial review is set out in the PPD. This is a fundamental right which should be specified in the primary legislation.</p>		Right of judicial review: Amend PPL to refer to right of judicial review and venue for judicial review.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
award decision and grant remedies, and also establish the right for judicial review.	<p>Venue for complaint: The complaint must, in the first instance, be submitted to the head of the public body (the procuring entity). There is a right to file a complaint with the Board in cases where the head of the public body does not issue the decision within the specified time period, or if the complainant is not satisfied with the decision.</p> <p>Board independent of the procuring entity: The Board is established pursuant to PPL A.70 and is a body which is independent of the procuring entity. It is composed of individuals representing private sector, relevant public bodies and public enterprises.</p> <p>Remedies: PPL A.75 provides for a range of remedies. The Board may: a) prohibit the public body from acting or deciding unlawfully; b) order the public body to proceed in a manner conforming to the PPL (other than a decision to award or conclude a contract); c) annul in whole or in part, an unlawful act or decision by the public body. (see also PPD A.41 and Complaints Manual para.4.2.8).</p> <p>Right to appeal against decision of the Board: PPD A.50 refers to a right of appeal to the competent court, though it does not specify which court it is.</p>		<p>Board independent of the procuring entity Composition of the Board raises at the minimum a lot of questions in terms of independence and impartiality of the parties representing the various stakeholders. Their appointment by the Minister lacks transparency and independence. The criteria and qualifications of the board members are missing from the PPL or PPD.</p>		<p>Board independent of the procuring entity Composition, qualifications requirements, procedures for appointment/dismissal of the Board members, should be reconsidered (i) to enhance independence of the Board, (ii) avoid conflict of interests created by the participation of the Agency's representatives, but also of other representatives, such as: public enterprises, public bodies, private sector, etc.</p>
(c) Rules establish the matters that are subject to review.	<p>Summary: The PPL establishes the matters that are subject to review. The bidder's right of review is not available in respect of <u>all</u> acts or omissions of the public body regarding public procurement and the exclusions from coverage are [significant], severely impairing the effectiveness of the review system.</p> <p>Decisions or actions which are the subject matter of review – and exclusions PPL A.73(1) provides for a right to submit a complaint “against an act or omission of the public body in regard to public procurement....”</p> <p>The Complaints Manual makes it clear that the right of complaint relates to both actions and inaction of the public body (Para.3.3) and requires that the subject of the complaint procedure “should be understood as broadly as possible in order to prevent any possible violation of rights of interested parties and violation of basic principles of public procurement.”</p> <p>The right of review is not available in respect of <u>all</u> acts or omissions of the public body regarding public procurement.</p> <p>PPL A.73(2) provides that the right of review is not available in respect of four matters, the most relevant of which for public procurement are: a) the selection of procurement method; and b) rejection of bids, proposals or quotations pursuant to PPL A.30.</p> <p>PPL A.73(3) & (4) provide that complaints may not be brought after a contract has been signed with the successful bidder, subject to specified conditions being satisfied.</p> <p>PPD A.44 elaborates on, and adds to, these exclusions from the right to review to cover the selection of bidders for procurement in restricted tendering or RFQ or the evaluation criteria in the bidding document; domestic preference; and complaints submitted late.</p>	Not applicable	<p>Criterion is partially met.</p> <p>Acts or omissions not subject to the right to review: The exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p> <p>Alignment between the PPL and PPD PPD expands on exclusions from the right to review.</p>		<p>PPL A.73 Acts or omissions not subject to the right to review: Reconsider the exclusions from the right to review, in particular regarding selection of procurement method and selection of bidders and evaluation criteria to ensure that bidders can take action on significant decisions and issues.</p> <p>Alignment between the PPL and PPD All exclusions from right to review should be set out in primary legislation and the PPL and PPD should be aligned.</p>
(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.	<p>Summary: There are rules establishing time frames for the submission of challenges and appeals. There are also rules for issuance of decisions at the initial review stage, by the head of the public body and for issuance of decisions by the Board, the independent appeals body.</p> <p>Time frame for submission of challenges and appeals: PPL A.74((2) requires the candidate to submit the complaint to the head of the public body within five (5) working days from the date he knew, or should have known, the circumstances giving rise to the complaint (see also PPD A.45.1(b)).</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPL: Time frames for issuance of decisions of the Board are expressed inconsistently. The PPL and PPD should be aligned.</p>		<p>PPL: Time frames for issuance of decisions of the Board: Align time frames in PPL and PPD.</p>

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Assessment criteria [1(h) Right to challenge and appeal]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>Time frame for issuance of decision by the head of the public body: PPL A.74(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons. PPD A.45.1(d) requires the public body to give the complainant a copy of the decision within five (5) working days from the date the decision was made.</p> <p>Time frame for complaint to the Board: PPL A.74(4) If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Board. The complaint to the Board must be submitted within five (5) working days from the date on which the decision had been or should have been communicated to the candidate. (See also PPD A.47(a).)</p> <p>Time frame for issuance of decision by the Board: PPL A.75(4) requires the Board to issue its decision within 15 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any. However, PPD A.47(f) states that the Board shall give its decision in writing within 15 working days of receipt of the public body's statement in response to the complaint. This is not consistent.</p>		<p>It is not clear if the suspension of the procurement process is notified to all bidders and if so, when.</p> <p>In addition, it is not clear what happens to the suspended procurement process when the head of public body does not respond to the complaint within 5 working days as contemplated in the PPL. Is the suspension automatically lifted or public body should inform all bidders of the lifting?</p>		<p>PPL should make clear that the suspension of the procurement process should be notified immediately to all bidders who submitted bids.</p> <p>Additionally, the PPL should clarify what happens to the suspended procurement process when the Head of public body does not respond to the complaint within 5 working days as required by PPL A.74(4).</p>
<p>(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.</p>	<p>Summary: The legal framework does not provide for applications for appeal and full decisions to be published and in easily accessible places. There is no timeframe for publication in the legal framework.</p> <p>PPD A.47(g) requires the Secretariat to send a copy of the decision to the complainant and the public body.</p> <p>Complaints Manual para.4.2.10 provides that the Secretariat shall produce a summary of each decision which shall include the basic facts, reasoning, and findings of the Board. The Secretariat shall publish the summary on the website of the Agency.</p> <p>The Secretariat must also maintain copies of the full text of each decision and make it available to interested parties on request.</p> <p>Complaints Manual para.4.2.7.5 (b) states that "All proceedings and communication should remain confidential until notification of the Decision."</p>	<p>Not applicable</p>	<p>Criterion is not met:</p> <p>PPD A.5(3)(4) sets out general principles requiring transparency, fairness and accountability for decisions made in procurement. Failure to publish sufficient information on complaints and decisions is in breach of these principles.</p> <p>PPL: Publication of applications and decisions: In the interest of transparency, the legal framework (ideally primary legislation) should require applications for appeal and full decisions to be published in easily accessible places. Presumption should be in favor of full transparency, and access to full text of decisions should not be limited to provision to interested parties on request. The legal framework should specify a timeframe for publication.</p> <p>Notification of decisions to parties: In the interests of efficient operation of the system, the legal framework (ideally primary legislation) should require prompt notification of decisions to parties within specified timescales.</p>		<p>Publication of applications and decisions: Include a provision in the PPL requiring applications for appeal and full decisions to be published in easily accessible places and within a specified time period.</p> <p>Notification of decisions to parties: Include a provision requiring prompt notification of decisions to parties within specified timescales.</p>
<p>(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).</p>	<p>Judicial review/right of appeal: PPD A.50 confirms that a candidate, bidder or supplier aggrieved by the decision of the Board or the Agency may take the matter to a competent court.</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>PPL Judicial review/right of appeal: First, the clause itself as drafted is problematic as it leapfrogs from a public body to the Court - while the highest administrative body is the Board. Second, it does not specify a competent court who reviews the Board's decision. It is advisable to include provisions concerning right of appeal in the primary legislation.</p> <p>If PPD at A.50 is intended as is drafted, i.e. to allow filing of appeals of decisions of a public body to court - without going through the Board - it creates</p>		<p>Judicial review/right of appeal: Include in the PPL a provision confirming right of appeal, venue for appeal, and time limits.</p>

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Assessment criteria [1(h) Right to challenge and appeal]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
			inconsistency with the PPL, which establishes a two-tier system of complaints with Head of Public Body as first tier and Board as the second. Leapfrogging from a public body to the Court seems to leave out the role of the Board as second-tier reviewer. Some countries have adopted this model, but it is not clear if this is the intention.		

1(i) Contract management

The legal framework provides for the following:

Assessment criteria [1(i) Contract management]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,	<p>PPL A.46(4) states that the procedure for administering contract shall be prescribed by Ministerial Directive.</p> <p>PPD. A.6 lists the Procurement Unit's duties and responsibilities, which include to "Follow up and coordinate the execution of outsourced procurements" (A.6.16), "ascertain that the Public Body has discharged its obligations and its rights have been satisfied under a procurement contract."</p> <p>PPD Part VII A.28 to 30 concerns the responsibilities of public bodies in the administration of contracts.</p> <p>There is a basic requirement to ensure prompt implementation of contracts. The provisions in PPD A.29 focus, in particular, on payment arrangements.</p> <p>PPD A.29 provides that public bodies have to identify the party responsible for following up the performance of a contract or make sure that those parties are aware of their duties. Specified contract management activities are listed. There is reference to performance monitoring.</p> <p>There is further detail in the Manual in section 8 "Contract Management, Delivery and Payment", including reference to the role of the public body's procurement unit undertaking regular contract monitoring.</p> <p>Manual section 8.14-8.17 covers contract supervision and management of works contracts.</p> <p>Manual section 8.19 - Services - confirms that contract monitoring, supervision and administration for simple routine services are undertaken by the user department and the procurement unit as appropriate. For consultancy services the contract will usually nominate a contract manager.</p>	Not applicable	Criterion is met.		
(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.	<p>PPD A.29.4 provides that a contract may be amended in the course of its performance, "it being understood that such an amendment shall not be detrimental to the interest of the public body and not favor one supplier or certain suppliers...."</p> <p>The Manual (section 8.29) provides some further detail about the circumstances where changes may be necessary, and also notes that the contract may allow for modification of contract values by a pre-determined percentage "when this is in the public interest and essential for the work of a public body" (8.29.1). The Manual requires formal written approval by the head of the public body for "all other amendments to costs, quantities, time periods and other terms and conditions" (8.29.2). The Manual goes on to set out a procedure to be followed for contract amendments following approval by the head of the public body.</p> <p>PPD A.16(4) requires a public body to include in the bidding documents information on whether it is possible to make a price adjustment to the contract and the condition applying if it is allowed (A.16(4)(j)), an indication that the public body has a right to decrease or increase the</p>	Not applicable	<p>Criterion is met.</p> <p>The provisions on contract amendments and price adjustment are broadly drafted and have the potential to be interpreted widely, to the detriment of competition.</p> <p>However, the assessment shows that during the last three years covered by the assessment, except for one public body, the value of amendments was insignificant.</p>		Amend the provisions on contract amendments and price adjustment for more precision and avoidance of unjustified discretion in their application.

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Assessment criteria [1(i) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>quantity of goods of services by up to 25% without changing the unit price offered by the bidder (A.16(4)(r)).</p> <p>There is also a price adjustment provision for consultancy service contracts (16(14)(5)).</p>				
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	<p>PPD A.16(27)(3) requires that the signed contract provides for the procedure for resolution of disputes that may arise in the performance of the contract.</p> <p>Manual section 8.27 Resolution of Disputes states that “most minor disputes may be resolved by sensible discussion and agreement between the responsible office and the supplier.” There is a requirement on the public body to fully investigate any formal written complaint and actions required.</p> <p>Manual 8.27.3.4 refers to the use of arbitration as specified in a contract, only for those public bodies which are allowed by law to use arbitration. All other bodies are allowed to use conciliated processes as specified in the contract. Parties may also, or in the alternative, seek redress in the courts if no initial agreement is reached and negotiation fails.</p> <p>The Civil Procedure Code A.315(2) provides that “No arbitration may take place in relation to administrative contracts of the Civil Code.”²⁵</p> <p>PPD A.27(8) concerning framework agreements confirms that the PPPDS has responsibility to facilitate amicable settlement of disputes in connection with performance of the contract. It is not clear whether parties can go to court for resolution of disputes.</p> <p>The General Conditions of Contract in the SBD include dispute provisions.</p>	Not applicable	<p>Criterion is partially met.</p> <p>As noted earlier under Indicator 1 (a), It appears there is a lack of certainty for public bodies and suppliers as to the correct classification of contracts awarded under the PPL and the impact of this on the availability of arbitration. Arbitration is not appropriate in all cases but for contracts where it is appropriate the legality of its use should be clear. We understand that there is a current review of certain aspects of the Civil Code, and it is possible that this is already being addressed.</p>		<p>The PPL or PPD should clarify when the arbitration shall be used as a forum.</p> <p>Arbitration would enable parties to settle their disputes using professional arbitrators, who are conversant on the matter instead of ordinary judges who have no specialization in the area of the contract subject matter.</p>
(d) The final outcome of a dispute resolution process is enforceable.	<p>The General Conditions of Contract in the SBD include dispute provision and provide that in the event of a failure to resolve a dispute, it may be referred for resolution through the Courts. There is no specific provision concerning enforceability of the outcome of a dispute resolution process.</p> <p>PP Manual 8.27 confirms that the right to arbitration is limited to those public bodies who are entitled by law to use the arbitration. All other public bodies may use conciliation. Arbitration provisions are not included in the SBD.</p>		<p>Criterion is partially met.</p> <p>There is no specific provision concerning enforceability of the outcome of a dispute resolution process.</p>		<p>Include a provision concerning enforceability of the outcome of a dispute resolution process.</p>

1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria [Electronic Procurement (e-Procurement)]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.	<p>Summary: The legal framework allows for e-Procurement solutions at a general level, but the implementation of e-GP will require substantial amendments and additions to the legal framework.</p> <p>PPL A.26(1) allows for the Minister to issue a Directive to determine the extent to which communication by electronic means may be used in addition to, or instead of, writing.</p> <p>PPL A.31 confirms that the Ministry may authorize the use of electronic means as a method of procurement. To implement this, the PPL gives authority to the Agency to conduct a study and submit proposals; review the readiness of public bodies, suppliers and supervising entities to implement the electronic procurement system; and accordingly authorizes the implementation of an electronic system in all or certain procurements.</p> <p>PPD A24.10 provides that public bodies may, by permission of the Agency, employ electronic means to send RFQs and receive quotations subject to satisfaction of specified conditions.</p>	Not applicable	<p>Criterion is not met.</p> <p>The PPL provides general permissive provisions for the development of an electronic procurement system. However, it stops there and it does not contain specific provisions, covering areas such as: agency in charge of developing and maintaining the e-procurement system; procurement cycle stages covered by the e-procurement system (e.g. procurement planning, advertisement, bid submission, evaluation, award, bid complaints, and contract management); requirement for authenticity, privacy and security of the procurement system; procurement methods which may be conducted using e-procurement system; requirement for a full and unrestricted access, roles and responsibilities of each party in the procurement</p>		<p>There is a need to review and update PPL and corresponding implementing rules guiding the manual procurement process to reflect the new practices to be followed when conducting procurement electronically.</p> <p>Those areas include those identified in the gap analysis section, including the roles and responsibilities of each party in the procurement process (the procuring agency, the supplier and the</p>

²⁵ Thus, if public procurement contracts are classified as administrative contracts, and the provisions of the Civil Procedure Code are strictly interpreted they cannot be subject to arbitration. For further discussion on this issue see: Conflicting Legal Regimes Vying for Application: The Old Administrative Contracts Law or the Modern Public Procurement Law for Ethiopia, Teclé Hagos Bahta, African Public Procurement Law Journal (2017) 4 APPLJ 1.

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Assessment criteria [Electronic Procurement (e-Procurement)]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>Manual 2.4 requires communication by e-mail to be confirmed in writing and states that communication made by e-mail shall not be considered as communication in writing.</p> <p>Manual 4.2.9.1 provides that bids may not be submitted by telex, fax, or electronic mail. Bids can only be delivered by hand or mail.</p> <p>It is early days in the introduction of e-GP. The e-GP strategy and Action Plan is relatively recent, dating from 2018. The strategy and roadmap cover the period 2018 to 2023.</p>		process; maintaining records when conducting procurement electronically, etc. PPL includes provisions throughout the procurement cycle that are relevant for a manual system only.		e-procurement system); the leading agency in charge of maintaining the e-procurement system; the procurement methods to be conducted through e-procurement system; full and unrestricted access to the e-procurement system by all interested parties; the phases of procurement that the system will support, etc.
(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.	There is no e-procurement system that could provide unrestricted and full access to the system, yet taking into consideration privacy, security of data and authentication.	Not applicable	Criterion is not met. There is no system that could provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.		Implement e-GP system that will provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.
(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.	PPD A24.10 provides that public bodies may, by permission of the Agency, employ electronic means to send RFQs and receive quotations subject to satisfaction of specified conditions.	Not applicable	Criterion is partially met. Please refer to gap under 1(j) (a)		Please refer to 1(j) (a) and 1(j) (b)

1(k) Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.	<p>Summary: The legal framework includes a list of procurement records and documents related to transactions, including certain aspects of contract management. Procurement records and documents are prepared and maintained at an operational level by the public body's procurement unit. Procurement records and documents are not available for public inspection.</p> <p>PPL A.9(c) requires the procurement department in a public body to maintain a complete record for each procurement in accordance with PPL A.23.</p> <p>PPL A.23 Records of Procurement requires the public body to maintain records and documents. It sets out a non-exhaustive list of information to be maintained. The list in the PPL does not specifically refer to contract management information. However, the Manual, at 2.2 and Appendix 2, expands on that list and requires public bodies to retain copies of the contract/purchase order, and to include information on contract management such as delivery/acceptance reports and payment documentation.²⁶</p> <p>PPL A.23(2)(a) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition."</p> <p>PPL A. A.23(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body - (See also Manual 2.2.4).</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPL A.23 Records of procurement The drafting of PPL A.23 is confusing, particularly the interaction between A.23(2)(a) and A.23(2)(b) and what is, or is not, available for public inspection.</p> <p>PPL A.23(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body. This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p>		There is a need for separate guidance on the identification and managing of information of commercial sensitivity/ confidentiality during bid evaluation process and after contract award.

²⁶ Financial Administration Proclamation No.648/2009 includes provisions on payment related issues including checks to be made prior to making payments (see, for example, A.33 of that proclamation concerning payments for goods and services).

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Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p> <p>The Manual provides, at 2.2.5, that public bodies should disseminate to the general public information about contract award by posting it on the Agency's website within 5 days of signing the contract.</p> <p>PPL A.23 Records of Procurement requires the public body to maintain records and documents regarding public procurement for a period of time determined by Ministerial Directive. PPD A.32(2) provides that the time for which these records shall be kept is stipulated in Financial Administration Regulations to be issued, pursuant to A.73 of Proclamation no.648/2009 Financial Administration Proclamation.</p> <p>Appendix 2 of the Manual is a Guidance Note on Communications and Records Management. This confirms that public bodies must keep all documents regarding a particular procurement for a period of 10 years and provides a recommended structure and content for the procurement dossier. This includes contract management and finance information.</p> <p>PPL A.42 on Opening of Bids requires the recording of the announcement of names of bidders, total amount of bids, discounts, etc. A copy of the record shall be made on request to bidders (see also PPD A.16(18(4) and Manual.</p>				
(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.	<p>PPL A.23 Records of Procurement require the public body to maintain records and documents regarding public procurement for a period of time determined by Ministerial Directive. PPD A.32(2) provides that the time for which these records shall be kept are stipulated in Financial Administration Regulations to be issued pursuant to A.73 of Proclamation no.648/2009 Financial Administration Proclamation.</p> <p>Appendix 2 of the Manual is a Guidance Note on Communications and Records Management. This confirms that public bodies must keep all documents regarding a particular procurement for a period of 10 years and provides a recommended structure and content for the procurement dossier. This includes contract management and finance information.</p>	Not applicable	Criterion is met.		
(c) There are established security protocols to protect records (physical and/or electronic).	<p>There is no specific legislation that establishes security protocols to protect records. It is addressed in the Financial Administration Proclamation and the Appendix 2 of the Manual, which is a Guidance Note on Communications and Records Management.</p>	Not applicable	<p>Criterion is partially met.</p> <p>While there is no legislation that establishes security protocols to protect records, this matter is addressed in other laws.</p>		Consider adopting a regulation establishing security protocols to protect records and classification of documents.

1(l) Public procurement principles in specialized legislation

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

Assessment criteria [1(l) Public procurement principles in specialized legislation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Public procurement principles and/or the legal framework apply in any specialized legislation that governs procurement by entities operating in specific sectors, as appropriate.	<p>Summary: There is no specialized legislation that governs procurement by entities operating in specific sectors, and the legal framework applies to procurement carried out by all public bodies.</p>	Not applicable	Criterion is met.		
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	<p>Proclamation 1076/2018 on Public Private Partnership ("PPP Proclamation") applies to PPP projects of public bodies and public enterprises with effect from 22 February 2018 (PPP Proclamation A.67).</p> <p>PPP Procedure: The PPP Proclamation generally requires a competitive procurement procedure for the award of a PPP using an open bidding process with pre-qualification (A.19). Other procurement processes include competitive dialogue and also direct negotiations (where conditions are satisfied). There is also an unsolicited proposal process.</p>	Not applicable	<p>Criterion is met.</p> <p>See detailed comments on PPP at 1(a)(c)</p>		See recommendations for improvement at 1(a)(c).

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Assessment criteria [1(l) Public procurement principles in specialized legislation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	PPP Proclamation A.10 establishes the PPP Directorate General within the Ministry of Finance and Economic Cooperation. A.11 & 12 set out the objectives, duties, and responsibilities of the PPP Directorate General. These include the promotion of participation of the private sector, technical assistance, recommendations on regulatory, institutional and policy framework, and the development and implementation of guidance. This is elaborated in the PPP Directive.	Not applicable	Criterion is met.		

2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria [2(a) Implementing regulations to define processes and procedures]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	There is a comprehensive procurement Directive, the Federal Public Procurement Directive, Ministry of Finance, June 2010 ("PPD") ²⁷ , revised in December 2015 ²⁸ and December 2016. ²⁹ The PPD supplements and provides detail on the provision of the PPL. The Federal Public Procurement and Property Administration Agency ("Agency") publishes Manuals , including the Public Procurement Manual (December 2011) ("PP Manual"), Manual on Public Procurement Complaint Procedure (April 2011) ("Complaints Manual") and Manual on the use of Framework Agreements (May 2011).	Not applicable	Criterion is partially met. The PPD on occasions, appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD (see specific comments elsewhere in this assessment).		Alignment between PPL and PPD Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, that PPD should not introduce provisions that materially limit or inappropriately expand the provisions of the PPL.
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	The PPD is a single document representing secondary legislation providing a consolidated set of implementing rules applying to most of the provisions in the PPL. It is available to download from the Agency website.	Not applicable	Criterion is met.		See above.
(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	PPL A.78(1) provides that the Council of Ministers may, where necessary, issue regulations for the implementation of the PPL. PPL A.78(2) provides that the Minister may issue directives implementing the provisions of the PPL.	Not applicable	Criterion is partially met. The responsibility for maintenance of the secondary legislation is clearly established. The secondary legislation is updated from time to time. However, as discussed above, the PPD on occasion appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD.		See recommendation under 2 (a) (a).

²⁷ Available in English from AGENCY Website: http://www.Agency.gov.et/index.php?option=com_joomdoc&view=documents&path=legislation%2Fdirectives%2Fprocurement%2Fpublic-procurement-directive-englishpdf

²⁸ Available in Amharic from AGENCY Website: http://www.Agency.gov.et/index.php?option=com_joomdoc&view=documents&path=legislation%2Fdirectives%2Fprocurement%2Fprocurement-directive-revised-on-dec-2015-on-focus-of-construction-bids-threshold-amounts-and-experiences-requiredpdf

²⁹ Available in Amharic from AGENCY Website: http://www.ppa.gov.et/index.php?option=com_joomdoc&view=documents&path=legislation%2Fdirectives%2Fprocurement%2F-----pdf

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

2(b) Model procurement documents for goods, works, and services

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
[2(b) Model procurement documents for goods, works, and services]					
(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.	<p>Summary: There are model procurement documents for use for a wide range of goods, works and services including consulting services.</p> <p>Standard Bidding Documents: There are model Standard Bidding Documents (SBD) published by the Agency and available to download from their website for goods, works, consultancy services and non-consultancy services. Public entities. In each case, there are separate SBDs for international competitive bids (ICB) and national competitive bids (NCB). There are also ICB and NCB SBDs for the procurement of goods under framework agreements and for procurement of Information Systems, Textbooks and Health Sector Goods. There is no SBD for procurement of goods where no framework agreement is used.</p> <p>The SBDs include Instructions to Bidders with information on the bidding process including evaluation and award, Statement of Requirements, General and Special Conditions of Contract and Bidding/Contract Forms including the bid submission sheet.</p> <p>The Manual contains specific guidance on the scoping and conduct of specialized procurements, including guidance on criteria, scoring methodologies and evaluation for Textbooks and Manuscripts (Appendix 7.1), Information Systems (Appendix 7.2), Pharmaceuticals and Vaccines (Appendix 7.3), and Vehicles and Spare Parts (Appendix 7.4)</p> <p>Standard forms for bid opening and evaluation: In addition, there are standard templates covering invitation to bid, bid opening and evaluation; including a bid opening checklist, minutes of bid opening, report on bid submissions and bid evaluation report. There is also a sample letter of notification of award. These are included in the Manual at Appendix 8.</p> <p>INCOTERMS and Insurance: The Manual also includes a copy of INCOTERMS and related guidance as well as guidance on insurance (Appendix 10).</p>	Not applicable	Criterion is met.		<p>The SBDs, which were prepared in 2011, need to be regularly reviewed and updated as needed.</p> <p>All SBDs should be available on the PPA's website.</p>
(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.	<p>PPL A.37 sets out the mandatory content of the Bidding Documents.</p> <p>PPD A.16 provides that public bodies must use the standard bidding documents prepared by the Agency. Procurement Units have some flexibility as to how they use the SBDs (see PPD A.16.3) but they must ensure that the bidding document incorporates the contents listed in the PPL and PPD. The contents listed in the PPD are detailed.</p>	Not applicable	Criterion is met.		
(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	<p>PPL A.15(4) Functions of the Agency: provides that the Agency is responsible for preparing, updating, and issuing authorized versions of the Standard Bidding Documents, procedural forms, and other attendant documents.</p>	Not applicable	Criterion is partially met. The SBDs prepared in 2011 are not updated regularly.		<p>The SBDs, which were prepared in 2011, need to be regularly reviewed and updated as needed.</p> <p>All SBDs should be available on the PPA's website.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

2 (c) Standard contract conditions

Assessment criteria [2 (c) Standard contract conditions]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	The SBDs include standard contract conditions for works, goods, consultancy services and non-consultancy services contracts. There are both general conditions of contract and special conditions of contract. PPL A.37 Bidding Documents requires the bidding documents used by public bodies to include the general and specific conditions of contract. PPD 16.3.1 mandates use of the SBDs by public bodies. PPD 16.3.2 provides that public bodies must include the general conditions of contract [prepared by the Agency] in bidding documents without making any changes.	Not applicable	Criterion is met.		
(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	The standard general contract conditions contain provisions which are consistent with internationally accepted practice including defining the parties to the contract, their respective obligations, assignment and sub-contracting, contract changes, payment provisions, liability, dispute, and termination. PPD A.29.4 Contract amendments: The drafting in the procurement Directive is too wide. It has the potential to be interpreted widely to the detriment of competition. The manual does require approval from the head of the public body.	Not applicable	Criterion is met. The provision on contract amendments and price adjustment are broadly drafted and have the potential to be interpreted widely, to the detriment of competition. However, the assessment shows that during the last three years covered by the assessment, except for one public body, the value of amendments was insignificant.		Amend the provisions on contract amendments and price adjustment for more precision and avoidance of unjustified discretion in their application.
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	The standard contract conditions are an integral part of the SBDs (PPL A.37, PPD A.16.3.2) which are included in the Bidding Documents issued to candidates. Charge for bidding documents: Public bodies may charge candidates for bidding documents at a price not exceeding the cost of reproduction and delivery of those documents to the candidate (PPL A.38(1)). Where appropriate the public body may make the bidding documents available free of charge.	Not applicable	Criterion is met.		

2 (d) User's guide or manual for procuring entities

Assessment criteria [2 (d) User's guide or manual for procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.	The Federal Public Procurement and Property Administration Agency ("Agency") publishes Manuals , including the Public Procurement Manual (December 2011), Manual on Public Procurement Complaint Procedure (April 2011) and Manual on the use of Framework Agreements (May 2011). The Public Procurement Manual is comprehensive.	Not applicable	Criterion is partially met. The Public Procurement Manual elaborates on the procurement procedures process but in some cases, it expands upon provisions in the PPL or PPD or introduces provisions which are properly placed in primary or secondary legislation.		The Public Procurement Manual should be aligned with the PPL and the PPD.
(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	PPL A.78(3) provides that the Agency shall issue manuals. The PP Manual has not been updated.	Not applicable	Criterion is partially met. The responsibility for maintenance of the Manual is clearly established. The Manual has not been updated. The Manual appears to elaborate on the provisions to expand on the PPL and PPD. There is not always full alignment between the Manual, and the PPL and the PPD.		The Manual should be aligned with the PPL and the PPD and should be updated.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

3(a) Sustainable Public Procurement (SPP)

Assessment criteria [3(a) Sustainable Public Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	No evidence of a policy/strategy in place to implement SPP in support of broader national policy objectives. The elements of SPP are reflected in fair terms of contracts, and by providing opportunities for small and medium-sized enterprises by preferential schemes or by supporting training and skill development.	Not applicable	Criterion is not met. There is no evidence of a policy/strategy in place to implement SPP in support of broader national policy objectives. The elements of SPP are reflected in fair terms of contracts, and by providing opportunities for small and medium-sized enterprises by preferential schemes or by supporting training and skill development.	✓ Yes	Develop a policy for promotion of sustainable procurement in accordance with the country Transformation and Growth Agenda.
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalize, facilitate and monitor the application of SPP.	No evidence of SPP implementation plan.	Not applicable	Criterion is not met. See gaps under 3 (a) (a).	✓ Yes	See recommendation under 3 (a) (a).
(c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental, and social criteria) to be incorporated at all stages of the procurement cycle.	Summary: the legal provisions address “life-time approach” and environmentally friendly procurement only at a high level – see 3(a) (d) below. There is also an incentive to locally manufactured goods/ local contractors etc. and the MSEs which is intended to provide jobs to young graduates – see 1(d)(b) above.	Not applicable	Criterion not met. Sustainability provisions don’t cover all aspects of sustainable procurement and all stages of procurement cycle.	✓ Yes	Develop legal framework allowing for sustainability to be incorporated at all stages of the procurement cycle.
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	Summary: the legal provisions address “life-time approach” and environmentally friendly procurement only at a high level and do not address the issue of well-balanced application of sustainability criteria to ensure value for money. PPL A.5 provides that one of the principles of procurement is to ensure value for money in the use of public funds. PPL A.65 requires heads of public bodies to adopt a “life-time approach” to the management of public property. This means a system which takes into account all associated activities and costs including acquisition, maintenance, consumption, disposal and deletion. Similar general provisions are not included in the PPL in the context of public procurement. PPD A.9(1)(f) requires a public body, when identifying its procurement needs, to take into account that “...the procurement need is environmentally friendly”. (See also Manual at 3.1.3(f)). The Manual contains a little more commentary and guidance on the issue of value for money and using a lifetime approach. For example, in the Preface it notes, in the paragraph on “Economy” that the lowest initial price may not equate to the lowest cost over the operating life of the item procured. At 2.7.1 on technical specifications there is reference to characteristics, including environmental performance.	Not applicable	Criterion not met.	✓ Yes	See above.

3(b) Obligations deriving from international agreements

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

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) clearly established	According to article 9(4) of the Constitution of Ethiopia 1994 all international agreements ratified by Ethiopia are an integral part of the law of the land. International agreements and treaties are adopted and ratified as proclamations.		Criterion is met.		

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(b) consistently adopted in laws and regulations and reflected in procurement policies.	<p>Procurement framework does not make mention to any international agreement or obligations arising from such agreements. Similarly, it is not clear from where the thresholds for international competitive bidding are coming.</p> <p>Ethiopia is a member to the Agreement Establishing the African Continental Free Trade Area (AfCFTA). Member States of AfCFTA are working on harmonization of public procurement policies. Accordingly, a continental procurement policy is planned to be developed to ensure that procurement policies are in harmony. AfCFTA will develop a model law that can be adopted by member states.</p> <p>Ethiopia signed the United Nation Convention against Corruption (UNCAC) on 10 December 2003 and adopted it through Proclamation no 544/2007 on 26 November 2007. UNCAC calls for:</p> <ul style="list-style-type: none"> Article 9 (1) (a) of UNCAC, calls for the “public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders.” Article 9 (1) (b) of UNCAC, calls for the “establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication.” <p>The African Union Convention on Preventing and Combating Corruption is another international agreement with impact on procurement. Member states of this Convention undertake to adopt legislative measures to create, maintain and strengthen their procurement system and management of public goods and services. The UN Convention for Anti-Corruption provides that parties undertake to establish appropriate systems of procurement based on transparency, competition, and objective criteria to prevent corruption.</p> <p>In addition, Ethiopia is also a member state of the African Union whose headquarters are hosted by Ethiopia in Addis Ababa. As its member. Ethiopia can benefit from the AU’s work, for example of the New Partnership for Africa’s Development (NEPAD) Agency which is the implementing arm for the AU’s Agenda 2063 development strategy. NEPAD’s structure includes several committees that are complemented by various panels such as procurement and recruitment as well as directorate and division level quality assurance task teams.</p>	Not applicable	<p>Criterion is partially met.</p> <p>The international agreements are adopted into laws through proclamation ratifying the agreements. However, the procurement policies are not updated for consistency.</p> <p>While UNCAC calls for a defined level of transparency, obligations stemming from these laws are not fully reflected in the specific laws and implemented in practice. The procurement legislation requires disclosure of procurement notices and contract award above a specified threshold; however, the procurement framework does not mandate adequate publication and disclosure of procurement-related documents, information, and decisions.</p> <p>UNODC carried out a review of the implementation by Ethiopia of the UNCAC Convention. The government is currently preparing a response to the Country Review Report of Ethiopia by UNODC.</p>		Amend the legislation to introduce the level of transparency at a minimum, as recommended for different indicators of this assessment and for compliance with UNCAC, also in practice.

Pillar II. Institutional Framework and Management Capacity

4. The public procurement system is mainstreamed and well-integrated into the public financial management system

4(a) Procurement planning and the budget cycle

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

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	<p>PPL A.22 requires public bodies to prepare an annual procurement plan prepared in accordance with the PPL and a Ministerial Directive. The annual procurement plan must be approved and then communicated to the Agency by a specified date.</p> <p>PPD A.14 permits, but does not oblige, the Agency to publish annual procurement plans/ facilitate publication by making available its website for publication.</p> <p>PPD A.12 sets out the content of the procurement plan. PPD A.5(11) requires the head of the public body to examine and approve the procurement plan to ensure, amongst other things, that it is in harmony with the work program of the public body. The procurement plan must be supported by an action plan for implementation (PPD A.8).</p>	Not applicable	<p>Criterion is partially met</p> <p>There is no requirement and practice of preparing a typical procurement plan (annual or multiyear) to inform the budget preparation process. To a certain extent, information of a procurement planning nature (e.g., cost estimate, market analysis, scheduling), including project feasibility studies, is considered in the budget preparation process through the NPC’s approval of the project. However, that is only a practice rather than being a statutory requirement and</p>		<p>More explicit provisions that demand the integration of budgeting with procurement plan should be considered.</p> <p>Enacting and implementing the Public Project Administration and Management System Proclamation would help to integrate the budgeting and</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>All Federal public bodies use Program Based Budgeting which is informed by the Medium-Term Expenditure and Fiscal Framework (MEFF). The MEFF is prepared for 5 years on an annual rolling basis and updated each year to reflect the changing situation. In the MEFF, program-level discussion is carried out by the Council of Ministers and the budget ceiling for each year is assigned, which is the basis for assigning the budget ceiling for each of the agencies. Based on the ceiling, public bodies allocate resources for their programs and request budget. Though detailed procurement plan is not prepared to inform budget preparation, the MEFF enables consideration of future and existing commitment associated with new and ongoing programs in each of the public bodies. Thus, at the national level, the MEFF provides opportunity to consider a multiyear budget requirement for new and ongoing programs.</p> <p>Considering the projects for the program, budgeting is a bottom-up and top-down process performed through submission of the projects by the public bodies and budget hearings by the Council of Ministers.</p> <p>The National Planning and Development Commission has prepared a Public Project Administration and Management System Proclamation which, during the time of the assessment, was tabled to the House of Peoples Representatives. The purpose of the Proclamation is to govern the selection, preparation, evaluation, and management of Federal Government Public Projects. The proclamation requires public bodies to prepare a detailed feasibility and implementation plan that would be reviewed and accepted by an "Independent Reviewer" sitting in the Commission before a request for budget is passed to the MoF. According to the draft guidance prepared to support the implementation of the Proclamation, the implementation and monitoring plan shall include, inter alia, the financial plan and procurement plan which should be compatible and mutually consistent. In addition, the guidance requires the financial plan to include an updated cost estimate that would be a basis for budgeting and cash management. The new arrangement, if approved and implemented, provides opportunity to integrate the budgeting and the procurement planning process, and ensure that procurement plans are prepared, not to meet a formal requirement, but to support effective project preparation and implementation.</p> <p>Procurement of pharmaceuticals and medical equipment is conducted using the revolving fund managed by the Ethiopian Pharmaceuticals Supply Agency. The Agency procures using the revolving fund and supplies the health facilities against payment that revolves for another round of procurement and supply. The Quantification and Market Directorate collects annual requirements from health facilities through the 19 supply hubs and prepares aggregated annual demand that shows the items, quantity required and budget requirement. The annual budget is reviewed and approved by the Board of Directors. Since the fund is available in the Agency's account, there is no issue related to adequacy of budget demand for which is raised by the Ministry of Health. The Agency indicated that they have not experienced a shortage of funds to meet the demand.</p>		<p>is thus not consistently applied, resulting in budgets that are not realistic.</p> <p>Thus, another gap is that there is no legal requirement to submit a feasibility study, nor its independent verification for quality and realism.</p> <p>The annual procurement plan as required by the PPL and prepared by the Procuring entities is shared to the regulatory agency (PPA) after the budget has been approved and has no influence on the budget decision.</p>		<p>PP process, at least for major projects.</p>
<p>(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).</p>	<p>The Budget Administration Directive requires public bodies to consider financial requirements for ongoing and new programs while preparing their annual budget requirement. In general, the provisions in the Directive are followed by the public bodies. The budget is expressed and committed in a local currency (Birr) while some payments have to be effected in foreign currency which is not freely available in the market. Thus, a payment that involves foreign currency has to go through additional procedure of securing foreign currency though the budget is fully committed. There is no commitment of Forex.</p> <p>Procurement proceedings are generally not commenced without assurance of the necessary budget allocation, a practice enforced by the IFMIS system, which is supposed to block the initiation of procurement without a budget allocation. However, there have been incidental instances in which that IFMIS control has been circumvented (e.g., by entering an amount of 1 Birr to fool IFMIS into authorizing procurement initiation as if there was a budget allocation for the procurement). There has been an indication of an intent to suppress such a practice.</p>	<p>Not applicable</p>	<p>Criterion is met</p>		
<p>(c) A feedback mechanism reporting on budget execution is in place, in</p>	<p>As per the Budget Administration Directive, each Public Body submits its physical and financial plan to the Ministry of Finance before July 30 of each year. The Public Bodies provide quarterly reports within 15 days after each quarter and annual consolidated report before July 30 of the</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p>		<p>Though there is frequent reporting on budget execution (monthly), it is</p>

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Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
particular regarding the completion of major contracts.	<p>next budget year. After closing of the financial year, the Minister of Finance reports on the budget execution to the Parliament on all budget lines.</p> <p>There is a practice in each of the Public Bodies to prepare monthly budget execution report, which includes a report on major contracts (performance, gaps, and challenges), and to submit it to the management.</p> <p>According to the PEFA 2018 Federal report, public bodies prepare monthly detailed budget execution report that includes details by economic classification, source of funds, payables, receivables, transfers, and trial balances. However, the monthly report is not used to analyze monthly budget performance by PB, and also is not aggregated at the national level.</p>		The monthly report is not used to analyze monthly budget performance by PB and also is not aggregated at the national level.		<p>important to improve on the practice in analyzing the reports and taking necessary corrective measures timely.</p> <p>The Ministry of Finance may also consider simplifying the scope of reporting by integrating reporting available from IFMIS with the reports provided by the public bodies.</p>

4(b) Financial procedures and the procurement cycle

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

Assessment criteria [4(b) Financial procedures and the procurement cycle]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	Financial Administration Proclamation 648/2009 A.32 Commitments, provides that no contract or other arrangement shall be entered into by any public body unless there is sufficient unencumbered balance from the budget to discharge any debt incurred during the fiscal year in which the contract or other arrangement is made (A.32(2)). It goes onto provide that for long-term contracting lasting more than one fiscal year, the ascertainment of budget appropriated for the first fiscal year of the project shall be sufficient.	Not applicable	Criterion is not met. The Proclamation provides that no contract shall be signed before certification of availability of budget and not before solicitation of tenders. The legal requirement should look into and address the reputational risk and transaction cost associated with unsuccessful procurement in case of lack of funds at the time of contract signing.	✓ Yes	Consider introducing explicit provision that provides that the soliciting tenders should not take place without certification of budget availability.
(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.*	<p>The Manual 8.12 Payment for Goods and 8.20 Payment for Services, sets out the process to be followed by the Procurement Unit for payments against invoices.</p> <p>The Manual at 8.23 Prompt Payments notes that the public body has responsibility to make payments promptly with periods for payment and penalties for delayed payments specified in the contract. Example: SBD Goods NCB – General and Special Conditions of contract. The period for payment of undisputed invoices is to be specified in the Special Conditions (GCC 32.4/SCC Section 8.D).</p>	As shown below, quantitative analysis on timeliness of payment was carried out based on information collected from contract files. The team was not able to use the source specified in the methodology as PFM system does not generate such information.	Criterion is partially met. During the budget administration process, the MoF requires public bodies to submit payment requests as a condition to release funds. This process allows submission of invoices for payments above Birr 500,000 only once monthly, by 23 rd of the month. This occasionally hampers public bodies' ability to effect payment timely. Not the entire procedure for processing of invoices and authorization of payments is publicly available and clear to potential bidders.	✓ Yes	While the need for submission of payment requests as a condition to release funds is understood as necessary to control planning and use of funds, it is recommended to review and consider streamlining the process to minimize its impact on timeliness of payment.
// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.	<p>In the private sector survey, out of 37 respondents (75 skipped) 38% said that the payment provisions used in the contract follow the law, 30% said that they are not, and 32% were not sure (Q38³⁰).</p> <p>In response to the question whether the time for payment defined in the contract complies with the international good standards, out of 37 respondents (75 skipped) 19% said yes, and 19% said no, and 43% were not sure (Q37). The remaining respondents shared their views indicating that there is a problem with foreign currency, there are delays in payment, advance payment is denied frequently, high cost of L/C.</p> <p>Out of 34 (78 skipped) private sector respondents, 32% say that payments are processed as stipulated in the contract, 56% say that they are not, and 12% are not sure (Q39).</p>	<p>On average, out of 590 reviewed invoices in 10 PEs, only 31% of the invoices were paid on time. The percentage range is from 8% to 57% for a PE.</p> <p>None of the PEs covered in the assessment paid all invoices on time.</p> <p>The best performers are 4 PEs that paid 42 to 70% of the invoices on time.</p> <p>2 PEs out of the 10 paid 10% of the invoices or less on time.</p>			

³⁰ The private sector survey report is included in Volume III of the MAPS Assessment Report. The reference "Q#" is to the question number in the survey report.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

5. The country has an institution in charge of the normative/regulatory function.

5(a) Status and legal basis of the normative/regulatory institution function

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

Assessment criteria [5(a) Status and legal basis of the normative/regulatory institution function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	<p>Summary: Proclamation 1097/2018 on the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (“Proclamation 1097/2018”) A.16(f) provides that the Ministry of Finance has powers and duties to establish procurement and property management system of the Federal Government and supervise implementation of the same.</p> <p>PPL A.12 establishes the Public Procurement and Property Administration Agency (“the Agency”) as an autonomous government organ having its own judicial personality.</p> <p>Proclamation 1097/2018 A.33(7)(c) provides that the Agency is accountable to the Ministry of Finance.</p> <p>PPL A.14 sets out the objectives of the Agency. These include to ensure application of fair, competitive, non-discriminatory and value-for-money procurement, a compliance role, capacity building, working to ensure uniformity and consistency in the public procurement system, and harmonization of the system with internationally recognized standards.</p> <p>PPL A.15 sets out the functions of the Agency. (See 5(b) below)</p> <p>PPL A.16 sets out the powers of the Agency</p> <p>PPL A.20 provides that the budget of the Agency shall be allocated by the Government.</p>	Not applicable	Criterion is met.		

5(b) Responsibilities of the normative/regulatory function

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

Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) providing advice to procuring entities	<p>PPL A.15(1) Agency function: to advise the Federal Government on public procurement policies, principles, and implementation, and provide technical assistance to regional governments and city administrations.</p> <p>The Agency established a help desk that is providing technical support and advice to procuring entities upon demand. However, the legal framework does not specifically provide a mandate to PPA to provide technical support or advice to procuring entities.</p>	Not applicable	<p>Criterion is met.</p> <p>While the legislation framework limits the advisory/support role of the Agency to Federal and regional government and city administrations, the Agency provides this advice to the public bodies through a helpdesk established within the Agency.</p>		Within the Constitution framework, consider coordination of the Federal and Regional public procurement systems and provide support to the Regions.
(b) drafting procurement policies	PPL A.15(1) Agency function: to advise the Federal Government on public procurement policies, principles, and implementation.	Not applicable	Criterion is met.		
(c) proposing changes/drafting amendments to the legal and regulatory framework	PPL A.15(2) Agency function: monitor and report to the Minister, initiate amendment on law and implementation of system improvements	Not applicable	Criterion is met.		
(d) monitoring public procurement	PPL A.15(2) Agency function: to monitor and report to the Minister the performance of the public procurement system.	Not applicable	Criterion is met.		
(e) providing procurement information	Not specifically provided for. However, one of the responsibilities assigned by PPL A.15(13) is to carry out research and surveys.	Not applicable	<p>Criterion is partially met.</p> <p>While the said research and surveys may generate useful procurement information, this is not done on regular basis. The only ongoing program is through measuring Key Performance Indicators (KPI) (please see Indicator 7), albeit that they are not reliable.</p>		Introduce a provision that requires the Agency to collect and provide procurement information.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(f) managing statistical databases	PPL A.15(10) Agency function: to set up, develop, maintain, and update a database that covers the entire spectrum of public procurement and property administration.	Not applicable	Criterion is not met. There is no comprehensive statistical procurement database.		Establish and maintain comprehensive statistical procurement database available to the public.
(g) preparing reports on procurement to other parts of government	PPL A.15(15) Agency function: to submit quarterly and annual reports to the Minister regarding the overall functioning of the public procurement administration and provide such data as the Minister shall request.	Not applicable	Criterion is met.		
(h) developing and supporting implementation of initiatives for improvements of the public procurement system	PPL A.15(2) Agency function: implementation of system improvements PPL A.15(11) Agency function: develop policies and maintain an operational plan on capacity building both for institutional and human resource development	Not applicable	Criterion is met.		
(i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement	PPL A.15(4) Agency function: prepare update and issue SBDs, procedural forms and other attendant documents PPL A.15(11) develop policies and maintain an operational plan on capacity building both for institutional and human resource development. Regulation 184/2010 Public Procurement and Property Disposal Service Establishment Council of Ministers Regulation – A. 6(c) deliver consultancy and training services in relation to procurement to public bodies, public enterprises, regional states and the private sector, and charge fees for such services. As regards the integrity training programs, the responsibility lies with the Ethics and Anti-corruption Commission, which, among others, is responsible for educating citizens and public bodies on integrity and corruption matters. Under each Ministry, there are ethics officers who organize training programs in their respective agencies.	Not applicable	Criterion is met.		
(j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)	PPL A.15(3) Agency function: in collaboration with competent authorities, ensure the setting of training standards, competence levels, certification requirements and professional development paths.	Not applicable	Criterion is met.		
(k) designing and managing centralized online platforms and other e-Procurement systems, as appropriate	Agency: PPL A.31 provides that the Agency shall: conduct a study and submit a proposal concerning an e-GP system and ensure that public bodies, suppliers, and supervising entities develop the necessary capacity. (See e-GP strategy available on Agency website). Regulation 184/2010 Public Procurement and Property Disposal Service Establishment Council of Ministers Regulation. The PPPDS is established to carry out procurement of common user items, goods and services which have national strategic significance as well as large value procurements. Proclamation 1097/2018 confirms the PPPDS as a body accountable to the Ministry of Finance.	Not applicable	Criterion is met.		

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

5(c) Organization, funding, staffing, and level of independence and authority

Assessment criteria [5(c) Organization, funding, staffing, and level of independence and authority]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.	PPL A.12 establishes the Public Procurement and Property Administration Agency (“the Agency”) as an autonomous government organ having its own judicial personality. Proclamation 1097/2018 A.33(7)(c) provides that the Agency is accountable to the Ministry of Finance. The position for the Director General and the Deputy Direct General of the Agency is a high-level political position and is assigned by the Prime Minister of the Federal Government.	Not applicable	Criterion is met. The Agency is accountable and reports to the Ministry of Finance, but there is a lack of transparency as to where the lines of accountability lie beyond that level. This ties in with wider concerns about the general lack of transparency and accountability in the operation of the public procurement system.	✓ Yes	Consider revising the reporting structure of the Agency, for example, on accountability of the Agency to the Parliament, through the Ministry of Finance, by means of annual reporting on functioning of the public procurement system. It is also recommended that there are statutory obligations on the Agency and/or Ministry of Finance to prepare and publish reports on the operation of the public procurement system.
(b) Financing is secured by the legal/regulatory framework, to ensure the function’s independence and proper staffing.	PPL A.18(c) provides that the budget and work plan is prepared by the Agency’s Director General and implemented upon approval. PPL A.20 provides that budget of the Agency is allocated by the Government. There is no specific reference in the PPL to financial autonomy of Agency. During the last three years, the budget for recurring cost and training increased and was not fully utilized due to the vacancies in the PPA.	Not applicable	Criterion is met.	✓ Yes	PPA may review and consider additional sustainable income sources towards their greater financial autonomy.
(c) The institution’s internal organization, authority and staffing are sufficient and consistent with its responsibilities.	PPA is managed by a Director General and one Deputy Director General. The organizational structure includes 4 core and 5 support Directorates, and the IT unit. The Core Directorates are Public Procurement Administration Directorate, Public Property Administration Directorates, Public Procurement & Property Audit & Follow up Directorate, and Public Procurement and Property Disposal complaint Directorate. As per the approved staff plan, the agency total work force should be 206 while the existing staff is only 138. 30% positions are vacant. The size of the core staff is comparably small, which is about 40% of the total staff both as per the plan and existing. The assessment noted that the Agency has not been able to attract and retain qualified experts due to the salary scale which is less than as compared to other ministries and procuring entities. The salary scale for the highest-grade technical expert in the Agency is 25% less than the salary scale paid to the highest-grade technical expert in the MoF, and 20% less than the salary scale in one of public bodies. Similarly, the salary scale for the Department Directors is lower by 17% and 10% of the salary scale in one of public bodies and MoF, respectively. As a result, the regulatory body developed less capacity to attract and retain qualified experts when compared to the public bodies it is supposed to regulate, advise, and technically support. According to the PPL, the agency has multiple responsibilities, and the key ones include policy advisory, procurement monitoring, technical support, and capacity building etc. However, these key responsibilities are not supported by adequate management structure and support. Most of the functions except procurement audit, are assigned into a single Directorate (Public Procurement Administration Directorate) in a flat structure. This structure does not allow the focus and management attention that should be granted to the key responsibilities of the agency. For instance, the Procurement Administration Directorate is responsible for carrying out research related to procurement markets, policies etc. Half of the job positions in the Directorate are for undertaking research but the assessment noted that no research has been undertaken and no research papers have been produced. The Proclamation No. 970/2016 to Amend the Federal Government of Ethiopian Financial Administration Proclamation through the Article 3 (2) empowers the MoF to decide on the organization of financial administration of departments within the public bodies in consultation with the concerned public body and the Ministry of Public Service and Human Resource Development. Based on the definition 33 in the Article 2 of the Proclamation this includes procurement departments. “Organization” is construed to include job descriptions, qualification, salary scale, etc.	Not applicable	Criterion is not met. PPA has no adequate organizational structure and staffing to deliver its responsibilities. It does not have the capacity to effectively lead and improve the public procurement system in Ethiopia. The Agency’s key functions should be supported by a dedicated management structure and qualified staffing.	✓ Yes	Restructure PPA including staffing requirement to allow the agency to deliver its responsibilities with a focus on key ones.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

5(d) Avoiding conflict of interest

Assessment criteria [5(d) Avoiding conflict of interest]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations										
<p>(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.</p>	<p>Conflicts of interest – institutional</p> <p>The objectives, functions and activities of the Agency are wide-ranging, making the Agency a powerful entity within the Ministry of Finance. At the same time, this mix of duties and functions are incompatible in many respects, and, in absence of clear rules on separation of duties, the system/structure currently in place is insufficient to avoid conflicts of interest.</p> <p>More specifically, the Agency considers and decides on requests for use of non-standard procedures (PPL A.15(5)) but also has responsibility for auditing public bodies' compliance with the procurement rules (PPL A.15(9)) and enforcement (PPL A.15(14)); the Agency is responsible for operating and maintaining the supplier's list (PPL A.15(6)) but also for review and decisions on complaints concerning the conduct of suppliers (PPL A.15(7)), maintenance of the suspension/debarment list (PPL A.15(1)) and enforcement of non-participation of suspended (debarred) suppliers (PPL A.15(17)); the Agency is involved in procurement processes – advice and assistance, authorization but it also provides the office facilities and technical support to the complaints Board and follow-up on the implementation of Board decisions (PPL A.15(16)).</p> <p>Rules of Ethics and Conflicts of interest - personal PPL A.32 sets out basic Rules of Ethics in Public Procurement, subject to details to be specified in a Ministerial Directive.</p> <p>PPL A.32(1)(a) requires persons engaged in public procurement to observe the obligation to notify any actual or possible conflicts of interest.</p> <p>PPD A.34 expands upon the requirements in the PPL and includes a provision covering how a public body should respond and investigate a position involving a conflict of interest.</p> <p>The Manual (1.2.2.5) includes a definition of “conflict of interest and provides examples of what may constitute a conflict of interest. There are specific provisions on conflict of interest in the context of consultancy services. Appendix 6 concerns professional ethics in public procurement and includes commentary on conflicts of interests, and how individuals and public bodies should behave in that context.</p> <p>There is a standard form “Statement on Confidentiality and Non-Existence of Conflict of Interest” which all members of the Bid Opening Team must sign. (Manual Appendix 8.8)</p>	<p>In the private sector survey, 72 respondents (40 skipped), who operate at the Federal level, responded as follows (Q53):</p> <table border="1"> <caption>Q53: Conflicts of Interest</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>no real or perceived conflict of interest</td> <td>10%</td> </tr> <tr> <td>conflicts of interest rarely appear to be a problem</td> <td>35%</td> </tr> <tr> <td>conflicts of interest are obvious</td> <td>45%</td> </tr> <tr> <td>abundant conflicts of interest</td> <td>10%</td> </tr> </tbody> </table> <p>As shown on the above graph, 56% of respondents think that the conflicts of interest are obvious or abundant. 44% of respondents think that the regulatory institution at the Federal level is free from conflict of interest or rarely it is a problem. It is noted, though, that some respondents also operate in the Regions and their response may have also considered regulatory institutions across the country.</p> <p>Out of 64 respondents, 56% responded that they experienced a situation where the regulatory institution faced a conflict of interest (Q54) giving the following reasons (Q55):</p> <ul style="list-style-type: none"> Unclear separation of duties between institutions: 46% Unclear competencies of officials: 31% An official positions used for private advantage: 60% An official's family or other personal relations: 25% An official's political affinities: 38% <p>(more than one answer was allowed)</p>	Response	Percentage	no real or perceived conflict of interest	10%	conflicts of interest rarely appear to be a problem	35%	conflicts of interest are obvious	45%	abundant conflicts of interest	10%	<p>Criterion is not met.</p> <p>The functions and duties of the Agency are wide-ranging with insufficient separation of duties to avoid actual or perceived conflicts of interest. For example, the Agency is given the functions of auditing (section 15(9)) and monitoring (section 15(2)). Whilst auditing would normally feed into a monitoring function, the monitoring function encompasses a much broader need for system measurement and analysis.</p> <p>No other authority has the mandate or capacity to carry out procurement system monitoring but there are other authorities responsible for auditing who have more staff, more capacity, and more knowledge of auditing in general. They may not have sufficient capacity in terms of procurement auditing but that can be learned or provided.</p> <p>There is a lack of clarity about the scope of mandate of the Agency and Supreme Audit Institution (SAI) on these common functions, which creates uncertainty of their reports and follow up actions by the public bodies.</p>		<p>When undertaking the recommendations related to the Complaint Handling Board (CHB) and restructuring the organizational structure to ensure delivering PPA's responsibilities with a focus on key ones, consider the need to avoid actual or perceived conflicts of interest.</p> <p>Consider review and clear definition of responsibilities among the institutions for best efficiency and avoiding overlap.</p> <p>For PPA, priority may be given preferably to the monitoring function which will also require new approaches, capacity, and possibly tailored software to allow for the collection and analysis of data and production of system reports.</p>
Response	Percentage														
no real or perceived conflict of interest	10%														
conflicts of interest rarely appear to be a problem	35%														
conflicts of interest are obvious	45%														
abundant conflicts of interest	10%														

6. Procuring entities and their mandates are clearly defined

6(a) Definition, responsibilities, and formal powers of procuring entities

The legal framework provides for the following:

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Procuring entities are clearly defined.</p>	<p>PPL A.2 Defines a “public body” (procuring entity) as “any public body, which is partly or wholly financed by the Federal Government budget, higher education institutions and public institutions of like nature.”</p> <p>“Public procurement” means procurement by a public body using public fund.</p> <p>“Public fund” means any monetary resource appropriated to a public body from the Federal Government treasury or aid grants and credits put at the disposal of the public bodies by foreign donors through Federal Government or internal revenue of that public body.”</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>See gap analysis at 1(a)(b)</p> <p>A list of all public bodies subject to the PPL is not published in the Agency's website.</p>		<p>It should be considered that the PPL provides a more complete and elaborate definition of “public body.”</p> <p>Also, subject to the PPL, publication of the full list of public bodies should be considered. This would already increase the certainty on the scope of entities</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>While the definition of “public body” could arguably encompass a wide range of entities, it is unclear as to the coverage of utilities, public enterprises/state owned enterprises, resulting in different perception or practical realities.</p> <p>Also, a list of all public bodies subject to the PPL is not published anywhere.</p> <p>See notes at indicator 1(a)(b) for more detailed discussion.</p>				included within the scope of the PPL.
(b) Responsibilities and competencies of procuring entities are clearly defined.	<p>There is no single list of responsibilities and competencies of procuring entities, but their responsibilities and competencies are set out in the PPL.</p> <p>The Responsibilities of the Heads of Public Bodies are listed at PPL A.8. The position of Head of Public Body itself is not defined in the PPL.</p> <p>The Duties and Responsibilities of the Procurement and Property Administration Unit within the public body are listed at PPL A.9, the Procurement Endorsing Committee at PPL A.10.</p> <p>PPL A.11 Accountability: confirms that heads of public bodies, heads and staff of procurement administration units and endorsing committees are accountable for their actions.</p>	Not applicable	Criterion is met.		Consider defining the term “Head of Public Body.”
<p>(c) Procuring entities are required to establish a designated, specialized procurement function with the necessary management structure, capacity and capability.*</p> <p><i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities with a designated, specialised procurement function (in % of total number of procuring entities). Source: Normative/regulatory function.</i></p>	<p>The PPL requires Heads of public bodies to establish: (1) a Procurement and Property Administration Unit whose duties and responsibilities are listed at PPL A.9. (2) a Procurement Endorsing Committee (PEC) whose duties and responsibilities are listed at PPL A.10.</p> <p>A.11 of PPL “Accountability” provides that staff from the procurement unit staff, head of such unit and PEC shall be accountable for their actions in accordance with the PPL and PPD.</p> <p>The accountability appears to stop at the technical level of the public body.</p>	All 186 Public Bodies at the Federal level have a designated, specialized procurement function.	<p>Criterion is partially met.</p> <p>Capacity and capability of the procurement function of public bodies vary and in many cases are insufficient.</p>		Carry out regular audit to assess structure, capacity and capability of the procurement function of the public bodies to discharge their responsibilities.
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.	<p>The PPL A 10 provides the authority to approve procurement decisions to the Bid Endorsing Committee on all procurements above the specified threshold in the directive. According PPD A 24/2 (amended) the public body requires the approval of the bid endorsing committee for procurement of Works Birr 500,000, Goods Birr 200,000, Consultancy Birr 120,000 and Services Birr 150,000. The threshold is consistent with the threshold for use of National Competitive Bidding. The Head of the public body or his/her delegate has the authority to approve the procurement below the specified threshold. Normally, the Head of public bodies delegate this authority to the Head of the Procurement Directorate which is a middle-level management structure in public bodies. Thus, lower-level units do not have procurement delegation.</p>	Not applicable	Criterion is met.		
(e) Accountability for decisions is precisely defined.	<p>PPL Article A.11 specifies accountability for decision making. The accountability provision is limited to procurement staff or the Head appointed to lead procurement and property administration units and members of the procurement endorsing committee in public bodies. Accountability for the Heads of public bodies is defined in the Regulations establishing these public bodies. Other actors who are not covered in the accountability provision.</p>		<p>Criterion is partially met.</p> <p>Accountability provision is limited to few actors and doesn’t include all actors that are directly or indirectly involved in procurement.</p>		Consider expanding accountability provisions to include all actors that are directly or indirectly involved in procurement decisions.

6(b) Centralized procurement body

Assessment criteria [6(b) Centralized procurement body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has considered the benefits of establishing a centralized	Yes. Please refer to sub indicator 6(b) (b), below.	Not applicable	Criterion is met.		

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [6(b) Centralized procurement body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
procurement function in charge of consolidated procurement, framework agreements or specialized procurement.					
(b) In case a centralized procurement body exists, the legal and regulatory framework provides for the following: <ul style="list-style-type: none"> • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is precisely defined. • The body and the head of the body have a high-level and authoritative standing in government. 	<p>Chapter XI of the PPL provides for “Special Procurement”, which includes: (i) Large Value Procurement³¹ and (ii) Procedure for Framework Contract.³² For that purpose, the PPL requires establishment of a central body. More specially:</p> <p>A.60(1) provides that a central body shall be established, by Regulation of the Council of Ministers, to be in charge of large value procurements having national significance, and of procurement of supplies for which a demand is shown by more than one public body.</p> <p>PPL A.61(2)(c) provides that the central body set up in accordance with PPL A.60(1) shall conclude and administer framework contracts in the manner prescribed in the PPL and Ministerial Directive.</p> <p>Regulation 184/2010 Public Procurement and Property Disposal Service Establishment Council of Ministers Regulation establishes the Public Procurement and Property Disposal Service (PPPDS) to carry out procurement of common user items, goods and services which have national strategic significance.</p> <p>PPD A.27 sets out details on the special procurement of common user items by the PPPDS using framework agreements and there are related obligations on public bodies to inform and cooperate with the PPPDS.</p> <p>Manual on the Use of Framework Agreements: The Agency has issued a Manual on the Use of Framework Agreements, May 2011.</p> <p>The centralized procurement body is established by the Council of Ministers’ Regulation no 184/2010 and referred as Public Procurement and Property Disposal Service (PPDS).</p> <p>It is funded by budget allocated from government, as indicated on article 12 of the Regulation.</p> <p>PPDS is managed by one Director General and two Deputy Director Generals and has 15 Directorates.</p> <p>Out of the 15 directorates, 11 are answerable to the Director General. The Deputy Director Generals lead the following branches:</p> <ol style="list-style-type: none"> 1. Procurement and contract administration branch, which administer two directorates under it (namely, procurement directorate and contract administration directorate), and 2. Market research and property disposal branch, which administer two directorates under it (namely Market research directorate and property disposal directorate) <p>The responsibility, decision making powers, accountability and level of the head are clearly defined in the regulation and it has high level standing in government as Head of public body.</p>	Not applicable	Criterion is met.		
(c) The centralized procurement body’s internal organization and staffing are sufficient and consistent with its responsibilities.	<p>The Centralized procurement body has adequate organizational structure commensurate with its responsibilities. It is managed by the Director General and two Deputy Directors General, one focusing on the management of Procurement and Contract Administration, and the other one focusing on Property Administration functions. Under each function, there are two Directorates and Teams which are responsible in managing the core functions of the organization. It is also supported by 11 non-core directorates providing support services in different areas HR, Finance, Legal, IT etc.</p> <p>According to the structure and staff plan approved in August 2018, the procurement and contract administration function is assigned with more than 100 staff including technical experts in different disciplines.</p>	Not applicable	Criterion is met.		

³¹ A.60(1) envisages establishment of a central body in charge of procurement of “large value having national significance of supplies for which a demand is shown by more than one public body and sale of public property to be disposed of...”

³² A.61.1 provides that “framework contracts may be used to fulfill similar procurement requirements of various public bodies or recurrent procurement requirements of a public body.”

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

7. Public procurement is embedded in an effective information system

7(a) Publication of public procurement information supported by information technology

The country has a system that meets the following requirements:

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.</p>	<p>There is no system used for publication of procurement information. However, PPA's website is used for purpose of publishing important procurement information for the use of the public. The procurement documents, which include the Proclamation, Directive, and SBDs, are available on the Agency's website. Also, the Directive Article 6 (5) and (6) requires publication of bid notices and contract award, and Article 14 says that PPA may publish procurement plans on the Agency's website.</p> <p>However, the Agency's website is not stable and fully functional in most of the time. It also lacks important information including key procurement information, such as amendments to the directives, circulars etc. The procurement plans are not published.</p> <p>The website provides a template and allows PEs to upload information including Bid Advertisement and to complete information on the different procurement stages. The public procurement agency has also issued a user manual for procuring entities on the use of the system.</p> <p>However, the information on the website provides only contract information and is not up to date. Thus, the information posted on the website is not complete, timely, and the website is not accessible to all interested parties to enable understanding the procurement processes and outcome. In addition to the Agency's website, some of the PEs uses their own websites for publication for procurement information though incomplete.</p>	Not applicable	<p>Criterion is partially met.</p> <p>Up to date and complete information on procurement is not accessible. The PPA's website is not fully functional both in terms of capacity and use.</p>		Revamp PPA's website as a central source of information on procurement. Ensure that the website is managed, kept up to date and resourced.
<p>(b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.</p>	<p>There is no integrated information system or centralized online portal that provides up to date information. The agency's website, which is used as a standalone system, is used only to provide basic procurement information to the public. Besides, the website does not provide complete and timely information and is not accessible and fully functional.</p>	Not applicable	<p>Criterion is not met.</p> <p>There is no integrated information system or centralized online portal that provides up to date information.</p>		Integrate PPA's website with regions' websites to ensure that the website provides complete and up to date information regarding public procurement in the country.
<p>(c) The information system provides for the publication of: *</p> <ul style="list-style-type: none"> • procurement plans • information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions • linkages to rules and regulations and other information relevant for promoting competition and transparency. <p>// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment</p>	<p>The procurement Directive (Article 14) allows the Agency to compile annual procurement plans submitted by PEs and publish on its websites or facilitate PEs to publish their procurement plans on the Agency's website. But the provision is discretionary and does not oblige the Agency or PEs to publish procurement plans. The assessment noted that neither the Agency nor the PEs publish procurement plans.</p> <p>Notices of procurement opportunities at the Federal level in most cases are published by the public bodies on their websites and in a newspaper. Only some are published on the PPA's website.</p> <p>The procurement rules and other information relevant for promoting competition and transparency are not complete on the PPA's website.</p>	<p>While there is no centralized online portal to publish procurement information, assessment was made of what procurement information is published through other means.</p> <p>The quantitative assessment has shown that only 2 out of the 10 PEs publish procurement plans on their websites.³³ Thus, more than 80% of the PEs do not publish procurement plans either on the PPA's website or their own website. In terms of contracts, it is only 2% of the procurement contracts reviewed under the assessment that were supported with a procurement plan that was published.</p> <p>79% of procurement opportunities were published (in a national newspaper or PE's website). This is measured against all contract, using different procurement methods including those that do not require publication (DC, RFQ). For the methods that require publication (NCB, ICB) the requirement is believed to be complied, though in several</p>	<p>Criterion is partially met.</p> <p>The information system does not provide for the publication of procurement plans and information related to specific procurements. There is no centralized information system used for publication of procurement opportunities, procurement methods, contract awards and contract implementation. The Agency's website is not fully functional, up to date and dependable.</p>		Introduce legal provision requiring the publication of key procurement information including PP, decision on procurement complaints, contract award information, etc., and ensure that the information system provides for publication of this information.

³³ Publication of Procurement Plans is not required.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>critterion (c):</p> <ul style="list-style-type: none"> • procurement plans published (in % of total number of required procurement plans) • key procurement information published along the procurement cycle (in % of total number of contracts) : • invitation to bid (in % of total number of contracts) • contract awards (purpose, supplier, value, variations/amendments) • details related to contract implementation (milestones, completion and payment) • annual procurement statistics • appeals decisions posted within the time frames specified in the law (in %). <p>Source: Centralized online portal.</p>		<p>percentage points the documents of publication could not be found.</p> <p>At the time of the assessment, 7 bid announcements that belong to 2 PEs were posted in PPA’s website. The status of the old bid announcement was not updated and all bid announcements including those advertised years back show that they were under “Evaluation” stage. This shows that even for IFB, PPA’s website is not complete and up to date. The below link opens the page for bid announcement in PPA’s website. http://www.ppa.gov.et/index.php</p> <p>In none of the PEs visited or PPA, there is a practice of publishing complete key procurement information along the procurement cycle such as contract award, contract implementation information, appeals decisions. No annual procurement statistics are published.</p>			
<p>(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).</p>	<p>There is no comprehensive information on the agency’s website. Except for the few PEs that publish bid opportunities on their own websites (2 out of the 11 assessed), all PEs do not publish bidding documents, evaluation reports contract documents or contract implementation information.</p>	<p>Not applicable</p>	<p>Criterion is not met.</p> <p>There is no system for publishing comprehensive procurement information in support of open contracting.</p>		<p>Revamp PPA’s website as a central source of information on procurement. Ensure that the website is managed, kept up to date and resourced.</p>
<p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e): - Share of procurement information and data published in open data formats (in %). Source: Centralized online portal.</p>	<p>Information is not published in an open and structured in a machine-readable format.</p>	<p>No procurement information is published in open data format.</p>	<p>Criterion is not met.</p> <p>There is no system for publishing comprehensive procurement information in open data format.</p>		<p>In addition to the above recommendation, ensure that the published data are available in an open data format.</p>
<p>(f) Responsibility for the management and operation of the system is clearly defined.</p>	<p>There is no centralized portal. PPA’s website is managed by PPA’s IT team.</p>		<p>Criterion is not met.</p> <p>There is no centralized portal.</p>		<p>Develop a central source of information on procurement. Ensure that the website is managed, kept up to date and resourced.</p>

7(b) Use of e-Procurement

Assessment criteria [7(b) Use of e-Procurement]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) E-procurement is widely used or progressively implemented in the country at all levels of government.*</p>	<p>Not met</p> <p>The establishment of e-Procurement system is a work in progress and not yet completed. PPA with the support from the PFM standalone project is preparing a pilot implementation which has not yet started. It has been delayed because of Covid-19 pandemic.</p>	<p>Not applicable because there is no e-procurement system yet in operation.</p>	<p>Criterion is not met.</p> <p>E-procurement is not yet introduced.</p>		<p>Introduce E-procurement system as urgently as possible.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [7(b) Use of e-Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement - number of e-Procurement procedures in % of total number of procedures - value of e-Procurement procedures in % of total value of procedures Source: e-Procurement system.</i>					
(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.	The e-GP readiness assessment was carried out in March 2018. The assessment identified 9 key components of e-GP readiness and include the Human Resource and Management capability as one of the determining factors for the successful implementation of e-GP. The score against this specific indicator shows that the country has the required skill and capacity of human resource and management capability to implement e-GP. However, since the e-GP has not yet been implemented, there is no evidence that shows that the government officials have the capacity to plan and implement the e-GP system.	Not applicable	Criterion is partially met. As part of the e-GP implementation, adequate training should be provided timely to Government officials and experts to have the capacity to plan, develop and manage e-Procurement system.		Ensure adequate training to Government officials and experts. See also the summary for the criterion 7 (b) (e).
(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.	The e-GP readiness assessment was carried out in March 2018. The assessment identified 9 key components of e-GP readiness and include the Human Resource and Management capability as one of the determining factors for the successful implementation of e-GP. The score against this specific indicator shows that the country has the required skill and capacity of human resource to implement e-GP. However, since the e-GP has not yet been implemented, there is no evidence that proves staff have adequate skill to use e-procurement system reliably and efficiently.	Not applicable	Criterion is partially met. As part of the e-GP implementation, adequate training should be provided timely to Government officials and experts to have the capacity to plan, develop and manage e-Procurement system.		See above.
(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.* * Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d): - bids submitted online (in %) - bids submitted online by micro, small and medium-sized enterprises (in %) Source: e-Procurement system.	E-procurement system has not yet been implemented.	Not applicable because there is no e-procurement system yet in operation.	Criterion not met E-procurement system not yet implemented		Implement E-procurement system.
(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.	The Government adopted an e-procurement roadmap based on an e-procurement readiness assessment carried out in March 2018. Currently, the E-government system implementation is progressing. The government has started the initiative with preparation of implementation strategy and road map. The strategy recommended to embrace and enhance a home-grown system developed by the initiative of Ministry of Communication and Information Technology (MCIT). Having a clear strategy and a roadmap, the government established the required structures for implementation such as e-GP Unit, Steering Committee, and Technical Committee. With the structures in place, the government signed a contract with a system developer to enhance and pilot the system in selected six pilot agencies. The government also secured service for change management with an objective of anticipating and managing change that comes with a new way of doing business. Currently, the software development and testing is under finalization stage with target to start piloting activities by June 2020. The pilot will take place in seven high spending federal institutions that consume significant amount of government budget through procurement.	Not applicable	Criterion is met		

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [7(b) Use of e-Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>The change management is also progressing in parallel with trainings on change management, communication, social accountability, and advocacy trainings delivered to relevant stakeholders. Furthermore, hardware for datacenter is being delivered, call center facility is being constructed and hiring staff for the call center underway. The progress so far is encouraging, and the preparation of piloting is on track to be a success.</p> <p>The government is considering preparation of Rollout Strategy of e-Government system to other Federal Institutions and ultimately across the country. The strategy is expected to address the roadmap of rollout of the system as well as cost of rollout and source of funds.</p>				

7(c) Strategies to manage procurement data

Assessment criteria [7(c) Strategies to manage procurement data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.	<p>PPA introduced a procurement performance measurement system using key performance indicators (KPIs). It is an excel format that captures real-time procurement data starting from planning until contract completion. The implementation of the KPI system in federal implementing agencies is limited and has not progressed as planned. The progress at regional level is relatively better due to the incentive provided through the World Bank-financed PforR project that identified the establishment and use of the system as a disbursement-linked indicator with attached resources.</p> <p>PPA undertook implementing the KPI system in seven big spending agencies at the federal level, but the implementation has not been successful. The data collected through the KPI system has not been reliable and there was no practice of using the reports for the purpose of decision making in procurement. The KPI system lacks the commitment and support from the higher officials, and its implementation is driven by the development partners.</p> <p>In addition to the KPI system, PPA enhanced its website to include a feature that collects procurement information from procuring entities. Each procuring entity is required to register itself and get account for uploading information required by the template embedded in the web-based system. The system allows procuring entities to upload procurement opportunities (Bid Advertisement) and to complete information on the different procurement stages using the imbedded format.</p> <p>The PPA has also issued User manual for procuring entities on the use of the system. However, the system is largely used to collect and disclose contract data instead of capturing the procurement data on the full procurement cycle. Besides, the information available on the website not up to date.</p>	Not applicable	Criterion is partially met. There is no system that supports the collection, analysis and use of procurement data. The procurement performance measurement system using Key Performance Indicators has not been rolled out successfully and is not reliable. It could provide better result if it is integrated with the e-procurement system that is under development.		Integrate the KPI system with the e-procurement system, and develop a system to provide real time data collection, analysis, and reporting capability.
(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.	In theory, the KPI system can manage data for the entire procurement process and allows analysis of trends. But the system has not been widely and successfully implemented. Thus, the system is not used in practice to analyze trends, efficiency, economy of procurement and compliance.	Not applicable	Criterion is partially met. There is no system that supports the collection, analysis and use of procurement data. The procurement performance measurement system using Key Performance Indicators has not been rolled out successfully and is not reliable. It could provide better result if it is integrated with the e-procurement system that is under development.		Integrate the KPI system with the e-GP and develop a system to provide real time data collection, analysis, and reporting capability.
(c) The reliability of the information is high (verified by audits).	The KPI system was supposed to capture data in real-time basis which is not implemented. The PEs collect the procurement information from contract files after the fact only, for purpose of producing a report to satisfy the project commitment. As a result, the data has not been reliable or consistent, and the system has not delivered the intended purpose of serving as a management tool to improve procurement system and performance.	Not applicable	Criterion is not met. The limited KPI system for collecting data on the procurement has not been reviewed or audited by an external party.		As part of developing the data collection, analysis, and reporting system, include the data verification and audit mechanism.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [7(c) Strategies to manage procurement data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(d) Analysis of information is routinely carried out, published and fed back into the system. *</p> <p><i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):</i></p> <ul style="list-style-type: none"> • total number and value of contracts • public procurement as a share of government expenditure and as share of GDP • total value of contracts awarded through competitive methods in the most recent fiscal year. <p>Source: Normative/regulatory function/E-Procurement system.</p>	<p>Analysis of the data collected through the KPI system is done only for the purpose of meeting the Disbursement Linked Indicator (DLI) requirement in the World Bank-financed PforR program. It is not fully integrated into the procurement system and analysis of information is not routinely carried out. There is no practice of publishing the reports or using the reports for management decision making purpose to improve the system.</p>	<p>The team was not able to access any official report or analysis showing public procurement as a share of government expenditure and as share of GDP.</p> <p>However, the procurement performance report (EFY 2010 (2018/2019) shows that 92.2% of the total value of contracts were awarded through open competitive methods.</p>	<p>Criterion is not met. KPI is not integrated in the procurement system and lacks ownership and support to rollout and use it.</p>		<p>Automate the system for real-time data collection until integration into the e-GP system and monitor performance as part of regular audit/review, and publish the reports.</p>

8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria [8(a) Training, advice and assistance]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) substantive permanent training programs of suitable quality and content for the needs of the system.</p>	<p>There are different trainings provided by different players. The following three permanent training programs are covered in this assessment.</p> <ol style="list-style-type: none"> 1. PPA established a procurement training program that certifies trainees at three levels: Essential, Basic, and Advanced. The training curriculum is developed based on the competency framework established in accordance with the needs assessment conducted in 2008. It also covers the Specialized level which is not yet supported with training modules and pursued. The training is provided by the PPA in collaboration with the Civil Service University. 2. PPA also provides training to SMEs; see also Indicator 10(a)(b) concerning capacity building provided to SMEs. 3. The MoF provides PFM training in collaboration with the training institutes called “the Institutionalized PFM Training.” One of the modules is dedicated to procurement. The training focuses on creating awareness of the procurement rules and regulations and is regularly provided to procurement staff and officials involved in procurement decisions. As per the records from MoF, by the time the assessment was conducted, 15,731 procurement staff were trained through the PFM institutionalized training. <p>The Ethiopian Management Institute conducts a generic procurement and property administration training in 3 rounds every year. Each year the institute provides the training to 25 trainees in each of the 3 rounds. Hence, the institute provides the generic procurement and property administration training for about 75 trainees. The content of</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>There are different procurement trainings. However, there is no mechanism to assure the quality and suitability of the training programs. Besides, the PPA, to fill the gaps, manages training programs like competence trainings for which the Proclamation does not provide mandate, and PPA has no appropriate structure and competence. This affects the quality and sustainability of trainings.</p> <p>The other gap associated with training is that training programs are not integrated with job requirements and are not considered for placement or promotion. Thus, the attractiveness and sustainability of the trainings programs is highly undermined.</p>		<p>Consider updating the training strategy document and the roadmap to reflect current developments and lessons and address the challenges to establish skill-based sustainable training program which is adequately monitored.</p> <p>In the updated strategy, define roles and responsibilities among different players regarding procurement trainings. Training should be provided by capable institutes, whose core business is trainings, while other players including PPA provide regulatory role in terms of ensuring the quality of training and management of trainees. Given their other multiple responsibilities, the involvement of PPA in providing training should be limited to generic type of awareness trainings on the procurement legal</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [8(a) Training, advice and assistance]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>the training module covers the Public Procurement and Property Administration Proclamation 649/2009 and the directive issued for implementation of the Proclamation. However, the coverage of the topics related to the public procurement proclamation and directive is not sufficient, as the content under each topic is largely prepared based on generic procurement principles. It is also noted that the training is not defined for different level of trainees, hence the training provided for beginners and experienced procurement experts is the same. The trainers have a minimum qualification in MSc. In addition to the above referred generic procurement and property administration training, which is based on the country's procurement legislation, the institute provides a procurement training based on World Bank's procurement requirements. The training is conducted in 4 rounds every year, in each round the training is provided for about 40 trainees. Hence the training on World Bank's procurement requirement is delivered to about 160 trainees every year. The trainers for this course are selected in consultation with the World Bank.</p>				framework, SBDs and templates.
(b) routine evaluation and periodic adjustment of training programs based on feedback and need.	<p>The procurement professionalization training program is evaluated by trainees at the end of every session. The training module has been reviewed once based on feedback collected from trainees and trainers. Besides, the University has started Post Training Evaluation, which is conducted at the trainees' duty of station. So far, Post Training Evaluation was conducted once in the year 2018/19. The evaluation is conducted through a questionnaire and focus group discussion. The evaluation focuses on issues related to the benefit gained by the trainees in relation to their performance and their view on the quality of the training as well as relevance of the training to their specific job.</p> <p>Despite the claim that the Ethiopian Management Institute revises the training module every two years, the assessment noted that the training module has not been updated to address the public procurement amendments; for example, the threshold limits for national and international bid indicated in the module refer to the limits defined before the amendment of these thresholds.</p>	Not applicable	<p>Criterion is partially met.</p> <p>While the training is evaluated by the participants, there are instances that the training modules are not updated based on feedback and need.</p>		Ensure routine evaluation and periodic adjustment of training programs based on feedback and need.
(c) advisory service or help desk function to resolve questions by procuring entities, suppliers, and the public.	<p>PPA set up a help desk with dedicated staff, though it is not supported through the official structure. The helpdesk provides technical clarification and advice on the procurement rules and procedures. The technical support is accessible and valued by staff in the PEs. Besides, the PPDS through its dedicated Tender Evaluation, Advice and Support Unit provided similar services to staff in procuring entities but focusing on framework agreements. The procurement staff in PEs highly regard the benefit of the helpdesk in providing real-time solution to their problems. However, PPA lacks the required capacity and staff to provide advice and support that can resolve procurement challenges on the ground. Some of the staff in PEs question the value addition of the service unless it is staffed with qualified experts and be able to support and guide particularly on complex procurement cases.</p> <p>In the private sector survey, 20% of 54 respondents said that they are aware of the PPA's helpdesk and 15% used the helpdesk (Q16&17). Those who did not use it gave the following reasons: (i) not being aware of the helpdesk. (ii) no trust that this would help; (iii) weak capacity of PPA. One of respondents also described a situation of reaching to PPA for help regarding a decision at the Regional level and received no help.</p>	Not applicable	<p>Criterion is partially met.</p> <p>The help desk in PPA has insufficient capacity to provide meaningful support. It is not supported with adequate structure and staffed with qualified experts to respond to questions including on complex matters. Besides, the legal framework does not specify the need to provide the support to other key players in procurement like private sector.</p>		<p>Increase the capacity of and improve the organizational structure for the PPA help desk to enable it to respond to more complex procurement inquiries.</p> <p>Consider expanding the function of PPA to provide advice to all stakeholders, including the private sector.</p>
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	<p>Capacity Building and Good Governance is one of the pillars in the current Growth and Transformation Plan II (2016-2021) of Ethiopia (GTP). The plan recognizes the need to develop public procurement capacity, strengthen transparency and accountability in the use of public resources. Following the GTP document, MoF prepared the PFM strategy that has also identified public procurement capacity building as one focus areas. However, the strategy is not well integrated with other measures for developing the capacity of key actors involved in public procurement. One of the key players in public procurement in Ethiopia is the Public Procurement and Property Administration Agency which has multiple responsibilities as a regulator, capacity builder, and policy advisor. However, the agency lacks the capacity in terms of qualified staff and structure to deliver its responsibilities. The strategy document lacks adequate focus in improving PPA's capacity. Similarly, there is no strategy in place to improve the capacity of the private sector as key players in public procurement, despite the challenges PEs face as a result of limited capacity of the private sector, particularly the small-scale suppliers and contractors.</p>	Not applicable	<p>Criterion is partially met.</p> <p>The PFM strategy document is not comprehensive in addressing the capacity need of key actors in procurement. The capacity of the key actors like the Agency and the private sector is overlooked.</p>		Update and expand the MoF's PFM strategy to address capacity challenges in key public procurement stakeholders, including the PPA and the private sector.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

8(b) Recognition of procurement as a profession

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

Assessment criteria [8(b) Recognition of procurement as a profession]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Procurement is recognized as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	The procurement function is not organized in the correct professional context and positioning. Based on the request from the Ministry of Finance, the Civil Service Commission recently established three types of structure and job grading for procurement. The procurement function could be organized independently as "Procurement Directorate" or as "Procurement Team" under the "Finance and Procurement Directorate." In any case, the function could be organized in one of three different levels (level 1, 2 or 3) depending on the size of budget in a given Procuring entity. ³⁴ Similarly, the procurement expert positions are graded into four levels based on years of work experience and educational background. The job grading doesn't consider other essential competencies required to deliver procurement responsibility (technical skill and behavioral) efficiently with integrity that can be acquired and developed through professional trainings and accreditation on top of work exposure competencies.	Not applicable	Criterion is not met. Procurement function and positions are identified in the civil Service structure. But job requirements are generic and not based on competencies (technical and behavioral) and not linked with the certification requirements.	✓ Yes	Revise the procurement job requirements to include required technical and behavioral competence at different levels.
(b) Appointments and promotion are competitive and based on qualifications and professional certification.	The procurement job grades are not linked with procurement professional certifications and competency requirements. Instead, they are based on generic qualifications and experience that are not directly relevant to perform procurement tasks under different level of complexities. As a result, though procurement positions are filled competitively, the selection criterion does not allow for identification of the right expert based on skill and competency requirements.	Not applicable	Criterion is partially met. While the appointments are competitive, they are not based on skill and competency requirements specific to the job.	✓ Yes	Revise the procurement job requirements to include technical and behavioral competencies.
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	Staff performance is evaluated on a regular basis as part of the human resource management function in public bodies. But there is no link to trainings which are not provided based on needs assessment. The perception in most of the visited agencies is that staff's performance evaluation is carried out to meet HR formalities and do not have impact on staff promotion or training. The inconsistency between the focus of the evaluation and the skill required to deliver procurement responsibilities eroded the trust of the experts in the evaluation system.	Not applicable	Criterion is partially met. Performance evaluation is generic and not tailored to procurement job requirements. Besides, performance evaluation is not linked to promotion or training requirements and are carried out to meet HR requirement.	✓ Yes	Consider developing a performance evaluation system specific to public procurement and link with incentives and promotion.

8(c) Monitoring performance to improve the system

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	<p>There is no workable and consistently applicable performance measurement system that focuses on both qualitative and quantitative aspects. However, PPA introduced performance measurement system based on identified Key Procurement Performance Indicators (KPI). The system uses an Excel format to collect, analyze, and report procurement performance against the indicators.</p> <p>The system is based on an Excel format and intended to support PBs in collecting procurement data, analyzing and reporting for purpose of improving procurement performance. The following nine indicators were adopted: improvement in procurement cycle time, reduction in number of cancelled bidding processes, increase in the use of competitive procurement methods, increase in average number of bids, improvement in realism of procurement plans, increase in number of complaints resolved within the standard time, reduction in contract cost overrun, reduction in contract time overrun, and reduction in poor quality of contract deliverables.</p> <p>The system has not been systematically integrated into the procurement system and hence, the use of the system is left at the discretion of the procuring entities and staff. The system has been introduced in 2015 but the use of the system at federal level is very limited and unreliable, even in the public bodies that spend huge amounts of public resources. There is a clear lack of ownership and high-level commitment to roll out and use the system. It is implemented in the</p>	Not applicable	Criterion is not met. The KPI system is not rolled out successfully. It is not a comprehensive tool in measuring performance in qualitative and quantitative terms. It is important to enhance the KPI system and integrate it with the procurement system to allow real-time data collection, analysis and reporting both on qualitative and quantitative terms.		<p>Develop a comprehensive data capture and performance measurement system integrated with the e-procurement system to be introduced.</p> <p>Consider integrating the KPI into the procurement measurement system.</p>

³⁴ The PEs that manages up to Birr 50 million, up to Birr 200 million and above Birr 200 million could be organized as Director or Team 1, 2 and 3 respectively. While procurement could be organized independently as "Procurement Directorate" or together with Finance "Procurement and Finance Directorate" which is a discretion left to PEs.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	Regions largely because it was linked with disbursement in the World Bank-financed PforR project (PBS III and ESPES).				
(b) The information is used to support strategic policy making on procurement.	There is no system allowing for collection and analysis of data to support strategic policy making on procurement. The information collected through the KPI system is not complete and accurate to be used as reliable data source for procurement policy making. It appears that the limited report generated from the system is meant to satisfy requirements in the World Bank-financed PforR projects and not used for procurement strategic policy making decisions.	Not applicable	Criterion is not met. There is no systematic procurement performance data collection and analysis, and it is not available for use to support strategic policy making on procurement.		In addition to enhancing the functioning of the KPI system into a comprehensive data capture and performance measurement system, it is appropriate to establish a procurement policy team that utilizes the data to make procurement policy recommendations. The team should ensure the consistency of the procurement system and implementation to the broader policy objectives of the government.
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	The MoF prepared a PFM strategy document issued on March 2018 covering the period 2018-2022. Public procurement is one of the 8 focus areas of the strategy. The strategy indicates the main reform targets regarding public procurement and asset management, sets a strategic goal, and defines tasks required to meet the goal. The strategy has a results framework which is not complete to show the baseline, targets, monitoring mechanisms or indicators etc. It is not clear what the strategy tries to achieve in the short and long term with regard to procurement and how the tasks contribute to the broader objective of the government. Rather, it appears that the strategy is limited to the ongoing and isolated procurement reform activities. More importantly, the results framework indicates that the procurement part of the strategy document will be implemented by the regulatory agency. However, the discussion with the management of the regulatory agency revealed that the agency has no full knowledge and follow-up on the strategy and its implementation. Therefore, there is no evidence to show the strategic plan is in place with the involvement of the key stakeholders particularly the Agency, as a regulatory body, not only during preparation but also in its implementation.	Not applicable	Criterion is partially met. The PFM strategy is not comprehensive in addressing key procurement issues and stakeholders. Besides, there is no adequate awareness and ownership of PPA.		Consider preparing a comprehensive procurement strategy document with consideration of the input from the MAPS assessment.
(d) Responsibilities are clearly defined.	The procurement Proclamation 649/2009 Article 15 (2) mandates PPA to monitor and report on procurement performance. Within the agency, the Government Procurement Administration Directorate is responsible for the overall KPI system development and supervisions, such as provision of trainings, technical support, follow-up and monitoring of data collection at federal and regional level bureaus. However, the Directorate is not efficiently and effectively delivering its responsibility with respect to measuring and monitoring of performance using KPI data, due to lack of attention and collaboration by management and decision-makers.	Not applicable	Criterion is partially met. The procurement administration Directorate is tasked with a lot of responsibilities that require close management attention and follow up. However, the Directorate is not supported with structure that allows focus on key responsibilities including dedicated team for monitoring procurement performance reporting.		Consider restructuring of the Agency and provide focus (management and resources) to key responsibilities.

Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	Most of the high-spending procuring entities carry out needs analysis and market research for complex procurement. However, in most of the agencies, the market assessment is not carried out especially for the purpose of guiding selection of the procurement approaches. Procurement methods are selected mainly based on thresholds, following the provisions in the directive.	Not applicable	Criterion is not met. There is no mechanism and supporting tools to enable procuring entities to carry out a meaningful market		Consider introducing a requirement and providing tools/templates to support needs analysis and market

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	Besides, the market analysis is not systematized and integrated into the procurement system. There is no guidance and template to support need analysis and market research, and to ensure that the results inform procurement decision making. It was revealed that there is a general attitude of complying with procurement rules, instead of finding and pursuing innovative solutions, which would evidently support better procurement outcomes.		assessment that informs selection of the optimal procurement approach. Selection of the procurement approach is basically made based on thresholds, as provided in the procurement documents, instead of based on market realities and outcomes. In addition to the lack of supporting tools, the procurement system is hampered by fears of discretion and risk-avoiding behaviors. It is key to enhance confidence in the procurement decision making process in a way that focuses on procurement outcomes, rather than mere compliance with rules.		research and to define optimal procurement strategy based on threshold. Empower procurement decision makers to consider innovative and optimal approaches based on market information.
(b) The requirements and desired outcomes of contracts are clearly defined.	The requirements and desired outcomes of contracts are described in the procurement documents. The PEs specify the procurement requirements in the specifications (for works, goods, non-consulting services), Terms of Reference (for consulting services), or Bill of Quantities (works), as appropriate.	Not applicable.	Criterion is partially met. The legal framework requires the use of neutral specifications, cites international norms, and provides for the use of functional (performance) specifications as far as possible. However, the PPA's Circular dated 1 August 2018 notes that there are problems in practice with the use of discriminatory specifications. Numbered paragraph 5 highlights problems considered by the Complaints Handling Board, noting that they are increasing year by year. The final point under paragraph 5 refers to increased complaints to the Board in relation to technical specifications, including the requirement for specified brands.		Enhance procurement audits carried out by PPA, to put emphasis on the technical specifications and follow-up to ensure improvement in preparing the specifications. Expand training on the requirements for neutral specifications, functional where appropriate, and based on international norms when possible.
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	The procurement arrangement supports social and economic objectives which are integrated into the procurement legal framework and SBDs. The Procurement Proclamation, article 25 specifies preference to locally manufactured goods and services, and Small and Medium Enterprises. The preference margins are defined in the procurement Directive and applied by the PEs. The preference margin in some sectors is too high (25% in the health sector), which calls for proper analysis and for striking a balance between promoting local industries, competition, and cost. Besides, the MoF issued a letter instructing procurement of health sector products only from the local manufacturers if the procured product is available locally. This, in fact contradicts the procurement Proclamation that does not allow a provision for "setting aside." In a certain construction sector, other arrangements are considered, aiming at developing local contractors. The main ones are mandatory sub-contracting and an increased procurement threshold for procurement under the National Competitive Bidding procedure. These measures are implemented contrary to the procurement rules, and their impact on the cost of projects is not adequately analyzed and regulated. Thus, it is difficult to consider whether social/economic objectives are implemented in a balanced manner. Regarding environmental sustainability, there are no clear provisions in the procurement law on consideration of environmental factors in procurement. There are no other sustainability criteria used in the evaluation. In response to the question whether the private sector thinks that introduction of e-GP will lead to loss of business for SMEs due to difficulties in electronic submission of bids, out of 57 respondents (55 skipped) 21% responded that yes, 54% said no, and 25% was not sure (Q64).	Not applicable	Criterion is not met. There is no legal requirement and practice to use sustainability criteria (environmental, social, and economic) to ensure value for money. The only exception is the price preference margin allowed for goods and services manufactured locally or participation of SMEs and MSEs. In some sectors, the preference has been changed into "set aside" of contracts up to defined thresholds for these groups, thus excluding these opportunities and violating the procurement Proclamation. The decision for granting price preference (where and how) has not been supported by any analysis that would show the value addition and consistency with the national economic objectives. Thus, it is exposed to risk of misuse. The mandatory sub-contracting is implemented, contrary to the procurement rules and appears unbalanced.	✓ Yes	Having the history of using the preference schemes, both at the Federal and Regional level, it is recommended to study the use of the requirements and their impact as well as the ability of both the industry and MSEs to meet the requirements. This study can be carried out jointly at the country level, as similar schemes at both federal and regional levels as well as the Regions are looking to the Federal government for guidance. Revise the preference schemes based on the evidence of their impact.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

9(b) Selection and contracting

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	PPA issued a standard document for the use of the prequalification procedure in construction procurement. Procuring entities that procure complex procurement have experience in using the prequalification procedure.	Not applicable	Criterion is met.		
(b) Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	Public bodies use standard bidding documents (SBD) developed by PPA. In addition to the SBDs for ordinary procurements, they use SBDs for specialized procurements relevant to specific sectors, like procurement of health-related products, Textbooks, and Framework Agreement also developed by PPA. The SBDs incorporate all sections that are found in typical SBDs that include Instruction to Bidders, Bid Data Sheet, schedules and templates, Standard Conditions of Contract, Special Conditions of Contract, etc. However, in some sectors where the suppliers are informal and traditional bidders, the SBDs are complex and irrelevant for them. Besides, the SBDs have not been updated for a long time and there is no assurance that they are responding to the current market realities.	41% of 74 respondents (38 skipped) to the private sector survey said that the bidding documents are of relatively good quality, 35% that they are bad quality, and 18% said that the documents are of good to very high quality (Q26). As main deficiencies they indicated a biased evaluation methodology (77%) and technical specifications (63%), unfair contract clauses (44%), not fit for purpose technical specifications (40%), and large volume and complexity of the documents (38%) (more than one answer was allowed) (Q27).	Criterion is partially met. The SBDs were issued in 2011 and not updated to meet the current practice and market operation. Besides, some of the SBDs are not consistent with the requirements of the market in some sectors.		Consider updating the SBDs and ensure that they are fit-for-purpose.
(c) Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework.	The procurement legal framework defines open bidding as the default procurement method, which is largely followed by the public bodies. But other procurement methods are also used if the procurement meets the conditions stated in the directive and if the procurement is within the threshold. However, in some sectors the established threshold is not appropriate vis-à-vis their market. Thus, there is a practice of deviating from the use of the procurement methods as per the legal framework. The choice of procurement methods is guided mainly by the applicable threshold as provided in the procurement documents. There is a high tendency of complying with the threshold requirements instead of applying professional judgment in selecting the appropriate procurement method that is relevant to attain successful result in the procurement. The uniform thresholds for procurement methods set in the legal framework may not be relevant in some construction sectors and are not respected. In addition to the objective of promoting local contractors, the lack of adequate foreign currency to timely effect payment obligations to foreign contractors has forced some PEs to use the increased the threshold for the NCB without the approval of the regulatory body and the MoF.	Not applicable	Criterion is partially met. The choice of procurement methods is guided mainly by the applicable threshold, as provided in the procurement legal framework. These thresholds are not always consistent with the development of markets in some sectors like construction. There is a tendency of complying with the threshold requirements instead of applying professional judgment in selecting appropriate procurement method that is relevant to attain successful result in the procurement. The application of a one-size-fits-all-approach in setting thresholds is not working well. The construction sector may need different thresholds, commensurate with the local capacity in the sector.		Consider following the procurement procedures as specified in the legal documents. Ensure accountability for decisions taken otherwise. Provide guidance/tools to guide evaluation and selection of workable procurement options. Consider updating procurement methods thresholds to reflect the capacity of the local and sector market.
(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.	Procedures for bid submission, receipt and opening are clearly described in the SBDs and complied with by the PEs. The PEs allow bidders or their representatives to attend bid openings. The PPD 16.18.1 (b) specifies that representatives of mass media or any interested observer can attend the bid opening ceremony as far as practicable, namely, it does not interfere with the bid opening process and there is enough space. The procurement legal documents do not explicitly allow civil society and other interested parties to monitor bid submission, receipt and opening. The PBs do not specify the actual bid closing/opening date in the Invitation for Bid (IFB) due to uncertainty on the actual date of publication of the IFB in Newspaper. Instead, they express the number of days that the IFB floats and bidders are required to calculate the bid opening days at their own risk. This has created uncertainty on the actual bid closing/opening day and added risk to the bidders.	In response to the private sector survey, 92% of 37 respondents (75 skipped) said that procedures for bid submission, receipt and opening are clearly described in the procurement documents (Q30) and 57% said that they complied with. 24% said that the procedures are not complied with (Q31). The fact that bidders are allowed to participate in the bid opening is confirmed by 92% of respondents (Q32).	Criterion is partially met. The published IFB does not specify bid closing/opening date.	✓ Yes	Discuss and agree a mechanism with the press agency on how to specify the bid closing/opening day in the IFB.
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	The Procurement Proclamation Article 44 specifies the rule of confidentiality. It requires PEs not to disclose information related to bid evaluation and award decision until the award is publicly announced. The Proclamation Article 32 "Ethics on Public Procurement and Property Administration" further identifies "confidentiality" as one of the procurement ethics for staff involved in procurement. This is translated in PPA's SBD, which require the process to be confidential and all communication with bidders to be in writing. It is observed that there are no major incidents of breaching confidentiality provisions. However, the PEs are not provided with and do not follow procedures to ensure confidentiality. Evaluators are not required to sign a declaration of confidentiality except in one of the PEs visited. Most importantly, in two envelope procedures, the PEs announce results of the technical evaluation to bidders before the award	While a quantitative indicator is not envisaged here, the Assessment Team asked the private sector in the survey about their perception of confidentiality of the procurement process (Q34). 27% of 37 respondents said that confidentiality is ensured throughout the bid evaluation and award process. 22% said that it is not, and 51% was not sure.	Criterion is partially met. The procurement system does not provide tools to ensure and support maintaining confidentiality, which might include requiring evaluators to sign a declaration to uphold confidentiality.		Consider providing tools and templates to enforce confidentiality provisions.

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Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	decision is made by the authorized official. The technical evaluation committee receives complaints and responds including making the necessary correction on the report before the PE reaches final decision by the authorized officials. Though the process is carried out publicly, it has same impact in exposing the procurement process to unintended external influences and unfair practices.				
(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.	<p>The procurement proclamation allows two types of evaluation: least cost and best advantageous bid which considers quality as one aspect of evaluation. In practice, PEs are inclined to use the least cost evaluation method.</p> <p>However, for procurement of equipment, IT facilities etc., PEs use a merit point evaluation system with due consideration of quality aspects in the evaluation of bids. Other techniques, like Best and Final Offer (BAFO) or competitive negotiation etc., are not accommodated in the procurement legal framework and are not applied.</p>	<p>Percentage of 73 respondents to the private sector survey who think that the following criteria should be the most important is (Q28):</p> <ul style="list-style-type: none"> • Combination of quality and price (64%) • High quality (58%) • Combination of price, quality, preferences for SMEs, environmental, and social (49%). <p>14% of 37 respondents (75 skipped) said that the bidding documents include criteria that allow achieving value for money, 49% said that their do not contain such criteria, and 38% were not sure (Q29).</p>	<p>Criterion is partially met.</p> <p>The award criteria are limited to the least cost and merit point evaluation only. Given the development in the market and the increasing complexity of procurement, other award criterion should be considered in the legal documents and applied in practice.</p>		See the recommendation 1 (f) (b). Ensure that the training program includes how to design and apply the evaluation criteria to achieve best value for money.
(g) Contract awards are announced as prescribed.	<p>Article 46 of the Proclamation stipulates the manner in which the contract award is notified. The PEs comply with the provision by notifying the contract award decision both to the successful and unsuccessful bidders including the reason why the unsuccessful bidders are not considered.</p> <p>Some PEs publish contract award information on their websites.</p> <p>The Directive, Article 6 (6) requires the PEs to publish procurement award information on the Agency's website for procurements above defined thresholds.³⁵ However, the award publications in the PPA website are not up to date. The website includes publications made in 2015 or earlier. No recent awards are published on the PPA's website.</p> <p>There are 36 publications under this link, and all are relevant to procurements conducted years back. http://www.ppa.gov.et/index.php</p>	<p>41% of 37 respondents to the private sector survey said that contract awards are published, 32% that they are not published, and 27% of respondents are not sure (Q35).</p>	<p>Criterion is partially met.</p> <p>Contract award information is not published on the Agency's website as required by law. The Agency's website is not fully functional and there is no monitoring of compliance with the requirements for award publication.</p>		Ensure publication of contract awards as required by the law.
(h) Contract clauses include sustainability considerations, where appropriate.	<p>PPA's SBD clauses require suppliers/contractors to respect environmental considerations as stipulated in the Ethiopian law. The SBDs for works contracts require contractors to take reasonable precaution to protect the environment, including :</p> <ol style="list-style-type: none"> No pollutants shall be allowed to enter any watercourse. No unauthorized or indiscriminate felling of trees shall be permitted. No open or uncontrolled fires shall be permitted. The Contractor shall not cause areas of stagnant water to form, on the surface or in open containers. All spoil or waste materials remaining after the works must be neatly disposed of in approved dump sites. The Contractor shall ensure that the Works, including the action of individual workers, do not result in any littering. Where such littering does occur, the Contractor shall be responsible for the collection and proper disposal of the litter. The use of herbicides and pesticides shall not be permitted. Excavations and finished works are to be protected from adverse weather and any work damaged by adverse weather is to be repaired by the Contractor. <p>The SBD have no provisions related to social and health risks. But some of the PEs use SBDs that have extended provisions on environment and social aspects, including the required measures that should be taken to address HIV/Aids risks and other sexually transmitted diseases during construction. The PEs apply the provisions as stipulated in the SBDs.</p>	<p>16% of 37 respondents to the private sector survey said that contract clauses include sustainability considerations, 43% said they do not. And 40% are not sure (Q36).</p>	<p>Criterion is partially met.</p> <p>The SBDs have no provisions related to social and health risks.</p>		Ensure that the PPA SBDs incorporate sustainability consideration related to economy, environment and social. It is very important to consider provisions that address public health related issues like COVID-19. The training programs and PPA's forum with the private sector should include sustainable procurement to raise awareness and disseminate knowledge among the private sector.

³⁵ For Works procurement above Birr 10 million, Goods procurement for procurement Birr 3 million, consultancy service Birr 2 million and non-consultancy service procurement Birr 1 million.

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Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations												
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	There are no provisions and practices that provide incentives for exceeding performance levels. However, there is disincentive clause for failure to meet agreed terms particularly on slippage from the agreed delivery time. It appears that the PEs are obliged to apply the liquidated damage clauses which is 0.1%/day of delay. Not applying the liquidated damages is indicated as a non-compliance in an audit.	Not applicable	Criterion is partially met. Contract clauses do not provide incentives for exceeding performance.		Standard contracts may provide for an incentive for timely excellent performance (that exceed expectations above the agreed terms like time, quality) (e.g., a bonus). Consider introducing the value engineering provision that allows enhancing performance, reliability, quality, safety, effectiveness, or other desired characteristics.												
(j) The selection and award process is carried out effectively, efficiently and in a transparent way.* *Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j): - average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each procurement method used) - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) Source for all: Sample of procurement cases.	The selection and award process is not carried out effectively, efficiently and in a transparent manner. The assessment team learnt that there were various instances in which the procurement processes were nullified due to delays in awarding contracts within the bid validity periods. It is also observed that the process lacks transparency. For instance, it is not a common practice to publish award information in accessible media.	Average time to procure per procurement method: <table border="1"> <thead> <tr> <th>Method</th> <th>Av. Time (days)</th> <th>Range (days)</th> </tr> </thead> <tbody> <tr> <td>ICB + NCB</td> <td>200</td> <td>67 – 337</td> </tr> <tr> <td>ICB</td> <td>261</td> <td>50 - 375</td> </tr> <tr> <td>NCB</td> <td>160</td> <td>67 - 284</td> </tr> </tbody> </table> On average, 5 responsive bids were obtained in procurements conducted using both ICB and NCB procedures. This shows that there is quite adequate competition under both ICB and NCB methods, However, the level of competition in different PEs varies. In the visited PEs, the average number of responsive bids is from 1 to 12 for ICB contracts, and 3 to 8 for NCB contracts. Compliance with publication requirement: The average percentage of the contracts that are fully in compliance with publication requirement is only 42%. The level of compliance again is quite different in different PEs, with a range that varies from 0% to 100% of compliance. Number of successful processes: 94%.	Method	Av. Time (days)	Range (days)	ICB + NCB	200	67 – 337	ICB	261	50 - 375	NCB	160	67 - 284	Criterion is not met. The average time to process procurement is significantly longer than the normal bid validity time and international practices. This makes the procurement process inefficient. The level of compliance to publication requirement is also low.	✓ Yes	Regularly review, by public body, the procurement processes to identify inefficiencies and bottlenecks. Based on these, define and implement measures to improve the processes. Monitoring efficiency and transparency of the processes should be incorporated as part of the monitoring and reporting function by the PPA.
Method	Av. Time (days)	Range (days)															
ICB + NCB	200	67 – 337															
ICB	261	50 - 375															
NCB	160	67 - 284															

9(c) Contract management

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Contracts are implemented in a timely manner.* Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)	Contracts are not implemented timely. Time overrun in the reviewed sample of contracts was significant. The reasons vary.	Time overrun of contracts implementation beyond their original completion date: on average, time overrun for all contracts covered under the assessment is 229 days. The performance significantly varies among PEs – from 7 to 819 days' overrun.	Criterion is not met. Contracts are not implemented timely. In some cases, the time overrun exceeds 2 years.		Public bodies should regularly analyze contract performance and outcome, identify reasons for contract time overrun and implement corrective measures. Consider preparing guidance tools and provide training to staff.
(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*	The General Conditions of Contract in the PPA's SBDs provides provisions for Inspection and Tests of items procured and delivered. The PEs responded that they carry out inspection routinely. But the quantitative data shows that quality control and inspection was carried out in 78% of the contracts reviewed.	Quality control and inspection work were carried out in 78% of the contracts covered by the assessment. In all PEs, the practice of quality control has been observed while the performance differs from contract to contract.	Criterion is partially met. Quality control and inspection work was not carried out routinely in all contracts.		Public bodies should regularly monitor contract management, identify reasons for non-compliance,

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

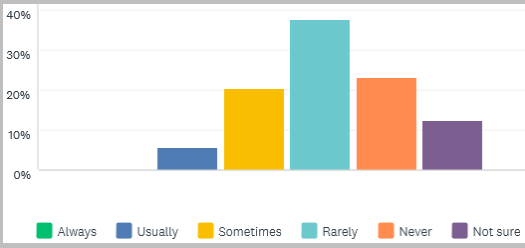
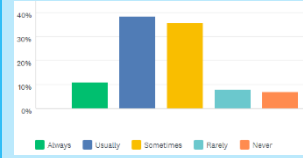
Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)					and implement corrective measures.
(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).	The procurement Directive Article 25(e) states that, for works procurement, the PEs should make progress payment within 14 working days after receipt of payment certificate from the consultant. However, the contracts specify eg., for works 45 days and different periods for delivery of goods. However, in all PEs, payment is not made on time as per the timeline agreed in the contract. The invoices are examined by the relevant staff of the public bodies. The public bodies are required to submit the invoices with the supporting documents for payments above Birr 500,000 to the Treasury Department of MoF for verification and authorization for payment. Such submission can be done only once a month.	On average, only 31% of the invoices were paid on time. None of the PEs visited paid invoices on time. The best performers are 2 PEs that paid half of the invoices on time. 4 PEs out of the 11 paid less than 10% of the invoices on time, while 2 PEs paid none of the invoices on time.	Criterion is partially met. Invoices are not paid on time. In some of the PEs, none of the invoices are paid on time. This is related to weak contract management capacity and follow-up mechanisms that leads to delays in contract completion, as observed above, and consequential costs to the government.	✓ Yes	Review the invoice verification process and payment obstacles to optimize the payment process and minimize delays due to unavoidable reasons such as prevalent shortage of forex that cannot be mitigated at the time of payment.
(d) Contract amendments are reviewed, issued, and published in a timely manner.* Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)	The contract amendments in most of the agencies are prepared in consultation and with the approval of the Heads of the PEs. The process does not follow the established procurement decision approval procedures, which includes review and approval by the Bid Endorsing Committee. In terms of timeframe, issuing variation order in works contract could take as long as 7 months.	On average, 19% of the contracts covered in the assessment were amended. In several PEs contracts were not amended at all, while in others, up to 80% contracts were amended. The average increase in contract amount due to amendments is 87%. The maximum increase in contract amount is 280% which was observed in one of the PEs while the increase in contract amount in 9 out of the 10 PEs was insignificant. 77% of 37 respondents (75 skipped) say that amendments are not prepared timely (Q40).	Criterion is partially met. While the contract amendments are normally issued, they are not prepared timely. The approval process established for procurement is not followed as it may not be clear in the legal framework.	✓ Yes	Clarify the approval process for contract amendments.
(e) Procurement statistics are available, and a system is in place to measure and improve procurement practices.	There are no procurement statistics available that could be used to measure and improve procurement performance. The KPI system is designed to collect key procurement data against the KPIs with the intention of measuring performance throughout the cycle. But the system is not rolled out in all federal PEs and the data collected through the system is not reliable. Most importantly, it is not reported to the management and used to improve the procurement performance.	Not applicable	Criterion is not met. The KPI system is not fully functional and integrated with the procurement system in capturing procurement data, measuring, and improving procurement practices. It is also not used by all public bodies.		See recommendation for indicator 7 (c) to integrate the KPI system with e-procurement system when in place and develop a system to provide real time data collection, analysis, and reporting capability. Until then, the public bodies and PPA should develop for example Excel-based collection and monitoring of data.
(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.* Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.	There is no practice of involving relevant external stakeholders in public procurement and contract management.	1.5% of contracts with direct involvement of CSOs. None of the contracts reviewed were carried with direct involvement of civil society at any stage of the contracts. No evidence has been obtained showing involvement of civil society during planning, or bid/proposal opening or evaluation, or contract award or contract implementation in any of the PEs and contracts reviewed under the assessment.	Criterion is not met. There are no opportunities for direct involvement of external stakeholders in procurement. The procurement system has not reached the level of maturity that encourages stakeholders' participation in the procurement process. Even though engagement of external stakeholders is not prohibited, they are not engaged because there are no CSOs working in the procurement area.	✓ Yes	Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(g) The records are complete and accurate, and easily accessible in a single file.*</p> <p><i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):</i></p> <p><i>- share of contracts with complete and accurate records and databases (in %)</i></p> <p><i>Source: Sample of procurement cases*</i></p>	<p>The procurement records are not kept in a complete and accessible manner. In most cases, the payment documents are kept in the finance unit supporting payments. Accessing and relating the procurement documents and the payment documents were difficult. The PEs visited in this assessment were not able to furnish complete records quickly and easily. There were sampled procurement contracts that were dropped from the sample due to incomplete and inaccessible data. Even review of any contracts in one PE was dropped because of lack of access to documents and lack of data.</p>	<p>Record management is a systemic challenge across all public bodies. Procurement records are not complete and accessible and supported by data base. Thus, the team dropped the quantitative analysis as it is not possible to carry out meaningful comparison and different result is not expected.</p>	<p>Criterion is not met.</p> <p>Procurement records are not kept in complete and accessible manner. The assessment team dropped review of some contracts, and even review of any contract in one PEs due incomplete and inaccessible records.</p>	<p>✓ Yes</p>	<p>Given how widespread a problem with record keeping appears to be, a special attention is recommended during the next year procurement review to review the record keeping arrangements held by the public bodies and follow up within let's say 3 months in case of negative findings (not awaiting the next audit). Special attention should be maintained until significant improvement.</p>

10. The public procurement market is fully functional

10(a) Dialogue and partnerships between public and private sector

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):</i></p> <p><i>- perception of openness and effectiveness in engaging with the private sector (in % of responses).</i></p> <p><i>Source: Survey.</i></p>	<p>PPA signed a Memorandum of Understanding with the private sector (Chamber of Commerce and Sectoral Association) and established a regular forum for a dialogue that happens two times a year since 2009. In the forum, the two parties discuss issues that affect the public procurement performance from the perspective of the private sector and propose measures. Experience shows the proposals from the private sector arising from this dialogue are considered in revising the procurement directive.</p>	<p>Out of 103 (9 skipped) respondents to the private sector survey, 26% responded that the private sector is usually or sometimes consulted before changes are introduced to the federal procurement rules and procedures. 61% responded that such consultation is made rarely or never. 13% are not sure (Q9).</p>  <p>Out of 61 respondents (51 skipped), who responded to the question whether opinions of the private sector are considered, (i) 8% said yes; (ii) 38% said no; and (iii) 54% were not sure (Q10).</p> <p>A question about who participates in the Forum asked by the Ethiopian Construction Contractors Association during the Validation Meeting appears to indicate that this Association is not aware of the Forum.</p>	<p>Criterion is partially met.</p> <p>The Government carries out regular discussion with the private sector through the associations. This mainly reaches to the big suppliers/contractors that are members of the different associations.</p> <p>While the PPA carries out a dialogue, it may not reach sufficient coverage of the private sector. The results of the survey show that an open dialogue with the private sector and the consultative process in adopting change to the procurement framework is limited.</p>		<p>PPA should enhance the engagement by creating a venue also for the involvement of small businesses as well as ensuring awareness of the forum among all relevant associations to enable them participation in the dialogue with the Government.</p> <p>This is the more important given that, as the survey shows, almost 50% out of 101 respondents say that it is difficult to follow changes to the procurement rules and procedures. 36% say that is difficult sometimes, and only 8% say that it is not difficult (Q11).</p>  <p>Out of 100 respondents 47% said that they have resources to keep up with the changes made to the legislative framework while 44% said that rarely have, and 9% never have (Q12).</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(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.</p>	<p>PPA does not have a formal training program for the private sector. Training to the private sector is provided through annual workshops and dissemination of information. The Public Procurement Enterprise provides training to the private sector.</p> <p>PPA runs a training program for SMEs which includes half-day sessions that are provided free of charge. Additional training is provided on demand.</p> <p>PPA has the opinion that the private sector's capacity is good, and more attention is needed to the public sector capacity.</p> <p>Based on the private sector survey, slightly more than 20% of 96 respondents (16 skipped) said that they were aware of the capacity building programs offered by the Government to private contractors and to SMEs, and they participated in training under such programs (Q13&14).</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>Are you aware of capacity building programs being run by the government for private contractors?</p> </div> <div style="text-align: center;"> <p>Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?</p> </div> </div> <p>Respondents informed that they participated in the training provided by the Ethiopian construction contractors association, Ethiopian construction management institution, ERA, PPDS, PPA, Construction Ministry, Ethiopian Construction Technology Management, Ministry of Urban Development, and Chamber of Commerce.</p>	Not applicable	<p>Criterion is met.</p> <p>While the government has a program to build capacity among SMEs and MSEs, capacity building for the private sector is limited to workshops and dissemination of information. Training is provided to the private sector by the Public Procurement Enterprise.</p>		<p>The system providing real time data collection, analysis, and reporting should also provide information about the capacity of the private sector.</p> <p>PPA should monitor capacity and competitiveness of the private sector, and act, if necessary, to adjust the availability of procurement training and its quality on the market.</p>

10(b) Private sector's organization and access to the public procurement market

Assessment criteria [10(b) Private sector's organization and access to the public procurement market]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The private sector is competitive, well-organized, willing, and able to participate in the competition for public procurement contracts.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p> <ul style="list-style-type: none"> • number of registered suppliers as a share of total number of suppliers in the country (in %) • share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) • total number and value of contracts awarded to domestic/foreign firms (and in % of total) <p>Source: E-Procurement system/Supplier Database.</p>	<p>The level of participation and organization of the private sector varies from sector to sector. In sectors where the size of the procurement is big, the private sector is well-organized and willing and able to compete in public procurement contracts. But in other sectors like social sectors where the size of individual procurement is small, the private sector is not organized and lack the capacity to participate in public contracts. In most cases, the bidders submit bids without reading the bidding documents, which results in rejection of bids.</p>	Not applicable	<p>Criterion is partially met.</p> <p>The private sector, particularly small businesses, are not competitive and well organized. They lack the capacity to participate in public procurement competitively.</p>	✓ Yes	<p>Consider a procurement arrangement that accommodates small business. Resolve issues/bottlenecks that hinder participation of small business in the procurement opportunities.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [10(b) Private sector's organization and access to the public procurement market]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations																																																
<p>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b): - perception of firms on the appropriateness of conditions in the public procurement market (in % of responses). Source: Survey.</p>	<p>There are major systemic constraints in the procurement system. The private sector survey respondents indicate difficult access to financing, complexity of procurement rules and documents, and an ineffective mechanism for appeals resolution.</p> <p>Another major systemic constraint inhibiting the private sector to access the public procurement market is the shortage of foreign currency and cost inflation. The private sector avoids bids especially if the procurement requires import from foreign markets due to the long queue for accessing foreign currency. In addition, there are sector-specific constraints, which include limited capacity of the private sector (local), biased specifications, restrictive bidding (contract) terms etc.</p> <p>The private sector survey respondents indicated challenges in the implementation of the public procurement process (Q41):</p> <ul style="list-style-type: none"> • Lack of qualified staff in PEs • Corruption and conflict of interest • Lack of transparency • Lack of good planning • Limiting evaluation criteria to the lowest price • Unfair evaluation process. 	<p>Based on the private sector survey, the appropriateness of conditions in the public procurement is shown in the table below.</p> <p>83 respondents responded to the question whether the below listed conditions to participate in competition for public contracts are met (Q18):</p> <table border="1"> <thead> <tr> <th></th> <th>Always</th> <th>Sometimes</th> <th>Rarely</th> <th>Never</th> <th>Not sure</th> </tr> </thead> <tbody> <tr> <td>Access to financing</td> <td>10%</td> <td>24%</td> <td>34%</td> <td>25%</td> <td>7%</td> </tr> <tr> <td>Procurement methods are proportionate to the risk and value</td> <td>7%</td> <td>30%</td> <td>41%</td> <td>16%</td> <td>6%</td> </tr> <tr> <td>Procurement rules are simple and flexible</td> <td>1%</td> <td>17%</td> <td>40%</td> <td>36%</td> <td>6%</td> </tr> <tr> <td>Contracting provisions help distribute risk fairly</td> <td>9%</td> <td>26%</td> <td>36%</td> <td>24%</td> <td>5%</td> </tr> <tr> <td>Payment provisions are fair</td> <td>10%</td> <td>24%</td> <td>41%</td> <td>24%</td> <td>1%</td> </tr> <tr> <td>Effective mechanism for appeals and dispute resolution</td> <td>5%</td> <td>20%</td> <td>43%</td> <td>31%</td> <td>1%</td> </tr> <tr> <td>Conditions are conducive to win contracts in the public procurement</td> <td>5%</td> <td>31%</td> <td>43%</td> <td>19%</td> <td>2%</td> </tr> </tbody> </table> <p>The private sector survey respondents said they would like the following improvements (Q42):</p> <ul style="list-style-type: none"> • Transparency (84%) • Better communication (49%) • Simpler bidding documents (45%) • Better guidance (38%) 		Always	Sometimes	Rarely	Never	Not sure	Access to financing	10%	24%	34%	25%	7%	Procurement methods are proportionate to the risk and value	7%	30%	41%	16%	6%	Procurement rules are simple and flexible	1%	17%	40%	36%	6%	Contracting provisions help distribute risk fairly	9%	26%	36%	24%	5%	Payment provisions are fair	10%	24%	41%	24%	1%	Effective mechanism for appeals and dispute resolution	5%	20%	43%	31%	1%	Conditions are conducive to win contracts in the public procurement	5%	31%	43%	19%	2%	<p>Criterion is not met.</p> <p>There are major systemic constraints inhibiting private sector access to the public procurement market. The main systemic constraints are associated with the conditions for participation and the shortage of foreign currency that inhibit and limit the private sector's capacity to bid and honor contractual commitments.</p>		<p>PPA to discuss with the private sector associations and public bodies on constraints faced by the private sector and take corrective measures to improve competition and lower the transaction cost. Introduce a temporary procurement arrangement that minimizes impact of forex shortage until its availability improves.</p>
	Always	Sometimes	Rarely	Never	Not sure																																																
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10(c) Key sectors and sector strategies

Assessment criteria [10(c) Key sectors and sector strategies]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Key sectors associated with the public procurement market are identified by the government.</p>	<p>PPA identifies the following key sectors associated with the public procurement: pharmaceutical, road construction, education, health, water, and irrigation.</p> <p>These sectors are identified due to the size of the public procurement market and procurement expenditure in the sectors.</p>	Not applicable	Criterion is met.		As part of the recommendation under the indicator 10 (a) (a), PPA should ensure that the key sectors are engaged in the dialogue on procurement with the government.
<p>(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.</p>	<p>There is no practice of undertaking procurement risk assessments centrally or at the sector level. High-spending procurement entities rarely analyze their market, suppliers or contractors to come up with workable approach in specific procurements. There is no evidence showing that the assessments informed procurement policy objectives.</p>	Not applicable	<p>Criterion is not met.</p> <p>There is no practice of assessing risks associated with key sectors. PPA's structure includes a directorate that is responsible for carrying out research. However, there was no research carried out in relation to markets in key sectors.</p>		PPA should carry out regular assessments of risks associated with the identified key sector to ensure collaboration of the sector markets in specific areas to support the procurement policy objectives.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

11. Transparency and civil society engagement foster integrity in public procurement

11(a) Enabling environment for public consultation and monitoring

Assessment criteria [11(a) Enabling environment for public consultation and monitoring]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	The Growth and Transformation Plan (GTP) II requires public offices to hold consultation with the public before making changes to the system. But this is not very well practiced in public procurement. PPA and MoF normally invite primary stakeholders for consultation during changes to the public procurement rules, which are the private sector, Regions, and public bodies. However, there is no practice of consulting the larger public. The relevant standing committee in the House of Peoples Representatives invites the public for hearing when the action involves changes in the laws. The federal government very recently issued a Proclamation on Federal Administrative Procedure (Proclamation No. 1183/2020 (effective as of April 7, 2020) that requires consultation with the stakeholders and the public before directives are issued by public bodies.	Not applicable	Criterion is partially met. Because the government has adopted a new Proclamation that requires consultation with the stakeholders and the public before directives are issued by public bodies only recently, the practice to follow the requirement is not yet known.	✓ Yes	PPA and MoF should monitor that a transparent and consultative process is followed when formulating changes to the public procurement system by any public body that issues such changes.
(b) Programs are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.	There is no sufficiently regular and comprehensive capacity building program established to build the capacity of relevant stakeholders. However, PPA conducts a biannual forum with the private sector and other key stakeholders, including Development Partners and media representatives, on public procurement issues, performance, challenges etc. In addition, the PPA's officials hold regular discussion and live Question and Answer sessions through mass media and discuss with the public regarding procurement rules and performance.	Not applicable	Criterion is partially met. There is no regular and comprehensive capacity building program established to build the capacity of stakeholders.		See indicator 10 (a).
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	There are not many Civil Society Organizations that are actively working on public procurement in Ethiopia. There is no ample evidence that the government takes into account the input, comments, and feedback received from civil society.	Not applicable	Criterion is not met. There are not many Civil Society Organizations that are actively working on public procurement in Ethiopia.	✓ Yes	See recommendation under 11 (c) (a).

11(b) Adequate and timely access to information by the public

Assessment criteria [11(b) Adequate and timely access to information by the public]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	The procurement proclamation article 7 requires that the procurement law and directives, and other procurement documents be accessible to the public. While these documents are published in the Agency's website and are basically accessible to the stakeholders, they are not complete, especially SBDs and circulars. Different revisions/amendments made to the procurement directive, and circulars or similar documents are not published and are not accessible to the stakeholders. Some important procurement information is not required to be published and is not published, e.g., procurement plans. The procurement opportunities are advertised through newspapers that have national circulation. Some PEs upload some of their IFBs onto the Agency's website.	Not applicable	Criterion is partially met. The legal requirement misses publication of key information for effective participation in the procurement process by the public. For instance, the publication of procurement plans is not a requirement in the legal document. Besides, the publication practice is not adequate in terms of accessibility (Agency website is not functional), timeliness and comprehensiveness.		Consider a requirement to publish key procurement information in an easily accessible manner. Improve the functionality of PPA's website.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

11(c) Direct engagement of civil society

Assessment criteria [11(c) Direct engagement of civil society]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: <ul style="list-style-type: none"> • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local law • contract management and completion (monitoring). 	The procurement regulatory framework does not specifically mention and allow participation of citizens in the procurement system.	Not applicable	Criterion is partially met. While it does not prohibit, the legal framework does not explicitly state that participation of CSOs in the procurement process is allowed. In practice, the public bodies do not prohibit their participation. CSOs do not participate. The ability to finance CSO's activities, complex legal provisions of the Proclamation, broad discretionary powers of the Charities and Societies Agency regulated by now-rescinded 2009 Charities and Societies Proclamation No. 621 (repealed in 2019) with numerous directives, may have created a non-conducive environment for CSOs in Ethiopia and subsequently caused the lack of their involvement in procurement. The new Organizations of Civil Societies Proclamation No. 1113/2019 aims at creating an enabling environment to enhance the role of civil society organizations in the development. Its effect is yet to be seen.		Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.
(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation, and monitoring.	There is no evidence of citizen's participation in the procurement process.	Not applicable	Criterion is not met The citizen can express their views on changes or new laws when posted on the PPA's or HOPR website, but they have no role in the procurement process.		See the recommendation above under 11 (c) (a) .

12. The country has effective control audit systems

12(a) Legal framework, organization, and procedures of the control system

The system in the country provides for:

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits, and oversight by legal bodies	There is an adequate and comprehensive legal framework on internal audit, external audit, and oversight by legal bodies. Article 55(17) of the Constitution provides oversight responsibility to the House of Peoples Representatives (HPR) on the manner public officials discharge their responsibilities. In accordance with the Constitution Article 55 (19), the HPR established The Public Expenditure Administration and Control Affairs Standing Committee to oversee and control the appropriate implementation of any budget allocated by the house of the federal government. The Standing Committee is responsible for receiving and examining audit reports, and for follow up actions. ³⁶ The constitution further recognizes the roles and responsibilities of the external auditor. Following the constitution, the Proclamation No. 982/2016 was issued that reestablishes the Office of the Auditor General (OFAG) by specifying its duties, power, etc. One of the objectives of OFAG is to "audit or cause to be carried out as may be necessary accounts of private or public	Not applicable	Criterion is met.		

³⁶ <https://www.hopr.gov.et/web/guest/public-expenditure>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>organizations to protect Government and public interest.” While OFAG audits the accounts of all public bodies, they have never audited the accounts of private contractors.</p> <p>In addition to the external audit and oversight functions, the internal audit is established based on adequate legal framework. The Financial Administration Proclamation of the Federal government No. 648/2009 defines the internal audit function and responsibilities in public bodies. As per the revised proclamation, the internal control and audit function is enhanced through strengthened accountability provisions and independence of the management of the internal auditors.</p> <p>PPA also provides procurement audit function as part of the overall oversight framework.</p>				
(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations	<p>Internal control/audit mechanisms and functions ensure appropriate oversight of procurement.</p> <p>The procurement function in the public bodies is organized in a manner that provides checks and balances in the procurement system. The procurement decision making authority is assigned to the Bid Endorsing Committee (BEC) established by the Head of the PE. Its members are drawn from different work units. The BEC is a semi-autonomous body that reviews and approves procurement decision, while the procurement unit carries out the day-to-day procurement processing including evaluation and award proposal.</p> <p>The division of responsibility in procurement processing and decision making ensures the strengthened internal control and checks and balances in the system. The recently revised Finance Administration Proclamation has strengthened the internal audit function in public bodies by allowing the involvement of the MoF regarding the work plan, reporting, staffing and capacity building matters related to internal audit. Internal audit units in the public bodies report to the internal audit unit of the MoF.</p>	Not applicable	Criterion is met.		
(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	<p>Internal control/audit mechanisms and functions ensures appropriate oversight of procurement.</p> <p>The procurement function in the public bodies is organized in a manner that provides checks and balances in the system. The procurement decision making authority is assigned to the Bid Endorsing committee which is a semi-autonomous body that is not involved in the procurement processing. The delegation to the Bid Endorsing Committee is based on contract amount, which provides fair balance between efficiency and risk management. In addition, each public body is required to establish an internal audit function with adequate level of capacity. The recently revised Finance Administration Proclamation strengthens the internal audit function in public bodies by allowing the involvement of the MoF on the work plan, reporting, staffing and capacity building matters related to internal audit. Internal audit units in the public bodies report to the internal audit unit of the MoF.</p>	Not applicable	Criterion is met.		
(d) independent external audits provided by the country’s Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management	<p>The Office of the Federal Auditor (OFAG) is established as an independent body from the executive both in terms of financing and reporting. The Auditor General and the deputies are assigned by the Parliament and serve six-year terms, extendable by the decision of the Parliament. Besides, OFAG requests and secures the budget required for its operation directly from the Parliament without the involvement of the executive branch.</p> <p>OFAG undertakes three types of audits, which are: (a) Regularity Audit that is mainly a compliance audit and includes auditing procurement transactions. The Regularity audit is carried out annually covering all the public bodies. (b) Performance audit, dedicated to the performance of the PFM system, including the procurement system, and largely focuses on providing recommendations on how to improve the system for economy, efficiency, and effectiveness. (c) Special Audit, which is an audit undertaken based on demand when requested by external parties. This audit is undertaken by the relevant department in OFAG or a special team that could be formed in case the audit is voluminous or requires expertise from different Departments. The annual audit report presented to the Parliament includes the regularity audit and the performance audit.</p> <p>As part of the audit planning and preparation, OFAG reviews PPA’s procurement audit report and internal audit reports. Otherwise, OFAG does not have the capacity and arrangements to undertake regular audit on procurement. It is undertaken as part of the Regularity audit focusing</p>	Not applicable	Criterion is met.		

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>on compliance to the rules and regulations. In addition, audit of the procurement system is conducted as a key focus area in performance audits.</p> <p>In addition to the external audit carried out by OFAG, the Agency carries out procurement audits as an external party to the PE. The procurement law assigns responsibility to carry out procurement audits based on its own regular program or special audit in case of allegations of misconduct. The Agency's audit report is submitted to the Ministry of Finance but there is no clarity on the actions that should be taken beyond MoF.</p>				
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	<p>According to Article 55 (17) and (18) of the 1995 Constitution of the FDRE, the House of Peoples Representatives (HPR) has oversight powers over the government bodies in general and more specifically on audit findings. Though action plans are agreed with the public bodies particularly regarding adverse audit findings and progress reports are reviewed biannually by the relevant committee (Public Accounts Committee), there is a big challenge in addressing audit findings and implementing action plans. According to the PEFA Report (2018)³⁷, the HPR is working on issuing a new law to strengthen the enforcement role of the Parliament and the Attorney General on prosecution.</p> <p>PPA's audit report is submitted to the MOF and there is no established procedure and requirement for review of the reports and action at a level beyond the MoF.</p>	Not applicable	<p>Criterion is partially met.</p> <p>PPA's audit report is not submitted to a higher organ within the government that has a supervising authority of all the procuring entities at the federal level. As a result, there is no clarity of its impact in enhancing accountability within the procurement system.</p>	✓ Yes	Ensure enforcement of actions and addressing the audit findings by the public bodies.
(f) clear mechanisms to ensure that there is follow-up on the respective findings.	<p>Both the external audit and the internal audit do have and follow clear follow up procedures. The follow-up on the external audit is conducted both by the OFAG and legislature (HPR) as follows:</p> <ol style="list-style-type: none"> OFAG carries out two types of follow-up on audit findings and recommendations. For the Regularity Audit, the auditors check the implementation of audit action plans as part of the following audit and include the actions not taken in the report for the following year. For Performance Audit, after 3 or 4 years of the audit, OFAG shall undertake a follow-up audit to see the implementation of the action plans and the improvement in the system. The follow-up by the House of Peoples Representatives is conducted through the relevant Standing Committee which is the public Accounts Committee that receives the action plans from all public bodies with adverse and disclaimer findings. Based on the action plan, the Committee undertakes follow-up through hearing and field visit. Besides this, the relevant standing committee in the HPR reviews the progress in the implementation of the audit action plans during the annual review of the performance of public bodies. There is a clear mechanism for the follow-up on the findings of the internal audit. The follow-up on internal audit is carried out by the Internal Audit Directorate in the procuring entity and a follow-up report is submitted both to the management in the PE and the Inspection Directorate in the MoF. In addition, the Inspection Directorate in the MoF carries out audit follow-up supported by the IT system. PPA's procurement audit report is submitted to the MoF and follow-up is conducted by the PPA itself. 	Not applicable	<p>Criterion is partially met.</p> <p>PPA's audit recommendation is not supported by an independent and authoritative follow-up mechanism.</p>		Ensure enforcement of actions and addressing the PPA's audit findings by the public bodies with support of the high-level management.

12(b) Coordination of controls and audits of public procurement

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	<p>The Finance Administration Proclamation provides the requirements for the internal control and audit, including the responsibility of the Head of the public body. In addition, the internal audit manual provides, among other things, the procedures for conducting internal audit, including Value for Money Audit and audit on major contracts/projects.</p>	Not applicable	<p>Criterion is met.</p>		

³⁷ Pi-31 Legislative Scrutiny of Audit Report provided "A" score on timing of audit report scrutiny, "C" score on Hearing on Audit Findings, "B" score on Audit Recommendation by the legislature and "B" score on Transparency of legislature scrutiny of all audit reports.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations																								
(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.	<p>The external audit follows the international audit standards and audits are conducted based the AFROSAI E-audit manual. The audit covers both compliance audit and performance audit. The annual audit report submitted to the Parliament consolidates the findings from regularity audit and performance audit as mutually reinforcing audit function.</p> <p>The procedure for internal audit is described in the internal audit manual and includes both the compliance audit and special audit including value for money audit and audits on major contracts/projects. However, the capacity of the internal auditors is limited to carrying out special audits as described in the manual.</p> <p>PPA has a procurement audit manual which describes, inter alia, the planning, execution and reporting procedures while carrying out procurement audit. It also provides a checklist that provides step-by-step activities during the planning, execution, and reporting procurement audits. The manual provides a consistent and comprehensive approach to the procurement audit that is carried out by the Agency.</p>	Not applicable	Criterion is met																										
<p>(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):</p> <ul style="list-style-type: none"> - number of specialized procurement audits carried out compared to total number of audits (in %). - share of procurement performance audits carried out (in % of total number of procurement audits). <p>Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>There is clear evidence that shows that the external audit has been carried out annually. The last 10 years' audit reports are available in the OFAG's website,³⁸ which shows that annual regularity audit has been carried out almost in all public bodies for the last many years.</p> <p>Similarly, there is evidence that demonstrates the frequency of internal audit which is carried out in public bodies every quarter. Area of the audit coverage includes:</p> <ul style="list-style-type: none"> • Financial audit • Performance audit • Property audit • Special Audit (Fraud investigation, Social & environment audit etc.) <p>There is no separate Procurement audit carried out by internal auditors. However, compliance with procurement legislation and procedures is checked in the process of conducting Financial and Performance audits.</p>	<p>The Inspection Directorate monitors the proper planning and execution of an internal audit by the public bodies at the federal level. For example, in the year 2018/19, the following number of internal audits were carried out by entities under the federal government and universities:</p> <table border="1"> <thead> <tr> <th>QUARTER</th> <th colspan="2">NUMBER OF INTERNAL AUDITS</th> </tr> </thead> <tbody> <tr> <td>1st</td> <td>175</td> <td></td> </tr> <tr> <td>2nd</td> <td>163</td> <td></td> </tr> <tr> <td>3rd</td> <td>168</td> <td></td> </tr> <tr> <td>4th</td> <td>169</td> <td></td> </tr> </tbody> </table> <p>These data are extracted from the computerized Audit Report Management System established by the Inspection Directorate at the MoF. The data clearly shows that internal audit is carried out quarterly almost in all PEs.</p> <p>In the last three years PPA's audit coverage both for the regular compliance audit and special audits is as follows.</p> <table border="1"> <thead> <tr> <th></th> <th>2016/17</th> <th>2017/18</th> </tr> </thead> <tbody> <tr> <td>Compliance Audit</td> <td>68</td> <td>76</td> </tr> <tr> <td>Special Audit</td> <td>8</td> <td>19</td> </tr> </tbody> </table>	QUARTER	NUMBER OF INTERNAL AUDITS		1st	175		2nd	163		3rd	168		4th	169			2016/17	2017/18	Compliance Audit	68	76	Special Audit	8	19	Criterion is met.		
QUARTER	NUMBER OF INTERNAL AUDITS																												
1st	175																												
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3rd	168																												
4th	169																												
	2016/17	2017/18																											
Compliance Audit	68	76																											
Special Audit	8	19																											
(d) Clear and reliable reporting lines to relevant oversight bodies exist.	<p>In accordance with the Constitution, OFAG submits their Audit Reports to the House of Peoples Representatives. The Public Accounts Administration and the Control Affairs Standing Committee is responsible for review of the budget report and undertake the follow-up on recommendations on behalf of the House of Peoples Representatives.</p> <p>Regarding the internal audit, the audit report is submitted to the management of the public body with a copy to the Ministry of Finance, General Inspection Directorate that is recently been upgraded to include:</p> <ol style="list-style-type: none"> i) Compliance and performance audit directorate ii) Human Resource Directorate <p>The Compliance and Performance Audit Directorate is responsible for monitoring the respective entities on their compliance with the legal requirements and written standards, such as implementation of the internal control system as required by the Federal Directive no 8.</p> <p>The evidence on status of the internal audits, compliance to the legal requirements and written standards are well documented in the Directorate's computerized Audit Report Management System.</p>	Not applicable	Criterion is met.																										

³⁸ <http://www.ofag.gov.et/ofag/audit-report/>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
	The system is capable of filtering, searching, and sorting information in relation to each entity. It allows the Directorate to see when each entity submitted quarterly report, what comments were provided, what are the recommendations required to be implemented in the 30-day time frame stipulated by law, which of the recommendations are implemented and which are pending, etc.				

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

Assessment criteria [12(c) Enforcement and follow-up on findings and recommendations]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
(a) Recommendations are responded to and implemented within the time frames established in the law.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.	The Proclamation no. 982/2016 Article 17.3 ³⁹ requires auditees to take corrective actions within 15 days from the date on which the recommendation is delivered to them. But the auditees do not always take corrective actions within the stipulated time frame which is a recurrent concern for OFAG.	The Assessment Team could not obtain data on timeliness of implementing internal/external audit recommendations. Conclusion is based on information obtained during interviews.	The criterion is not met. Auditees do not take corrective actions within the stipulated timeframe.	✓ Yes	Ensure enforcement of actions and timely addressing the audit findings by the public bodies.
(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.	There are multiple arrangements and mechanisms in place to follow up on the implementation of audit recommendations. The HPR through its standing committee undertakes regular follow up on public bodies through site visits and hearing and check the implementation of audit recommendations. OFAG carries out a follow up audit and public bodies that did not address recommendations will be identified and included in the audit report for the subsequent year. Each year, the MoF establishes a team to follow up and support public bodies implement audit recommendations. However, there is no mechanism to enforce the implementation of audit recommendations timely. This is identified as the major drawback in the audit system. According to PFEA Report (2018), the HPR is working on issuing a new law to strengthen the enforcement role of the Parliament and the Attorney General on prosecution. Regarding the internal audit, the MoF organized 4 teams under the Compliance and Performance Audit Directorate that are in charge of, inter alia, following up on audit findings and collect feedback on implementation of the audit recommendations. The identified findings of the report and the expected feedback from each entity is recorded by the responsible team into the computerized Audit Report Management System. The system is well designed, and it records the type of audit conducted in each quarter of every year, the audit finding, the comment and feedback given by the team and the expected action from each entity with the respective time frame. If any entity fails to implement an audit recommendation, the inspection directorate issues a warning letter and further inaction will be escalated to the minister in the MoF and to the Council of the Ministers consecutively. It is noted that the inaction from public bodies may potentially instigate monetary penalty and administrative action to the Head of the public body, as per the provisions in the Finance Administration Proclamation. PPA's audit report is submitted to the MoF and the action that should be taken afterwards is not clear and supported by the legal requirements. As a result, the follow-up and enforcement of procurement audit recommendations provided by PPA appears weak.	Not applicable	The criterion is partially met. It appears that there is a system in place for audit follow-up, particularly external carried out by OFAG and internal audit. But no significant change due to weak or lack of enforcement. PPA's audit has no clear mechanism.	✓ Yes	Consider a strong accountability and enforcement mechanism. Define the enforcement mechanism to ensure that the findings of the PPA's audit are addressed timely.

³⁹ Article 17.3 audited entities are obliged to take corrective measures, within 15 days from the date of delivery, on recommendations and comments included in the audit reports sent to them by the Federal Auditor General; if they are unable to take such measures, shall inform the same and the reasons thereof to the Federal Auditor General within the period specified herein.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

12(d) Qualification and training to conduct procurement audits

Assessment criteria [12(d) Qualification and training to conduct procurement audits]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) There is an established program to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits. Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>OFAG ensures that every auditor is provided training for a minimum of 40 hours annually. In addition, the junior auditors are provided with an on-the-job training by the senior auditors who attend Training of Trainers courses. Currently, OFAG hired a training firm that provides training on Customs Audit, procurement, and construction management audit. While the outcome of the training is unknown, there has not been any focused training on procurement to ensure that the external auditors are qualified to conduct high-quality procurement audits.</p> <p>Internal Audit is one of the modules in the PFM Institutionalized Training. The training is provided for 30 days, covering all aspects of internal audit including the country's PFM system. The training is conducted in the civil service university and about 320 auditors are trained each year. Besides, the inspection Directorate in the MoF organizes regular consultation sessions with Internal audit directors and team leaders to share experiences and deliver short training session on selected topics. However, it looks like the internal auditors lack the knowledge and skill to deliver their responsibilities in accordance with standards. The Internal Auditors Examination Grade Report issued on August 28, 2019, shows that the average score for all internal auditor job positions is below 50% and for team leader position the average score was 38.5% only.</p> <p>PPA's procurement audit manual specifies 6 training courses that should be provided to procurement auditors starting at induction level up to advanced professional auditing level. However, these courses have not yet been developed and training not provided. In the last three years, procurement auditors in PPA were trained only for 5 days on performance auditing at the Ethiopian Management Institute.</p>	<p>See the numbers in the column of the qualitative analysis.</p>	<p>Criterion is partially met.</p> <p>There is no effective training program for internal and external auditors on procurement audit. PPA has not developed the courses stated in its own manual and has not provided training to its auditors.</p>		<p>Ensure effective training of the auditors in procurement.</p>
<p>(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>	<p>Auditors are not specifically required to have procurement knowledge to carry out procurement audit. Rather, their educational background is largely on accounting and auditing. There is no either experience in supporting auditors with service from procurement specialists or consultants while undertaking procurement audit. As a result, there is a growing concern among procurement staff that the audits carried out both by internal and external auditors lack the benefit of good understanding of the procurement environment and there is a tendency to overly rely on compliance.</p>	<p>Not applicable</p>	<p>Criterion is not met.</p> <p>The selection of auditors does not require procurement knowledge. Even the auditors in PPA who are fully engaged in auditing procurement contracts and processes are not required to have a procurement knowledge. Most of the auditors join the agency directly out of university, with no prior working experience. With limited or no training, the auditors carry out procurement audit without adequate knowledge and skills on public procurement.</p>	<p>✓ Yes</p>	<p>Revise the job specification to require procurement knowledge, and introduce a competitive scheme to attract qualified and experienced staff.</p>
<p>(c) Auditors are selected in a fair and transparent way and are fully independent.</p>	<p>The selection of the auditors (internal or external) follows an open, competitive procedure in accordance to the HR recruitment procedure. To enhance the independence of the internal auditors, the decision on the recruitment and promotion of the internal auditor is fully delegated to MoF and not carried out by public bodies. Similarly, OFAG carries out the recruitment and promotion decision of its own auditors.</p> <p>The selection of auditors in PPA is managed by the Human Resource Directorate through a competitive selection process following the HR procedure.</p>	<p>Not applicable</p>	<p>Criterion is met.</p>		

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations																								
<p>(a) Decisions are rendered on the basis of available evidence submitted by the parties.</p>	<p>Summary: Decisions are required by the law to be rendered on the basis of available evidence submitted by the parties, which may include an oral hearing.</p> <p>The main provisions in the legal framework on the right of appeal and appeal process are set out in PPL A.70 to A.76 ; PPD Parts X and XI, A.36 to 47; and The Manual on Public Procurement Complaint Procedure (2011) (“Complaints Manual”).</p> <p>The Complaints Manual contains detailed provisions on the submission of evidence and documentary evidence to be relied upon by the Board in considering the complaint.</p> <p>Complaints Manual, Paragraph 4.2.7.4 Evidence: requires that all relevant documentary evidence is submitted to the board. Review proceedings by the Board may be undertaken either on paper or by way of oral hearing. When an oral hearing takes place, the Board may take into account oral evidence. The Decision of the Board is confined to the issues raised in the Complaint and the public body’s decision (para.4.2.8).</p> <p>There is evidence that shows that decisions were made based on available evidence. The Complaint Handling Manual Section 3.5 clearly states that during the complaint procedure, parties have to present all facts on which they base their request, their decisions, actions or lack of actions. All facts they claim should be supported by presentation of proper evidence.</p> <p>The Compliant Handling Directorate in PPA, carries out preliminary assessment (evaluation) of the submitted complaint on behalf of the PPA (the Complaint Handling Board’s (CHB) secretary).</p> <p>The Directorate carries out the complaint evaluation through its staffs/experts, all of whom are Law professionals.</p> <p>The experts do have strict guidance to rely their assessment on the available evidence and are required to cite supporting evidence in their assessment report. In this respect, the Directorate conducts training, on assessment of complaint, for new staffs joining the directorate.</p> <p>The following sample cases reviewed as part of the assessment show that the CHB relies on the available evidence and are cited in the decision letter.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>#</th> <th>Issue</th> <th>Decision</th> <th>Evidence referred and cited</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Contest on the evaluation method and result</td> <td>Rejected the bidder’s complaint</td> <td>- Bidding Document that refers “Evaluation lot by lot” and - Procurement Directive para 44 (b)</td> </tr> <tr> <td>2</td> <td>Contest on the evaluation result</td> <td>PE was ordered to Retender</td> <td>-Bidding Document found incomplete/inaccurate</td> </tr> <tr> <td>3</td> <td>Rejection of all bids due to cost estimate which is not up to date</td> <td>Rejected the bidder’s complaint</td> <td>-Letter from MoF on additional budget -The bidder’s bid -Procurement proclamation para 30 (1) (d) (e)</td> </tr> <tr> <td>4</td> <td>Contest on the rejection of bid& application of evaluation criteria not stated in the bidding doc</td> <td>Reevaluate bids</td> <td>- Bidding Document in particular provisions on Post Qualification criteria, minor deviations were referenced -Bidders bid and letter of successful completions</td> </tr> <tr> <td>5</td> <td>Contest on the evaluation of bids against criteria not stated in the bidding document</td> <td>Reevaluate bids</td> <td>-Bidding document Bids and supporting documents submitted as part of the bid</td> </tr> </tbody> </table>	#	Issue	Decision	Evidence referred and cited	1	Contest on the evaluation method and result	Rejected the bidder’s complaint	- Bidding Document that refers “Evaluation lot by lot” and - Procurement Directive para 44 (b)	2	Contest on the evaluation result	PE was ordered to Retender	-Bidding Document found incomplete/inaccurate	3	Rejection of all bids due to cost estimate which is not up to date	Rejected the bidder’s complaint	-Letter from MoF on additional budget -The bidder’s bid -Procurement proclamation para 30 (1) (d) (e)	4	Contest on the rejection of bid& application of evaluation criteria not stated in the bidding doc	Reevaluate bids	- Bidding Document in particular provisions on Post Qualification criteria, minor deviations were referenced -Bidders bid and letter of successful completions	5	Contest on the evaluation of bids against criteria not stated in the bidding document	Reevaluate bids	-Bidding document Bids and supporting documents submitted as part of the bid	Not applicable	Criterion is met.		
#	Issue	Decision	Evidence referred and cited																										
1	Contest on the evaluation method and result	Rejected the bidder’s complaint	- Bidding Document that refers “Evaluation lot by lot” and - Procurement Directive para 44 (b)																										
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Assessment criteria [13(a) Process for challenges and appeals]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(b) The first review of the evidence is carried out by the entity specified in the law.</p>	<p>PPL A.74 provides that, in the first instance, candidates submit a complaint to the public body. So, the first review of the evidence is carried out by the public body, which is the entity specified by the law (The Public procurement proclamation, Article 74).</p> <p>The complaint to the public body must include a completed Complaint Review Form, copies of documentary evidence relied upon, power of attorney (where relevant), plus a list of information about the complaint.</p> <p>The Head of the public body is obliged to review and decide upon the complaint in accordance with the provisions of the PPL and PPD. In practice, in some public bodies the Head delegates the responsibility to procurement staff and the Bid Endorsing Committee.</p> <p>As part of the overall complaint and appeal process, the bidder submits his/her complaint to the Head of the public body who is mandated to review and respond to the complainant within 10 days. The complainant can submit his/her complaint to the CHB only after response or no response from the Head of the PE within 10 days. However, there are cases in which the Head of the Public Body delegates the review of the complaint to the Procurement Directorate which is a party involved in the procurement decision.</p> <p>Based on the private sector survey, 7% out of 44 respondents said that they were not satisfied with the response to the complaint, and 36% said that the response was provided timely.</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		<p>Ensure that the complaint is responded by the Head of the public body and not delegated to the unit that had carried out the process concluded with the decision complained about. The response should be provided timely.</p>
<p>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p> <p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.</p>	<p>There is no specific statement in the PPL that the decisions of the Board are final and binding (enforceable).</p> <p>The CHB is in charge of reviewing and deciding on appeals submitted by the aggrieved bidder. As per the Procurement Proclamation, the decision of the CHB could be to rectify or terminate the procurement proceeding on which complaint is raised or dismiss the complaint in case it considers it unfounded. The public body is required to notify within 15 days the action taken by the public body in implementing the CHB's decision. The decision of the CHB is commonly regarded as binding. However, there are cases in which public bodies do not follow the decision of the CHB and in some cases they cancel the bidding process and retender instead of rectifying their actions that caused the complaint as per the decisions of the CHB.</p> <p>Though the PPA reports to the MoF that withholds funds on public bodies that fail to implement the decision of the CHB, the MoF's action is not supported by a rule or is left at the discretion of the officials in the MoF.</p>	<p>The team was not able to access data on number of CHB's decision that were enforced. The regulatory body or the appeal body do not systematically follow the enforceability of the decisions and capture records in central data base.</p>	<p>Criterion is partially met.</p> <p>There is no specific statement in the PPL that the decisions of the Board are enforceable and the MoF practice to withhold funds on public bodies that fail to implement the decision of the CHB is not specified in the legislation.</p>		<p>Define the mechanism to enforce the decision of the CHB in the legal documents. Ensure that records are captured and stored in centralized data base.</p>
<p>(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.</p>	<p>Summary: The time frames for submission and review of challenges, appeals, and issuing of decisions set out in the legal framework do not unduly delay the procurement process or make an appeal unrealistic.</p> <p>Time frame for submission of challenges and appeals: PPL A.74((2) requires the candidate to submit the complaint to the head of the public body within five working days from the date he knew, or should have known, the circumstances giving rise to the complaint (see also PPD A.45.1(b)).</p> <p>Time frame for issuance of decision by the head of the public body: PPL A.74(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons. PPD A.45.1(d) requires the public body to give the complainant a copy of the decision within 5 working days from the date the decision was made.</p> <p>Time frame for complaint to the Board: PPL A.74(4): If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Board. The complaint to the Board must be submitted within five (5) working days from the date on which the decision had been or should have been communicated to the candidate. (See also PPD A.47(a))</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>The CHB does not provide resolution within the stated time frame. Almost all the decisions were made after unduly delay. This is basically related to the capacity of the secretariat that reviews complaint on behalf of the Board and prepares recommendations. The Directorate has other responsibilities while there is limited staff.</p>		<p>Consider reestablishing the CHB with a structure that allows to avoid conflict of interest and with adequate resources and competence to carry out its responsibilities in a timely manner.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>Time frame for issuance of decision by the Board: PPL A.75(4) requires the Board to issue its decision within 15 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any.</p> <p>However, PPD A.47(f) states that the Board shall give its decision in writing within 15 working days of receipt of the public body's statement in response to the complaint. This is inconsistent with the PPL.</p> <p>In practice, the decision of the CHB is not rendered within the time limit specified in the law.</p> <p>There are also cases in which the CHB could not go through the proper level of investigation including hearing expert's opinion.</p> <p>The CHB's secretary that carry out preliminary assessment of the complaint has limited capacity to address the increasing volume of complaints which has reached 250 per year.</p> <p>The PPA's Directorate has 4 to 5 experts who review the complaints and propose recommendations to the CHB. Hence, it is difficult to deliver decisions in 15 days, as the 250 cases per year are a big load to handle by the available experts.</p> <p>There is high turnover of the Directorate's experts due to the low salary scale.</p>				

13(b) Independence and capacity of the appeals body

The appeals body:

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions</p>	<p>The links between the Agency and the Complaint Review Board are close.</p> <p>PPL A.71(2) provides that the Agency shall serve as the Secretariat of the Board. In that context the Secretariat receives and processes complaints. Its functions include not just administrative and logistical support, but also analysis of the complaints and expert opinions on complaints.</p> <p>There is, however, a discrepancy with the PPD A.36, which lists the Agency as one of the bodies represented in the Board, also one staff acting as a secretary and an expert advisor.</p> <p>PPL A.15(16 and A.72(2) provides that the Agency shall provide the Board with office facilities and technical assistance. It also provides training to all members of the Board (Complaints Manual 2.4).</p> <p>PPL A.15(16) also provides for the Agency to follow up on the implementation of decisions of the Board.</p> <p>Board members: PPL A.71 provides that the five-member Board shall be drawn from persons representing the private business sector, relevant public bodies and public enterprises. Further detail is specified in PPD A.36 which states that members of the Board shall be drawn from: The Ministry of Finance and Economic Development (Chairperson), Chamber of Commerce, Public Bodies, Public Enterprises and the Agency. An additional non-voting member is drawn from Agency who shall service as secretary and expert advisor.</p> <p>In practice, the members of the CHB are drawn from different government offices (4) and 1 member from the Chamber of Commerce. One of the members is the Director General from the Public Procurement and Property Administration Agency who is involved in issuing decisions on requests to use procedure that deviate from the established rules. This implies that the Agency Director General is potentially involved in procurement decisions that lead to a contract award. Similarly, the CHB is chaired by the State Minister from MoF who is directly or indirectly involved in procurement decisions.</p>	Not applicable	<p>Criterion is not met.</p> <p>Links between the Board and the Agency/Authority: The close links between the Agency/Authority and the Board creates the potential for conflict with other advisory, regulatory, and monitoring roles of the Agency/Authority in relation to procurement and contracts.</p> <p>Appointment of Board members: It is not clear whether open competition is required for the appointment of the Board members. Membership of the Board is an important, quasi-judicial role. Appointment as a Board member should be by way of an open, public competition. The type and level of necessary experience should be clearly specified to ensure that Board members are appropriately qualified and experience to undertake this important task. It is common practice for a number (not necessarily all) of the Board members to be legally qualified.</p> <p>Board members and conflicts: Board members are drawn from representative groups which create the potential for conflicts of interest.</p> <p>There are provisions in the PPD and Complaints Manual concerning Disclosing and managing conflict of interest (PPD A.40, /Complaints Manual 2.1.4, 2.1.5) and ethical conduct. However, Board members from these organizations are placed in a potentially difficult position concerning actual or perceived independence and conflict. Each of the represented organizations has a day-to-day interest in the conduct of public</p>		<p>Links between the Board and the Agency: The review body should ideally be supported by its own secretariat, independent of the Agency and other public bodies.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
			procurement in general and may have direct interest in particular procurements in an advisory or review capacity, or as public bodies or bidders or representative of those organizations.		
(b) does not charge fees that inhibit access by concerned parties	There are no fees paid for lodging complaints and appeals to CHB.	Not applicable	Criterion is met.		
(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available	The procedures for review are clearly defined in the PPL, PPD, and Complaints Manual. These documents are publicly available, on PPA's website www.ppa.gov.et. The appeal body follows procedures for submission and resolution of complaints.	Not applicable	Criterion is met.		
(d) exercises its legal authority to suspend procurement proceedings and impose remedies	<p>Suspension: PPL A.75(1) provides that, upon receipt of a complaint, the Board shall promptly give notice of the complaint to the public body concerned and that notification automatically suspends further action by the public body until the Board has settled the matter.</p> <p>Remedies: PPL A.75(2) lists the remedies which may be imposed by the Board.</p> <p>The CHB has legal authority to suspend the procurement proceedings and impose remedies. According to Article 75 (2) of the proclamation, unless the CHB dismisses the complaint, it has the authority to render one of the following decisions: (a) prohibit the public body from acting or deciding unlawfully; (b) order the public body to proceed in a manner conforming to the rules in the proclamation other than a decision to award or conclude a contract ; (c) annul in whole or in part, an unlawful act or decision by the public body.</p> <p>It is supported with evidence that, upon receipt of complaints, the CHB issues a letter suspending the procurement proceedings and issues decisions imposing remedies.</p>	Not applicable	Criterion is met.		
<p>(e) issues decisions within the time frame specified in the law/regulations*</p> <p><i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (e):</i> <i>- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).</i> <i>Source: Appeals body.</i></p>	<p>Data received from PPA: In the last three years, 390 appeals were lodged at the CHB and only 6 appeals (1.5%) were resolved within the time frame stated in the directive, which is 15 working days.</p> <p>The CHB was able to give a decision for 31 appeals (about 8%) within 1 month of appeal and the majority of the appeals (about 68%) were decided on after a minimum of 45 days delay from the stipulated time. A decision on 76 appeals (26%) took 3 months and on 73 appeals 19% took more than 3 months.</p> <p>The CHB has not decided on 45 appeals or are pending cases for more than 1 to 3 years.</p>	<p>Data received from PPA: In the last three years, 390 appeals were lodged at the CHB and only 6 appeals (1.5%) were resolved within the time frame stated in the directive, which is 15 working days.</p> <p>The CHB was able to give a decision for 31 appeals (about 8%) within 1 month of appeal and the majority of the appeals (about 68%) were decided on after a minimum of 45 days delay from the stipulated time. A decision on 76 appeals (26%) took 3 months and on 73 appeals 19% took more than 3 months.</p> <p>The CHB has not decided on 45 appeals or are pending cases for more than 1 to 3 years.</p>	<p>Criterion is not met.</p> <p>Procurement complaints are not resolved within the time frame stipulated in the legal framework.</p>		See recommendation provided under indicator 13 (a) (d).
(f) issues decisions that are binding on all parties	<p>PPL A.15(16) requires the Agency to follow up on the implementation of decisions of the Board.</p> <p>The CHB's decision is binding on all parties unless any of the party appeals to the Higher Court. According to the Proclamation Article 72 (3), the decision of the CHB could decide (a) that the procurement proceeding, on which complaint is raised, be rectified or terminated; (b) to dismiss the complaint if in its judgment the complaint is unfounded.</p> <p>In case they are not satisfied with the decision of the CHB, the parties can file their case to the court.</p>	Not applicable	Criterion is partially met.		Consider including a specific provision in the PPL dealing with binding nature of decisions.
(g) is adequately resourced and staffed to fulfil its functions.	Complaints Manual, 2.4(i) states that the expenditure towards meeting all the expenses of the Board and secretariat of the Board shall be met from the Agency's budget "and governed by such applicable budget and payment procedures that can ensure the independence of the functioning of the Board."	Not applicable	<p>Criterion is not met.</p> <p>The Board is not adequately resourced and staffed. Except the secretariat service provided by the agency which is considered as conflicting role on the side of the agency, the board has no dedicated resource and</p>		See indicator 13 (a) (d)

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>The Board members are appointed by Minister of MoF. The Minister identifies members for appointment through requesting entities represented on the Board to notify the individual representing their entity.</p> <p>There are no defined criteria on qualification of Board members to be fulfilled, though the members are generally expected to be familiar with the country's procurement system.</p> <p>The members are eligible to continue for two terms, where each term is 3 years.</p> <p>The Board is not adequately staffed to fulfill its function. The Procurement Directorate serves as the secretariat office of the Board, hence the appeal body has no separate resource and staff as most of the expertise input comes from the Directorate. The Directorate's structure allows about 5 experts while currently there are only 3 experts who are in charge of evaluating appeals submitted to the Board.</p> <p>The private sector used to raise the issue of including Engineers as staff of PPA. The structure of the directorate responsible for complaint handling does specifically require recruiting an engineer. However, any procurement related professional including an engineer can be recruited.</p> <p>On the other hand, it is also difficult to attract and retain qualified experts with the current salary scale in PPA.</p>		<p>staff that provides support to deliver its responsibilities. Coupled with the perception that the Board is not independent, the capacity limitation has affected the credibility of the Board in addressing complaints of the private sector successfully.</p>		

13(c) Decisions of the appeals body

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

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations												
<p>(a) based on information relevant to the case.</p>	<p>According to the procurement Directive Article 47 (e), the CRB's decision will be based against the bidding document, bid document, invitation to bid, evaluation report and any other documents relevant to the case and the decision shall be made in accordance with the proclamation and Directive.</p> <p>Based on the private sector survey (Q50), the perception on challenges of the appeals system is as follows:</p> <table border="1"> <thead> <tr> <th>ANSWER CHOICES</th> <th>RESPONSES</th> </tr> </thead> <tbody> <tr> <td>▼ The system acts in accordance with rule of law and is predictable</td> <td>2.22% 1</td> </tr> <tr> <td>▼ Most actions within the system are in accordance with rule of law and are predictable</td> <td>20.00% 9</td> </tr> <tr> <td>▼ Only a very limited number of actions is in accordance with rule of law and predictable</td> <td>37.78% 17</td> </tr> <tr> <td>▼ The actions do not seem to be in accordance with rule of law and are not predictable</td> <td>42.22% 19</td> </tr> <tr> <td colspan="2">Total Respondents: 45</td> </tr> </tbody> </table>	ANSWER CHOICES	RESPONSES	▼ The system acts in accordance with rule of law and is predictable	2.22% 1	▼ Most actions within the system are in accordance with rule of law and are predictable	20.00% 9	▼ Only a very limited number of actions is in accordance with rule of law and predictable	37.78% 17	▼ The actions do not seem to be in accordance with rule of law and are not predictable	42.22% 19	Total Respondents: 45		Not applicable	<p>Criterion is not met.</p> <p>While the procedures governing the decision-making process of the appeals body provide that decisions are based on information relevant to the case, perception among the private sector is that the decisions are not in accordance with rule of law.</p>		<p>See indicator 13 (a) (d) Improve transparency of the appeal decisions and sensitize the private sector to establish positive perception.</p>
ANSWER CHOICES	RESPONSES																
▼ The system acts in accordance with rule of law and is predictable	2.22% 1																
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Total Respondents: 45																	
<p>(b) balanced and unbiased in consideration of the relevant information.*</p> <p>Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.</p>	<p>In principle, the respondents to the private sector survey do not see the appeal system as fair and trustworthy or consistent. The results of the survey are presented in the column on the right.</p> <p>The private sector responded suggesting the following areas for improvement:</p> <ul style="list-style-type: none"> Accountability Transparency Independence Competence and procurement knowledge Timeliness <p>The survey also asked the respondents about their perception on how the complaints are resolved by the procuring entities.</p>	<p>25% of the 51 respondents to the private sector survey said that they appealed the decision of public body to the complaints review Board (Q46).</p> <p>88% of the 43 respondents said that they do not consider the appeal system as fair and trustworthy (Q47).</p> <p>84% of 38 respondents said that the appeal decision was not consistent (Q48).</p> <p>69% of the 32 respondents responded that their complaints were not resolved timely (Q51).</p> <p>91% of 44 respondents, who have never appealed the decision of the Public Body, said that they felt that the decision of the Public Body was unfair, but</p>	<p>Criterion is not met.</p> <p>The private sector does not consider the Complaint Handling Board as trustworthy and fair. This is mainly due to:</p> <ol style="list-style-type: none"> the reporting structure of the Board (to Ministry of Finance) created mistrust on the impartiality of the Board; the limited capacity in delivering its decisions within the time frame; and The involvement of the agency in the reviewing and analyzing the complaints which is not viewed as independent and impartial. <p>The lack of minimum qualification and experience requirements and the formal positions of members of</p>		<p>See indicator 13 (a) (d).</p>												

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	42 out of 73 respondents (39 skipped) said that they filed a complaint (Q43). 64% of 44 respondents (68 skipped) said that their complaint was not responded timely (Q44) and 93% of 44 respondents said they were not satisfied with the response to the complaint (Q45).	did not appeal because they did not believe the appeal system was sufficiently trustworthy (Q49).	the Board are viewed as limiting factors in delivering responsibilities capably and independently.		
(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favor of procuring entity; decision in favor of applicant) (in %).Source: Appeals body.	The PEs are required to suspend the procurement proceeding immediately when a complaint is submitted to the CHB. The public bodies shall not proceed with the procurement activity before the CHB reaches decision. The CHB's decision could be either to rectify or terminate the procurement proceeding on which complaint is raised or dismiss the complaint in case the CHB determines that the complaint is unfounded. Thus, the decision-making process provides the opportunity to take remedial actions, if required.		Criterion is met.		
(d) decisions are published on the centralized government online portal within specified timelines and as stipulated in the law.* <i>// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d):</i> - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralized online portal.*	There is no legal requirement to publish full CHB's decisions on the Agency portal or elsewhere. The Complaints Manual para.4.2.10 provides that the Secretariat shall produce a summary of each decision which shall include the basic facts, reasoning, and findings of the Board. The Secretariat shall publish the summary of the website of the Agency. No timescale is specified. The summaries are not published either. The Secretariat must also maintain copies of the full text of each decision and make it available to the interested parties on request.	There is no practice of publishing CRB's decision on the website. It is also not required by the law.	Criterion is not met. Publication of full decisions: To ensure transparency and an effective complaints system, all decisions should be published in full on a central online portal.		Include a provision in primary legislation requiring publication of full decisions within a specified tie period. Ideally this should be in a user friendly and easily searchable format (open data format).

14. The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

The legal/regulatory framework provides for the following:

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.	The Manual at 2.9 sets out definitions of corrupt, fraudulent, collusive, coercive, obstructive practices as follows: "Corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the action of a public official in the procurement process or in contract execution; "Fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation; "Collusive practices" is a scheme or arrangement between two or more Bidders, with or without the knowledge of the Public Body, designed to establish prices at artificial, non-competitive levels; and "Coercive practices" is harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process or affect the execution of a contract. Obstructive practice is: - deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Federal Ethics and Anticorruption Commission, the Federal Auditor General and the	Not applicable	Criterion is partially met. There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law which define fraud & corruption in different ways, and also set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations may contradict each other, such as, for example, application of the specific law above general while the specific law does not provide for specific issues up to the professional standard. For example, the PPL is a specific law, but its definition of offenses lacks a standard required for prosecution e.g., intent of the wrongdoing.	✓ Yes	In the next round of reforms, ensure consistency of the public procurement legislation and other laws.

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Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>Public Body or their auditors investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent their from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, - or acts intended to materially impede the exercise of inspection and audit rights provided for under Clause 2.9.4 below.</p> <p>These definitions fulfill the requirement of the United Nations Convention against Corruption (UNCAC) which Ethiopia signed on 10 December 2003 and adopted through Proclamation no. 544/2007 on 26 November 2007. The UNCAC requires that States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards, and methodologies, as well as information on best practices to prevent and combat corruption.</p>				
<p>(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption, or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.</p>	<p>Responsibility/accountability of government employees:</p> <p>PPL A.32(1)(e) requires personnel engaged in public procurement to observe rules of ethics which include the requirement to report to the law enforcement agencies any intended or completed action of corruption and contribute to the effort to fight corruption and malpractice.</p> <p>PPD A.34.5 requires any employee of person in position of responsibility to notify the appropriate body of any acts of corruption, intended or perpetrated. In such a situation the individual must make sure the allegation is supported by evidence and isolate themselves from facilitation or assisting in the intended act.</p> <p>Penalties for government employees: PPL A.77 sets out offences and punishments for persons appointed to or employed by a public body and procurement and property administration officers. The penalties for offences under these provisions, which include fraudulent and corrupt practices as well as bribery, include fines and terms of imprisonment.</p> <p>Responsibilities of private firms:</p> <p>PPL A.32(2) requires that any candidate or supplier shall refrain from any act contravening the public procurement process. Candidate or supplier is prohibited, in summary, from actions intending to influence the public body, and must not make gifts or offer other forms of inducement. (PPL A.32(2)(d)).</p> <p>Bidders must sign an anti-bribery pledge form and a statement of undertaking to observe the Ethiopian Law against Fraud and Corruption which are included as part of the bid documents. (PPD A.16.4.2 (e).)</p> <p>PPD A.35 Ethics expected of candidates: requires candidates and suppliers to refrain from making gifts to persons with responsibility for public procurement, not to engage in collusive behavior (connivance) and to disclose to the appropriate body an intended or perpetrated act of corruption and not be complicit in such act. (see also Manual 6.2.)</p> <p>Disqualification: PPD A.16(21) provides that a public body may disqualify a bidder where it is proved that the bidder has committed and act of embezzlement, fraud or connivance with other bidders.</p> <p>Rejection of bid: PPL A.30(1)(f) provides that a public body may reject a bid in whole or in part where it is proved that the bid is not sufficiently competitive as a result of collusion (connivance) or unethical conduct.</p> <p>Fines and imprisonment: PPL A.77(5) provides that any candidate who, with the intention of deriving unlawful advantage, presents falsified documentary evidence, conceals information or colludes (connives) shall, upon conviction be punishable with a fine and imprisonment.</p> <p>Debarment: PPD A.48 Reports to the Agency on misconduct of bidders and suppliers states that any public body which can prove that any bidder has committed fraud, falsified documents,</p>	<p>Not applicable</p>	<p>Criterion is partially met.</p> <p>There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law which define fraud & corruption in different ways, and set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations may contradict each other, such as, for example, application of the specific law above general while the specific law does not provide for specific issues up to the professional standard. For example, the PPL is a specific law but its definition of offenses lacks a standard required for prosecution e.g., intent of the wrongdoing.</p> <p>In addition, the offences set up in the PPL mix criminal and administrative wrongdoing with criminal penalties for all of them.</p>	<p>✓ Yes</p>	<p>In the next round of reforms, ensure consistency of the public procurement legislation and other laws.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>committed and act of connivance (collusion) or corruption may file a report with the Agency. This leads to an investigation by the Agency with the potential for bidder debarment as a result.</p> <p>Compensation: PPD A.48(5)(5) provides that without prejudice to any action which may be taken by the Agency, public bodies shall be entitled to seek compensation for any damage or loss they have sustained on account of an act or omission by a supplier or bidder in connection with any procurement in accordance with the contract or the law.</p>				
(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	<p>Responsibility/accountability of government employees:</p> <p>PPL A.32(1)(a) requires personnel engaged in public procurement to observe rules of ethics which includes the obligations to notify any actual or possible conflict of interest and isolate oneself from any processes involving such conflict.</p> <p>There is no provision on cooling off period for former public officials.</p> <p>The public officials notify of their conflict of interest and recuse from the function with such conflict of interest.</p>	Not applicable	Criterion is partially met. There is no provision on cooling off period for former public officials.		Introduce provision on cooling off period for former public officials

14(b) Provisions on prohibited practices in procurement documents

Assessment criteria [14(b) Provisions on prohibited practices in procurement documents]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.	<p>The PPL para 77 specifies prohibited practices that should be observed both by public officials and procuring entities. In addition, the Standard Bidding Documents: (example used is SBD for Works, National Competitive Bid (NCB)). The Instructions to Bidders (clause 3 in SBD Works NCB)) include a section which refers to the requirement on both public bodies and bidders to observe the highest standard of ethics. It uses the definitions of corrupt, fraudulent, collusive, coercive and obstructive practices referred to in the Manual (see 14(a)(a) above). It confirms that the public body will reject a recommendation for award if it determines that the bidder has been engaged, directly or indirectly, in one of these practices. It also refers to the debarment process and list of debarred bidders held by the Agency and published on the Agency's website. It states that the public body may terminate a contract if at any time it determines that corrupt or fraudulent practices have been engaged in.</p> <p>Bidders are required to indicate their acceptance of the provisions on fraud and corruption through the statement in the Bid Submission Sheet. (Part 1, section 4: Bidding Forms, Form A) Bidders must permit the Agency to inspect their accounts, records and other documents.</p>	Not applicable	Criterion is met.		
(b) Procurement and contract documents include provisions on fraud, corruption, and other prohibited practices, as specified in the legal/regulatory framework.	<p>The Agency's SBD provide a dedicated section on Fraud and Corruption in the Instruction to Bidders (Paragraph 3) and Bid Submission Sheet para (I) indicates a statement of confirmation to abide by the provisions on fraud and corruption.</p> <p>The General Conditions of Contract (clause 5 in the example used; SBD for Works, National Competitive Bid (NCB)) includes provisions on fraud and corruption including reference to contract cancellation and debarment. The General Conditions of Contract are part of the SBD and may not be altered.</p> <p>The Procurement Directive Article 16.4 (e) requires the Instruction to Bidders of bidding documents to include a provision that requires bidders to sign Anti-Bribery pledge form and a statement of undertaking to observe the Ethiopian law against fraud and corruption. However, the SBD does not provide an Anti Bribery Pledge form as indicated in the Directive and it is not implemented.</p>	Not applicable	Criterion is partially met The SBD does not provide an Anti Bribery Pledge form as indicated in the Directive and it is not implemented.		Update SBD to comply with the legal framework and include anti bribery pledge form in the SBDs.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

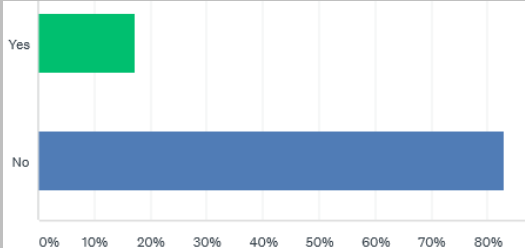
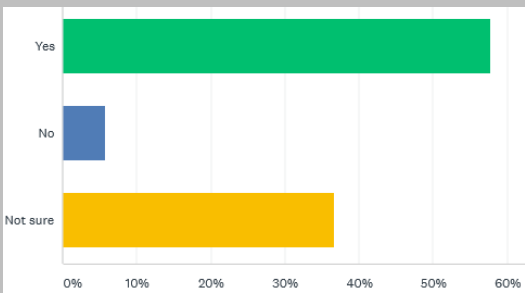
14(c) Effective sanctions and enforcement systems

Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.	<p>The Public Procurement Proclamation, Article 32 (d) obliges persons working on procurement to report allegation of corruption to law enforcement authorities. The Directive para 34.5 require employee or person in a position of responsibility to report to appropriate authority an act of corruption. The legal documents refer to only one aspect of malpractice as “corruption” and are lenient on the other aspects of malpractices including fraud. There is also inconsistency between the proclamation and the directive regarding whom to report to, in which the proclamation specifies “law enforcement authorities” while the Directive refers to “relevant authorities”. Besides, there is no clear procedure to report allegation of fraud and corruption to the law enforcement authorities.</p> <p>The legal framework also requires e.g., public bodies reporting corruption to provide evidence. Given that non-professionals are not in a position to do it, many allegations may go unreported.</p>	Not applicable	Criterion is partially met. The reporting structure on fraud and corruption and other illegal practices has to be clearly established and communicated to all parties including staff in procuring entities. The languages between the directive and the proclamation and other documents including the SBDs has to be consistent and comprehensive that avoids misconception or misinterpretation.	✓ Yes	<p>Ensure clarity and consistency within the public procurement legal framework and with other laws.</p> <p>Establish clear reporting structure on issues of malpractices and ensure clarity and consistency within the public procurement legal framework and with other laws.</p> <p>Consider providing training and guidance to staff on how to report on cases of corruption and other malpractices anonymously.</p>
(b) There is evidence that this system is systematically applied, and reports are consistently followed up by law enforcement authorities.	<p>There is no clarity to whom corruption allegations are to be reported, as explained above. In practice, they are reported to PPA, FEAC, Attorney General and police commission. However, it is not clear whether all allegations are directed to the agency responsible for acting on them. Cross check did not provide such assurance.</p>	Not applicable	Criterion is partially met. See gap under 14 (c) (a).	✓ Yes	<p>The working relationship among the relevant agencies in particular among PPA, FEAC, OFAG, Attorney General and police commission has to be worked out together with clarity and consistency of the legal framework for reporting corruption.</p> <p>See recommendation under 14(c) (a).</p>
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	<p>The procurement proclamation Article 15 (7) mandates PPA to review and decide on the complaint from public bodies submitted on the conduct bidders or suppliers and the decision could be to suspend the bidder/supplier for definite and indefinite period, give a written warning or dismiss the complaint. Article 76 of the Proclamation stipulates the procedure to be followed in reviewing and deciding on complaints from public bodies. According to Article 48.3 of the Directive, the Agency is required to request the alleged bidder or supplier to respond to the complaint along with its evidence within 5 working days.</p> <p>The legal framework also requires e.g., public bodies reporting corruption to provide evidence. Given that non-professionals are not in a position to do it, many allegations may go unreported.</p>	As per the debarred firms list posted on PPA’s website, 20 companies are under debarred list, as of April 15, 2020, due to fraudulent activities (falsified bid security and performance bond). However, the assessment team was not able to access evidence that the cases were addressed to the law enforcement bodies for legal action.	Criterion is met.		<p>Improve coordination and information flow among the procurement regulatory bodies and law enforcement authorities to ensure malpractices are legally addressed.</p>
<p>(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d): - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements</p>	<p>The Assessment Team was not able to obtain data on enforcement of the laws on fraud, corruption, and other prohibited practices. Information obtained from the AG informs only about the recent 7 cases of indictment for fraud and corruption. The Team was not able to verify whether these cases were reported to PPA to act on debarment.</p> <p>The Team reviewed the Reports of FEAC which provide a lot of information. In the Reports issued at the time when the investigation and prosecution functions were with FEAC, data related to fraud and corruption were aggregated and the Team was not able to establish the number related to fraud and corruption in procurement.</p> <p>Based on public information, it is known that from time to time, public officials are detained on suspicion of corruption and many of them are released after varied time counted in months without indictment.</p>	In the private sector survey, out of 68 respondents 60% said that they believe that the companies are expected to give a gift to secure a contract in the public sector. 44 respondents skipped this question (Q57).	Criterion is not met. There is no access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.	✓ Yes	<p>Ensure availability and access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(suspended/debarred). Source: Normative/regulatory function/anti-corruption body. - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body. - Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). Source: Survey.					

14(d) Anti-corruption framework and integrity training

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The country has in place a comprehensive anti-corruption framework 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.*</p> <p>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a): - percentage of favorable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey.</p>	<p>The country has in place a comprehensive anti-corruption framework. The anti-corruption responsibility is divided among three entities. The federal anti-corruption commission is responsible for preventing and fighting corruption through public education and awareness. The law enforcement responsibility is placed in the Attorney General (prosecution and overseeing investigation) and Police (investigation).</p> <p>In addition, different arrangements were established and up running with the purpose of creating awareness and fighting corruption at national level. The anti-corruption commission formed 14 coalitions at national level with different groups and interested parties including youth, women, religious groups, teachers, students etc. They have also established a joint platform with the Federal Auditor General to plan and tackle corruption based on audit findings and recommendations. There is a plan to hire a consultant and prepare a national anti-corruption policy.</p> <p>However, the capacity of the anti-corruption commission is limited. The commission lacks the technical competence and budget to deliver its responsibility.</p> <p>FEAC undertook a survey to understand the nature of corruption in procurement. The survey was conducted in collaboration with Transparency International on the construction sector.</p>	<p>In the private sector survey, out of 70 respondents, 17% said that they believe that the anti-corruption measures undertaken by the Government are effective and 83% that they are not (Q56).</p>  <p>42% of 70 respondents chose from the proposed options law enforcement as an effective measure to reduce corruption, and 30% said e-procurement is a very effective measure (Q58).</p> <p>Further, 70% out of 63 respondents responded positively to the question whether they think that introduction of e-procurement will lead to reduction in corruption. 6% responded negatively, and 24% were not sure (Q63).</p> <p>58% of 52 respondents said that CSO involvement in overseeing procurement contracts would be beneficial in the future (Q61).</p> 	<p>Criterion is partially met.</p> <p>While Ethiopia has in place a comprehensive anti-corruption framework 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, the legal framework lacks transparency in the first place. The private sector indicated some features they believe should be improved to support the existing system.</p>	<p>✓ Yes</p>	<p>Review factors that help preventing corruption and improve them both in the legal framework and in practice.</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
		<p>Asked to indicate their priorities to enhance anti-corruption measures the respondents most often indicated:</p> <ul style="list-style-type: none"> • Transparency (31) • Ethics, competent staff, and their fair compensation (18) • Law enforcement (17) • E-procurement (12) • Proper controls and accountability (11) • Fair and clear bidding processes (8) 			
(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.	There are certain mechanisms that are in place to detect and mitigate corruption risks in the public procurement cycle. The procurement organizational structure that provides segregation of roles and responsibilities with fairly adequate internal control and check & balance is one of the mechanisms to detect and mitigate corruption risks. In addition, each procuring entity has established an ethics office that is closely accessible to report corruption allegations. The government identified procurement as one of the sectors vulnerable to corruption. As a result, all government officials and employees that are involved in procurement activities are required to declare and register their assets at the Federal Ethics and Anti-Corruption Commission and update every two years. Assets that are acquired above the official income are considered as obtained through corruption and can lead to prosecution.	Not applicable	Criterion is met.		
(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	There is no practice to adequately compile statistics on corruption related legal proceedings. However, the assessment team came across reports that were annually issued by FEAC before the mandate was transferred to Federal Attorney General. FEAC compiled information from the federal and regions and issued an annual report covering the performance on training and awareness, prevention, investigation and prosecution including information on number of allegations received, investigation done, prosecution and conviction. It appears that the good experience in FEAC has not been continued by the Attorney General.	Not applicable	Criterion is not met. Statistics on corruption-related legal proceedings and convictions related to procurement are not compiled and reports are not published annually.	✓ Yes	Ensure that statistics on corruption-related legal proceedings and others are compiled and published, allowing access to information related to procurement.
(d) Special measures are in place for the detection and prevention of corruption associated with procurement.	There is no special mechanism in place for detecting and preventing corruption in procurement.	Not applicable	Criterion is not met. There are no special measures other than what is described under (b) above.	✓ Yes	Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system.
(e) Special integrity training programs are offered, and the procurement workforce regularly participates in this training.	There is no regular integrity training program on procurement. But the corruption prevention Department provides dedicated support on integrity training. Also, FEAC provides anti-corruption awareness to the public and training to public bodies when requested.	Not applicable	Criterion is not met. There is no regular integrity training program on procurement. But the corruption prevention Department provides dedicated support on integrity training.	✓ Yes	Incorporate integrity training session in the PFM training program or as a standalone program delivered on the regular basis.

14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are strong and credible civil society organizations that exercise social audit and control.	The team has not come across any strong and credible civil society organization (s) that exercises social audit and control.	Not applicable	Criterion is not met. There are no strong and credible civil society organizations that exercise social audit and control.		See indicator 9 (c) (f).

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.	The new Organization of Civil Society Proclamation No 1113/2019 opened a new era in the establishment and operation of CSOs in Ethiopia. The new law, inter alia, allowed all CSOs to engage in any lawful activities and relaxed the distribution of funds between administrative and operational costs. While there is a relatively conducive environment for the operation of CSOs, the procurement environment has no procedure to encourage the involvement of CSOs in public procurement. As a result, there are no practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.	Not applicable	Criterion is partially met. The new CSO law provides opportunities to enhance the role and operation of CSOs in Ethiopia. However, the procurement procedure has not identified and provided guidance on the involvement of CSOs in public procurement.		See indicator 9 (c) (f).
(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil society organizations (CSOs), including national offices of international CSOs actively providing oversight and social control in public procurement. Source: Survey/interviews.	There are not many CSOs that are working on public procurement in Ethiopia. The Construction Sector Transparency Initiative (CoST Ethiopia) is the only active CSO working on the transparency aspect of procurement related to construction contracts. CoST provides for the disclosure of project information on a selection of construction projects and the procurement aspect. PPA redesigned its website for purpose of publication with support from CoST Ethiopia. The main benefit of enhancing transparency in the sector is to improve the integrity and accountability in the system. However, this is only a single CSO, and its engagement is limited to construction projects.	37 respondents out of 112 responded to the question whether civil societies are allowed to monitor bid submission, receipt, and opening, and 11% said that they are allowed, 57% said that they are not allowed, and 32% were not sure (Q33). Out of 66 respondents who responded to the question whether they are aware of any CSO providing an oversight in procurement 6% said that they are aware and the remaining 94% said that they are not aware (Q60). This perception is different from the response of the Procuring Entities who generally say that CSOs are allowed to participate but they do not participate. Out of 52 respondents asked whether they think that CSO involvement in overseeing procurement contracts could be beneficial 58% said yes, 6% said no, and 37% were not sure (Q61). Asked to tell about obstacles for CSO participation in public procurement the respondents indicated mostly lack of transparency and lack of funding.	The criterion is partially met. The procurement legal framework should encourage the involvement of CSOs in public procurement as oversight and monitoring partners. PPA should establish closer working relationship with relevant CSOs to attract their interest and support their involvement on public procurement.		See indicator 9 (c) (f).
(d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.	There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.	Not applicable	Criterion is not met. There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.	✓ Yes	PPA should work with the business associations to promote adopting internal compliance measures by private firms to support integrity and ethical behavior in public procurement.

14(f) Secure mechanism for reporting prohibited practices or unethical behavior

Assessment criteria [14(f) Secure mechanism for reporting prohibited practices or unethical behavior]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.	The Federal Police Commission established a mechanism in which corruption and other prohibited practices can be reported. Denunciation could be made through telephone, email, or physical reporting. The allegations can be reported anonymously.	Not applicable	Criterion is met.		

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	Ethiopia has a dedicated proclamation for the protection of witnesses and whistle blowers. A proclamation to provide protection to witnesses and whistle blowers of criminal offenses No. 699/2010 defines different types of protection measures that can be granted to the witness or whistle blower and family in accordance with the law.	Not applicable	Criterion is met.	
(c) There is a functioning system that serves to follow up on disclosures.	The federal police commission established anti-corruption directorate with three divisions that investigates corruption on non-government organization, government organizations or Stated Owned Enterprises. In addition, under the deputy police commissioner, two bureaus are established that have specialization on information collected from document and witnesses (Tactic) or forensic investigation (techniques).	Not applicable	Criterion is met.	

14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a): - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.</p>	<p>The procurement proclamation article 32 provides the Rules of Ethics in public Procurement and Property Administration. The article specifies the required ethical conducts from personnel engaged in public procurement and candidates or suppliers on public procurement. In addition, the procurement directive Part IX Article 34 provides a relatively elaborated ethics or code of conduct expected from employees or public officials and candidates engaged in public procurement.</p> <p>The code of conduct is mandatory and applicable in all PEs and staff involved in procurement.</p> <p>The Manual, Appendix 6 sets out "Ethics in Public Procurement" which any employee or person in a position of responsibility involved in public procurement shall observe together with other rules of ethics.</p>	Not applicable	<p>Criterion is partially met. The code of conduct is specific to procurement and doesn't include the broader PFM function.</p>		<p>Introduce code of conduct applicable in the broader PFM function including procurement. Ensure that statistics on corruption related legal proceedings and others are compiled and published.</p>
<p>(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.</p>	<p>Accountability for decision making is clearly stipulated in the procurement Proclamation. Article 11 of the procurement proclamation states that "Procurement and property administration staff or heads of procurement and property administration units and members of the procurement endorsing committee in public bodies shall be accountable for their actions in accordance with this Proclamation and the directives to be issued by the Minister." In addition, the federal government issued a proclamation to provide Disclosure and Registration of Asset No 668/2010 that obliges public officials to disclose their asset and register by the federal ethics and anti-corruption commission. So far, more than 100,000 public officials registered their asset in the commission. However, the accountability provision is not broad enough to include all PFM functions and also all employees and officials that are involved in procurement decisions including technical experts and Heads of PEs etc.</p>	Not applicable	<p>Criterion is partially met. Please refer to the gap under sub indicator 14 (g) (a).</p>		<p>See indicator 6 (a) (e).</p>
<p>(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</p>	<p>The code of ethics in procurement is mandatory. It is stipulated in the procurement Proclamation and Directive that are applicable in all PEs and to all procurement staff involved in public procurement.</p>	Not applicable	<p>Criterion is partially met. Neither the procurement Proclamation nor Directive specify that failure to comply with the ethics code would result in administrative or criminal punishment. Besides this, there is no procurement professional association that monitors the integrity of people involved in procurement.</p>		<p>The legal framework should provide provisions on enforcement of the procurement code of ethics. In addition, the Agency should work with the relevant bodies to establish a procurement professionals' association or other mechanism that could support on enhancing integrity in procurement and</p>

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
					follow up on professionals to clean up the procurement profession from actions or professionals that undermine integrity as they appear.
(d) Regular training programs are offered to ensure sustained awareness and implementation of measures.	The Ethics and anti-corruption commission established a dedicated department that organizes and provides training. The ethics officers in each of the PEs are also responsible to coordinate with FEAC and ensure that employees receive trainings. However, there is no regular training program related to code of ethics. The Commission mentioned budget and technical constraints in providing regular trainings.	Not applicable	Criterion is partially met. There is no regular training program related to code of ethics.	✓ Yes	Ensure regular training of ethics. Besides delivery by FEAC, it can be jointly organized either as part of the PFM training or standalone program.
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.	There is no requirement to capture information on beneficial ownership. There is also no system to systematically capture and maintain information on conflict of interest. The software for asset registration is not also functional and information exchange is reliant on manual communication. Thus, the information on beneficial ownership, conflict of interest or asset disclosure are either not available or not systematically captured, maintained, utilized for decision making.	Not applicable	Criterion is not met. There is no established procedure and practice to capture information on beneficial ownership. Similarly, there is no established procedure to notify, address and capture information on conflict of interest. The lack of capacity to rollout the software designed for capturing, updating and analyzing information on asset register has limited the capacity to fight corruption in public procurement.		Ensure that Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

*Grey highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

The Federal Democratic Republic of Ethiopia

Assessment of the Public Procurement system 2021

Volume II.4

Indicator Matrix for Oromia



MAPS assessment in: Ethiopia

Name/organization: The World Bank in cooperation with the Ministry of Finance and the Public Procurement and Property Administration Agency of the Government of Ethiopia

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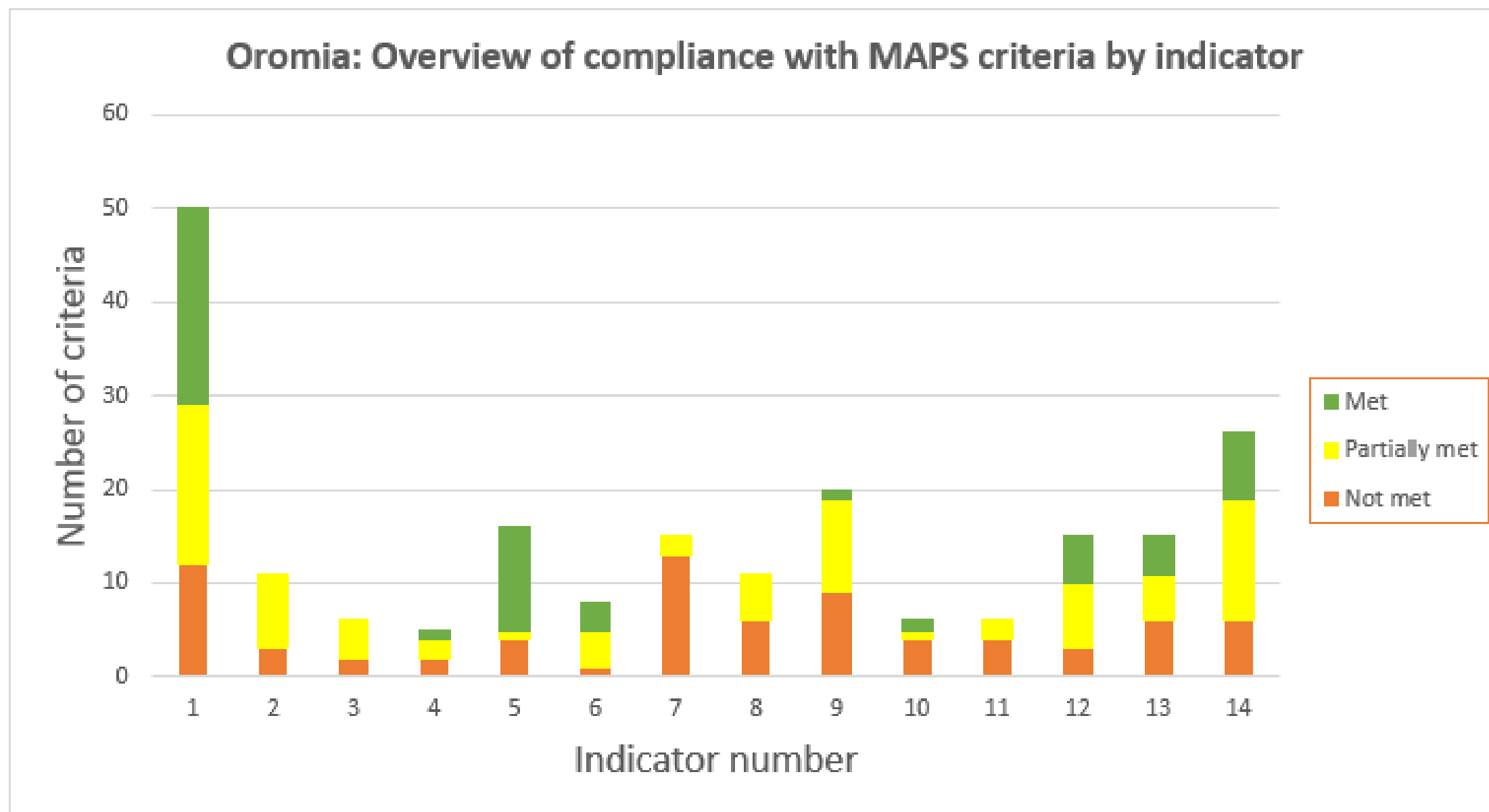
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The public procurement system in Oromia, Ethiopia: Overview of compliance with MAPS indicators

Red flags raised ✓	Non-compliance	Partial compliance	Compliance
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Indicators are assessed against several criteria. Non-compliance for an indicator is considered if at least one criterion is not met. Partial compliance is considered if at least one criterion is partially met. Compliance is considered if all criteria are met.

	Pillar I		Pillar II		Pillar III		Pillar IV
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	✓ 1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well-integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	✓ 9(a) Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring
	1(b) Procurement methods		✓ 4(b) Financial procedures and the procurement cycle		✓ 9(b) Selection and contracting		11(b) Adequate and timely access to information by the public
	✓ 1(c) Advertising rules and time limits	5. The country has an institution in charge of the normative / regulatory function.	5(a) Status and legal basis of the normative / regulatory institution function		✓ 9(c) Contract management		11(c) Direct engagement of civil society
	1(d) Rules on participation		5(b) Responsibilities of the normative / regulatory function	10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	✓ 12(a) Legal framework, organisation and procedures of the control system
	1(e) Procurement documentation and technical specifications	✓ 5(c) Organisation, funding, staffing, and level of independence and authority	✓ 10(b) Private sector's organisation and access to the public procurement market		12(b) Coordination of controls and audits of public procurement		
	1(f) Evaluation and award criteria	5(d) Avoiding conflict of interest	10(c) Key sectors and sector strategies		✓ 12(c) Enforcement and follow-up on findings and rec.		
	1(g) Submission, receipt, and opening of tenders	6. Procuring entities and their mandates are clearly defined.	6(a) Definition, responsibilities, and formal powers of procuring entities	13. Procurement appeals mechanisms are effective and efficient.	✓ 12(d) Qualification and training to conduct procurement audits		
	1(h) Right to challenge and appeal		6(b) Centralized procurement body		13(a) Process for challenges and appeals		
	1(i) Contract management	7. Public procurement is embedded in an effective information system.	7(a) Publication of public procurement information supported by information technology		14. The country has ethics and anticorruption measures in place.	13(b) Independence and capacity of the appeals body	
	1(j) Electronic Procurement		7(b) Use of e-Procurement	13(c) Decisions of the appeals body			
	1(k) Norms for safekeeping of records, documents, and electronic data.	8. The public procurement system has a strong capacity to develop and improve.	7(c) Strategies to manage procurement data	✓ 14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties			
	1(l) Public procurement principles in specialized legislation		8(a) Training, advice, and assistance	✓ 14(b) Provisions on prohibited practices in procurement documents			
	2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures	8. The public procurement system has a strong capacity to develop and improve.	✓ 8(b) Recognition of procurement as a profession	✓ 14(c) Effective sanctions and enforcement systems		
2(b) Model procurement documents for goods, works, and services		8(c) Monitoring performance to improve the system		✓ 14(d) Anti-corruption framework and integrity training			
2(c) Standard contract conditions				✓ 14(e) Stakeholder support to strengthen integrity in procurement			
2(d) User's guide or manual for procuring entities				✓ 14(f) Secure mechanism for reporting prohibited practices or unethical behaviour			
3. The legal framework reflects the country's secondary policy objectives and international obligations	✓ 3(a) Sustainable Public Procurement (SPP)			✓ 14(g) Codes of conduct / codes of ethics and financial disclosure rules			
	3(b) Obligations deriving from international agreements						



Explanation for the Matrix:

PPL – the Public Procurement Proclamation 157/2010 dated April 25, 2010 of the Regional State of Oromia (or the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 dated 9 September 2009, if so indicated or relevant in the context); PPD – the Procurement Directive No. 02/2011 of the Regional State of Oromia.

Procuring entity (PE) = public body (PB)

1. In accordance with the MAPS methodology “red flags” are factors likely to prevent appropriate action to improve the public procurement system. These are used to highlight any element that could significantly impede the main goals of public procurement and that cannot be mitigated directly or indirectly. They can be factors that lie outside the sphere of public procurement.
2. The MAPS methodology defines the minimum requirements for all criteria under its indicators. The Assessment Team assessed whether the public procurement system in Ethiopia meets the required minimum and based on the results concludes on each criterion that “Criterion is met”, “Criterion is not met” or “Criterion is partially met”. There are criteria which meet the required minimum and are indicated as “Criterion is met”. However, in some cases, the Team sees the possibility of improving the aspect of the public procurement covered by such criterion. In such cases, the Team offered a recommendation for such improvement proposed in addition to the conclusion that “Criterion is met”.

Pillar I. Legal, Regulatory, and Policy Framework

1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.

1(a) Scope of application and coverage of the legal and regulatory framework

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

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.</p>	<p>Summary: The legal and regulatory framework is adequately recorded and is organized hierarchically with precedence clearly established.</p> <p>Constitution: The 1995 Constitution of Oromia ¹ is the supreme law of the State. Any law including state law, customary practice or decision of an organ of state or a public official which contravenes the Constitution shall have no effect (Constitution A.9(a)). The Oromia Constitution is, however, <u>without prejudice</u> to the 1995 Constitution of the Federal Democratic Republic of Ethiopia which, therefore, takes precedence.</p> <p>International agreements: The Constitution does not refer to the negotiation and conclusion of international agreements. This falls within the jurisdiction of the Federal Government under the Federal Constitution since the power is not expressly given to the States, and all powers given to the regions and cities are subject to the powers explicitly granted to the Federal Government. In this respect, the Federal Government is given explicit powers to formulate and implement the country's foreign investment policies², foreign policy and ratify international agreements.³ All international agreements ratified by Ethiopia are an integral part of the law of the land (1995 Constitution A.9(4)).</p> <p>Nevertheless, in respect of applicable international obligations, the Oromia Procurement Proclamation ('the PP')⁴ PPL states in A.49 that to the extent that the PPL conflicts with an obligation arising out of an agreement with one or more international organizations and the Regional Government, the provisions of that agreement shall prevail. This contradicts the Federal Constitution, as explained immediately above. Further, the fate of obligations which derive from an agreement which is entered into by the Federal Government with one or more international organizations is not stated. Given that only the Federal Government has the power to conclude such agreements, it must be assumed that this obligation applies to the State only insofar as the obligation is passed on to the State by the Federal Government when it provides development assistance and loans to the State⁵ under its power to administer the Federal budget.⁶ There is a general obligation on all governments (Federal, State and Regional) to observe international agreements.⁷ The highest legislative authority is vested in the Regional Council.</p> <p>Primary legislation - Proclamations: The Regional Council adopts primary legislation consistent with that of the Federation.</p> <p>Secondary legislation – Regulations and Directives: The PPL provides for the adoption of a Procurement Directive ('PD') by the regional Finance and Economic Development Bureau ('the Bureau').</p>	Not applicable.	<p>Criterion is partially met.</p> <p>International agreements PPL A.6 The provisions with regard to international agreements create a good deal of uncertainty in terms of identifying which international obligations are imposed on public bodies in Oromia, and how. It is not clear exactly how they apply in a Federal context.</p> <p>1. Despite the exclusive mandate given to the Federal Government to enter into international agreements, it seems that there is an informal 'understanding' (which ostensibly contradicts the Federal constitution) that regional governments may enter into grant (but not credit) agreements with international organizations. The Oromia PPL nevertheless foresees the State entering into any agreements itself. Maybe this is limited to grants in accordance with the 'understanding', but that is not explained. If it is limited to grant agreements, this may be consistent with the 'understanding' although it formally contradicts the Federal (and Regional) Constitution. If it applies to credit and loan agreements, then it falls foul both of the Constitutions and the 'understanding'.</p> <p>2. Where the PPL applies only to grant agreements, it establishes how the international obligations apply. However, this does not explain how obligations which derive from an agreement which is entered into by the Federal Government with one or more international organizations would apply to public bodies in the region. This is critical in the event of donor loans.</p>	✓ Yes	<p>International agreements. It would be preferable to have more explicit provisions in this respect:</p> <ol style="list-style-type: none"> 1. Making clear which, if any, international agreements may be entered into by the State (for example, only grants). 2. Explaining clearly in the PPL that the obligations attaching to grants and credits obtained by the Federal Government from international organizations are passed on to the regions and how that is done. 3. Possibly by excluding procurement funded through grants and loans by international financing institutions from the PPL altogether.

¹ Oromia Gazette of August 21, 1995.

² Article 51(4) of the Federal Constitution.

³ Article 51(8) of the Federal Constitution.

⁴ Proclamation No. 157/2010 to establish the Oromia National Regional State Procurement and Property Administration.

⁵ Article 94(2) of the Federal Constitution.

⁶ Article 51(10) of the Federal Constitution.

⁷ Article 86(4) of the Federal Constitution.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>The key primary legislation on public procurement in Oromia is currently: Proclamation No. 157/2010 to establish the Oromia National Regional State Procurement and Property Administration which came into force April 25, 2010.⁸</p> <p>This is supported by a comprehensive Procurement Directive: the Oromia Regional State Procurement Directive No 02/2012⁹ ('the PD'). This was amended by the Amended Oromia Regional State Procurement Execution Directive Number FA 01/2009¹⁰, largely to make changes to the threshold levels. The Bureau is given the task of publishing Standard Bidding Documents (SBD) and other supporting documents as well as any e-GP strategy. Oromia has not yet developed its own SBDs and currently relies on the Federal SBDs for all procurement categories.</p> <p>In terms of electronic procurement, the process does not yet appear to have begun. There are provisions on administrative contracts in Proclamation No. 165/1960 (as amended), the Civil Code Proclamation, which entered into force on 5 May 1960 ("the Civil Code"). This was adopted under the old regime but has not yet been replaced. Title XIX contains General Provisions on the formation of administrative contracts, including the procedure for allocation of contracts by tender, as well as on the effects of administrative contracts. It also contains specific provisions on "concession of public service" and contracts for public works and supplies.</p> <p>The extent to which the provisions in Title XIX of the Civil Code are in force and/or applied in practice in public procurement and to contracts awarded under the procurement legal framework is unclear. The interplay between the Civil Code and the specialized public procurement legal framework is ambiguous. This creates legal uncertainty.¹¹ Even the Federal Constitution is ambiguous. Article 55 gives to the Federal Government the power to enact civil laws deemed necessary to establish and sustain one economic community. In other respects, Regions may also adopt their own civil laws. There is another 'understanding' (not made legally explicit) that, since contract law is necessary for the maintenance of one economic community, the adoption of laws relating to contract are within the sole remit of the Federal Government and that Regions will not adopt their own provisions.</p> <p>Due to this lack of clarity on the standing of the civil code in the overall procurement framework of Ethiopia, we have not analyzed or commented in detail on the provisions of the Civil Code.</p> <p>See also note at indicator 1(a)(c) on the legal framework for public private partnerships.</p>		<p>3. In practice, the obligations attaching to grants and credits obtained by the Federal Government from international organizations are passed on to the regions through a 'specific purpose grant' which is given either by way of formal agreement or by way of an attached letter setting out those obligations from the Ministry of Finance. Though these letters are considered legally binding (and always accepted by the regional states), the new Federal Administrative Proclamation provides that all such conditions will in future be passed on by way of formal agreement.</p> <p>4. As a result, it may be that, in practice, such obligations are in fact passed on to the State public bodies, but this is not referred to in the PPL or elsewhere in the legal framework, giving rise to inevitable confusion and potential for misunderstanding and misapplication.</p> <p>Alignment between PPL and PD</p> <p>It is appropriate that the PPD (as secondary legislation) elaborates on the provisions of the PPL. However, in some cases the PPL lacks provisions which we would usually expect to see in primary legislation, such as candidates'/bidders' rights to clarification and the right to judicial appeal. On other occasions, the PPD introduces a wide interpretation or additional provisions on important issues which are probably better placed in primary legislation, such as a full list of grounds for exclusion. Examples of particular note are highlighted in this assessment.</p> <p>Directives and similar advisory documents</p> <p>For transparency, clarity and legal certainty it is important to ensure that all documents forming the legal and advisory framework for public procurement are published on a single, central and easily accessible repository. This includes all documents issued by the Bureau but also those issued by any other body. It is also essential that any such documents are consistent and in line with primary legislation. They should not, as a general rule, create exceptions to the application of the public procurement legal framework, which carries the risk of, at least, fragmentation and the possibility of undermining the operation of the public procurement system as a whole.</p>		<p>Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, the PPD and the circulars should not introduce provisions that materially limit or inappropriately expand the provisions of the PPL.</p> <p>Directives and similar advisory documents</p> <p>Require that all Directives and similar advisory documents are published on a single, central and easily accessible repository. The repository must be kept up to date. Ideally, the repository should also be in electronic form and be easily searchable using a range of search terms so that all users can easily identify advisory and other documents of relevance to them.</p>

⁸ Proclamation No 157/2010, to establish the Oromia National Regional State procurement and property administration, Abadula Gameda, President of The National Regional State of Oromiya, came in to force as of 25th date of April 2010.

⁹ Oromia Regional State Procurement Directive No 02/2012, Siraj Kedir, Head, Oromia Finance and Economic Development Bureau, September, 27/2011, Addis Ababa

¹⁰ The Amended Oromia Regional State Procurement Execution Directive Number FA 01/2009, Tolosa Gedefa Gobena, Oromia Finance and Economic Cooperation Bureau Head, effective as of July 8,2017

¹¹ For further discussion on this issue see article by: Bahta, Teclé. (2018). Conflicting Legal Regimes Vying For Application: The Old Administrative Contracts Law Or The Modern Public Procurement Law For Ethiopia. African Public Procurement Law Journal. 4. 10.14803/4-1-23.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
			<p>Application of contract law: There is a significant lack of clarity on the applicable contract law. It appears that the 1960s civil code is still in force but its scope of application in the Regions is unclear. The Federal Government has the power to adopt any new civil laws, including any replacement of the 1960 civil code, but has not yet done so. Even though the Regions are entitled to adopt civil laws themselves, they may not do so if the scope of the civil law in question is one which is necessary for the maintenance of one economic community. Though not made legally explicit, there is an understanding that contract law would be one such law so that the Regions could not adopt their own contract law and must instead follow that adopted by the Federal Government.</p> <p>One additional issue may be that the PPL is stated to override any inconsistent laws. To the extent that the civil code applies (if that applies), then the PPL would prevail.</p>		<p>Ideally, the central repository should be comprehensive and thus also include sectoral specified documents, including defense and health related procurement as well as PPP legislation, and guidance and links to relevant websites.</p> <p>Application of contract law: Given the importance of contract law to public procurement, the applicable contract law in Oromia should be made explicit.</p>
<p>(b) It covers goods, works and services, including consulting services for all procurement using public funds.</p>	<p>Summary: The legal and regulatory framework covers the procurement of goods, works and services including consulting services, for procurement using public funds. The definitions of a “public body” and “public fund” are not sufficiently clear and create legal [and practical] uncertainty as to coverage. Defense and security procurement is generally excluded from the coverage of the PP, as are contracts between public bodies.</p> <p>PPL A.2 Definitions defines “procurement” as “obtaining goods, works, consultancy or other services through purchasing, hiring or obtaining by any other contractual means.” The terms “goods”, “works”, “services” and “consultancy services” are defined.</p> <p>“Public procurement” is defined as “procurement by a public body using public fund.”</p> <p>“Public fund” is quite broadly drafted to mean any monetary resource appropriated to a public body from the state revenue or aid and credits, or from the internal revenue of the public body. There is no mention of funds emanating from the Federal Government.</p> <p>PPL A.4(1) states that the PPL applies to “all procurement and property administration of the regional state.”</p> <p>Bodies subject to the PP</p> <p>Public body: PPL A.2 Defines a “public body” (procuring entity) as “any public body, which is partly or wholly financed by the state budget.”</p> <p>Public enterprises, state owned enterprises and other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage of the PP, though from the definition of “public body”, the public enterprises using public funds should be subject to the PPL. However, the general perception and feedback from stakeholders in Ethiopia is that public enterprises are excluded from the scope of the PP.¹² This requires further review in greater detail.</p>		<p>Criterion is partially met.</p> <p>Public funds: These are defined as covering only state funds (and aid and credits). Given the definition of “public procurement”, this means that the PPL applies only to procurement using State funds which may sometimes be difficult to isolate and identify. There is some debate about whether, when Federal funds are used, it is the Federal PPL that should be applied. There is thus a potential conflict in the Oromia PPL and the scope of application of the PPL is thus unclear: does it apply to both State and Federally funded contracts (as the wording of the PPL suggests) or does it apply only to State funded contracts, with Federally funded contracts being subject to the Federal PP? The apparent anomaly may give rise to disputes over the application of the PPL and it would be better to clarify the position.</p> <p>Bodies subject to the PP</p> <p>The definition of “Public Body” appears unclear as it does not define the specific entities subject to the PPL.</p>	<p>✓ Yes</p>	<p>Public funds: The scope of application of the PPL needs to be clarified with respect to the source of public funds. Does it apply to contracts funded by both State and Federal Government or only to those funded by the State?</p> <p>Bodies subject to the PP</p> <p>For legal certainty, it is desirable to list the categories of public bodies in the procurement legislation itself. Additionally, a list of designated public bodies,</p>

¹² The explanation for this seems to be that public enterprises are established with authorized capital provided by Government but with managerial autonomy and the expectation that they will operate on market principles. See: Public Procurement Regulation in Africa, Eds. Quintot & Arrowsmith, Cambridge University Press 2013, Country Study on Ethiopia, Teclé Hagos Bahta and further explanation by the same author at paragraph II.2, Framework Procurement Contracts in the Ethiopian Public Procurement Law, PPR 2016 No.2, pp35-50.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>Exemptions: There is no exclusion for defense, but defense/security is, in any event, within the competence of the Federal Government, not the regions. Reference is made to the Federal matrix for further details.</p> <p>A.3(2)(b) excludes from the coverage of the PPL “contracts a public body enters into with another public body for the provision of goods, works, services, consultancy or other services at cost.”</p>		<p>Public enterprises, state owned enterprises, other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage of the PPL. The drafting of the definition of a “public body” is not sufficiently clear on the question of whether, or when, these enterprises or organizations are subject to the PPL.</p> <p>In addition, it is not clear whether an organization not generally within the scope of the PPL but in receipt of public funds for a specific project is required to comply with the PPL for the contracts awarded using those public funds.</p> <p>There is, therefore, a general lack of transparency and clarity and significant uncertainty as to the scope of the PPL in terms of which bodies are required to comply with the PPL.</p> <p>Exemptions Contracts between public bodies for the provision of goods, works, consultancy or other services at cost. PPL A.3(2)(b) is a broadly drafted provision which has the potential to reduce transparency and competition, if over-used. The impact of this provision is unclear, particularly as there is a lack of clarity as to which bodies fall within the definition of “public body” (see notes above). It may be advisable to consider more detailed provisions. One possibility is requiring public:public arrangements to be subject to the PP, save in specified circumstances. Examples of such excluded circumstances could include genuine co-operation between public bodies to deliver public services/tasks at cost; direct award of contracts between public bodies; or assignment of tasks/functions where the direct award or assignment of tasks/functions and participating bodies are designated by specific laws. Similarly, it may be appropriate to consider clear provisions dealing with the situation where an entity is wholly owned by a public body, carries out public tasks and is not active on the market.</p> <p>The centralized procurement arrangement at local is covered in the PD.¹³ However, the pool arrangement contradicts the delegation given to PBs to establish procurement capacity and carry out their own procurement.</p>		<p>state enterprises and other bodies subject to PPL could be put together by the Bureau and published on the Bureau’s website for transparency and certainty.</p> <p>Revise the procurement arrangement in the primary legislation to cover the centralized procurement arrangement (Pool System) adopted at local level (Woreda and Zones).</p>

¹³ Oromia Regional State Procurement Directive No. 02/2012 section 7.

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(c) PPPs, including concessions, are regulated.	Summary: The PPL A 24 provides for separate PPP legislation by the Bureau, but no such legislation has been identified.	Not applicable.	Criterion is not met. To the extent that PPPs are being initiated in Oromia, it is imperative that a Directive on PPPs be issued.		
(d) Current laws, regulations and policies are published and easily accessible to the public at no cost	Summary: The PPL has been published in the regional Gazette, but the assessment team has not been able to identify a website for the Bureau which provides access to procurement legislation.	Not applicable.	Criterion is not met. No Bureau website providing details of the procurement legal framework can be found, so there is no readily accessible repository of the prevailing primary and secondary legislation. Printed copies, if made available, will be subject to cost and delivery problems so that free access to a website would be preferable.		It is important to provide a readily accessible website for procurement documents. Consider publishing the procurement documents in centralized portal (at least on Federal PPA's website as a short-term solution).

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	<p>Summary: The PPL provides that public procurement contracts shall be awarded through Open Bidding, unless otherwise provided for in the PPL. The PPL defines situations where alternative procurement methods can be used, with grounds for justification clearly specified.</p> <p>General note: use of terms “candidate” and “bidder”. In the English language version of the PPL, both “candidate” and “bidders” are defined terms. A candidate is a person invited or who has applied to take part in public procurement. A “bidder” is a person submitting a bid. However, the use of these defined terms within the PPL is not always complete or correct. For example, PPL A.16 refers to communications between candidates and public bodies being in writing with no reference to bidders, and PPL A. 20 (2) refers to informing “candidates” of reasons for rejection of bids.</p> <p>Open Bidding PPL A.23(2) provides that public procurement contracts shall be awarded through open bidding, except as otherwise provided for in the PPL. Open bidding is thus the presumed form of procurement method, at the top of the hierarchy of procurement methods. This is confirmed in PPD 17.2.</p> <p>Other competitive methods: PPL A.23(1) lists a range of other competitive methods and non-competitive awards. These methods are permitted only where conditions set out in the PPL are satisfied (PPL A.23(3)). Where a public body uses a method of procurement other than open bidding, PPD A.17.4 provides that they shall record a statement of the grounds and circumstances on which it relied to justify use of that method.</p> <p>Other competitive methods laid down in the PPL are Request for Proposals (consultancy services), Two stage Tendering, Restricted Tendering and Request for Quotation.</p> <p>The conditions for use of methods other than the open bidding method are listed in the PPL.</p> <p>Under PPL A.45, Request for Quotations (RFQ) are used only for contracts which fall below the appropriate threshold. There are no further conditions for use and no procedure is</p>	Not applicable.	Criterion is met.		

foreseen in the PP, although more details are provided in the PPD. The PPD also appears to limit the availability of the RFQ method to unplanned and urgent requirement (A.27.1).

The threshold is set out in A.27.2 of the PPD and depends on the level of the public body:

Type of procurement	Limit of the money (in Birr)		
	At regional level	Zone and city administration	Woreda
a. For construction sector procurement of up to Birr	500,000	300,000	200,000
b. For goods procurement	200,000	100,000	80,000
c. For consultancy service procurement	120,000	60,000	50,000
d. For other procurement	150,000	75,000	50,000

Selection of suppliers to whom RFQ is issued: under PPD A.27, the RFQ method requests are issued to at least 3 suppliers selected from the supplier list, to the extent feasible.

Restricted Tendering is permitted where one of four conditions is met (PPL A.40): (1) where the required object of the procurement is available only with limited suppliers; (2) where a previous competitive procurement failed; (3) where the time and cost required to evaluate and examine a large number of bids is disproportionate to the value of the needs; and (4) PPL A.49(2) where the cost of the procurement is below specified thresholds. The thresholds are set out in PPD A.26.4 and are:

Type of procurement	Cost in Birr		
	Regional level	Zona and city Administration	Woreda
Construction works	5,000,000.00	4,000,000.00	3,000,000.00
Goods	1,200,000.00	1,000,000.00	800,000.00
Consultancy services	700,000.00	600,000.00	500,000.00
Other services	1,000,000.00	750,000.00	500,000.00

In the case of condition 1, the invitation is sent to all known suppliers. In the case of conditions 2, 3 and 4 (although the procedure for condition 4 is set out in the PPD and not in the PP), the invitation to bid is, so far as possible, sent to suppliers chosen from a suppliers list and to at least 5. This approach has significant potential for favoritism and, may result in less than optimum outcomes if conditions of entry to the suppliers list are not sufficiently rigorous.

PPL A.40.2(c), unusually, also allows for advertising where conditions 1 and 2 are met, although the PPD seems to suggest that the provisions on advertising do not apply (A.26.1).

PPL A.43 Requests for Proposals may be used where a public body seeks to obtain consultancy services or contracts for which the component of consultancy services represents more than 50% of the contract.

PPL A.46 Two-stage bidding may be used, in summary, (1) where it is not feasible for the public body to formulate detailed specifications, to identify the characteristics of the requirements in order to obtain the most satisfactory solutions; (2) for genuine research and development; (3) where there is a failure in a previous bid procedure due to failure to clearly describe the object of the procurement or absence of clear and complete specifications; (4) where technical characteristics or nature of services mean it is necessary for the public body to negotiate with suppliers. The negotiations provisions are quite

PPL: Use of supplier list to select suppliers in Request for Quotations (PD A.27(4)). Whilst this can be an appropriate way to select suppliers in low-value RfQ processes, as it can reduce administration and speed up procurement, this is dependent on the way in which the supplier's list operates in practice. It can be a problem if the way in which the suppliers list is operated lacks transparency, or suppliers have practical problems getting on to the suppliers list. It can also be problematic if it merely creates an additional layer of bureaucracy, with suppliers required to submit information twice, once for inclusion in the Supplier's List and another time as part of the bid.

Use of suppliers list to select suppliers in and Restricted Tendering (PPL A.50). The use of the supplier list to select bidders has the potential to reduce competition, although the possibility given to public bodies, at least in some circumstances, to advertise could palliate this problem.

Current provisions of the PPL provide for a wide interpretation and significant (inappropriate) flexibility and variations to be negotiated. This raises serious concerns on the transparency of the procurement process.

PPL
Ensure that operation of and admission to supplier lists is transparent and efficient. Ensure consistency of qualification criteria in the bidding documents with those applied for registration on the supplier's list.

	<p>problematic. Though they are permitted with the successful bidder only (PPL A.47(7)¹⁴), the wording of the PPL is quite broad (A.35), allowing the public body to (1) negotiate on matters of contract performance not dealt with in the bidding document; and (2) except in a single source procurement, the public body may not negotiate on the price offered by the successful bidder and on other issues related to price.</p> <p>The PPD A. 18.22 refers to “Discussion with Bidders” and it is not clear whether this is another term for “negotiations”. Again, another example of inconsistencies between the primary (PPL) and secondary legislation (PPD).</p> <p>PPL A.48 requires international competitive bidding in specified cases including where the value of the contract exceeds specified thresholds. As per the amended Directive, the thresholds are¹⁵ Ethiopian Birr: Works 100 million; Goods 30 million; Consultancy Services 5 million; Services 14 million.</p> <p>Non-standard procedures: The Bureau is given power to approve the use of non-standard procedures at the request of public bodies, but no further details are provided (PPL A.11(6)). PPD A.39.2 lists information to be provided by the public body to the Bureau.</p> <p>Non-competitive method: The non-competitive method is Direct Procurement (single source)</p> <p>PPL A.41 Direct Procurement (without competition)/single source is permitted in eight specified circumstances, listed at PPL A.41(1)(a) to (h), subject to satisfaction of conditions, including in some cases financial caps, set out in PPL A.41 and further elaborated in PPD A.28 (Single Source).</p> <p>The eight specified circumstances are, in summary: absence of competition for technical reasons; additional supplies of goods which are intended as replacement or extension of existing supplies; additional necessary works required due to unforeseeable circumstances; repetition of similar works; continuation of consultancy services; special procurement needs of the public body; purchase in advantageous conditions; and emergency.</p> <p>PPL A.11(2) Direct procurement is also permitted for small-value procurement. In this context, PPD A.25 (7) permits direct award for contracts with a value of less than 5000 Birr, subject to aggregated total limit in one fiscal year of 150,000 Birr in the case of Bureaus and City administrations and 4,000 Birr in the case of Woredas.</p> <p>PPL A.11 does not state that Direct Procurement)/single source is to be used only exceptionally.</p> <p>No contract is required where reliance is placed on the conditions set out in A.41.1(f) and (g), i.e., where situations arise in which shopping becomes necessary to meet the special procurement needs of public bodies and where purchases may be made under exceptionally advantageous conditions.</p> <p>PD A.28.5. refers to procurement of supplies needed for study or research which is not available from regular suppliers or open market procurement is economical. It is not clear whether this is a reference to the condition contained in PPL A.41(f) and, if so, whether it is an exhaustive description of the situations where “special procurement needs” arise.</p>		<p>Non-standard procedures: PPD A.11. This provision raises two questions: (1) if applications to use non-standard procedures are prevalent does this mean that the standard procedures are not fit for purpose, thus pushing public bodies to resort into non-standard procedures; and (2) how transparent and competitive are the non-standard procedures which are conducted following authorization from the Bureau?</p> <p>PPL A.41 does not state that Direct Procurement is to be used only exceptionally. It is recommended that the exceptional nature of direct procurement is made explicit in primary legislation.</p> <p>A.41(3) No contract required in some cases: It is not clear whether the PPD A.28.5 is referring to the condition of PPL A.41(f) “special procurement needs” arise and whether this sets out an exhaustive description of the situations. Even if it is limited to this one case, it does seem unusual not to require some form of written contract for items purchases, not least for audit purposes.</p>	<p>Non-standard procedures: In principle, a well drafted procurement legislation, should provide for a wide and fit for purpose menu of procurement methods. Accordingly, the possibility for the use of non-standard procedures should be eliminated.</p> <p>PPL A.41 Direct Procurement (without competition): Add provision stating that Direct Procurement is to be used only exceptionally, and “emergency” is not created by the lack of planning or dilatory conduct on the part of public body.</p>
<p>(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.</p>	<p>Summary: The PPL sets out conditions for use of procedures other than the open bidding procedure which are generally linked to the nature, complexity or risk involved in the contract which is the subject of the procurement. The PPD sets out thresholds applying to the use of the competitive procedures with the lightest methods of procurement permitted for low-value tenders. The procurement methods and processes are proportional to the value and risks of the underlying project activities. The range of options does provide, in theory, for a procurement system in which value for money, fairness, transparency,</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>	

¹⁴ PP A.58(7) “The public body may engage in negotiation with the first ranking bidder concerning any aspect of its bid, except price.”

¹⁵ PPD A.19.2.

	<p>proportionality and integrity are achieved. Direct award (single-source procurement) is permitted only where specified grounds for justification are satisfied.</p> <p>“Lighter” methods of procurement are available where the benefits of “process-heavier” methods are not evident or necessary.</p> <p>More process-heavy methods are permitted in specified cases, in particular for more complex contracts.</p>				
(c) Fractioning of contracts to limit competition is prohibited.	<p>Summary: Fractioning of contracts to avoid open competition is prohibited when it aims at circumventing competitive rules.</p> <p>PPL A.23(4) provides that Public Bodies shall not split procurement requirements for a given quantity of goods, works or services with the intention of avoiding the preferred procurement procedure.</p>	Not applicable.	Criterion is met.		
(d) Appropriate standards for competitive procedures are specified.	<p>Summary: The PPL requires use of Open Bidding as the default procedure but permits public bodies to use other competitive procedures subject to meeting conditions set out in the PPL as described in (a)(b)(c) above, which generally reflect the nature and complexity of the contract concerned.</p> <p>Where the procuring entity wishes to use a non-standard procedure, not provided for in the PPL or PD, prior approval from the Bureau is required (see comments above).</p>	Not applicable.	Criterion is met.		

1(c) Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
[1(c) Advertising rules and time limits]					
(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).	<p>Summary: The legal framework requires that procurement opportunities are publicly advertised, at least, in one national newspaper and, where the public body finds it necessary, on national radio, television or other mass medium having national circulation. The PPL sets out circumstances where advertisement is not necessary.</p> <p>Publication: PPL A.25 requires advertisements for open bidding to be advertised in at least one national newspaper of general circulation. Where necessary the public body may, in addition, advertise on national radio or television.</p> <p>The amended PPD A.18.2 also permits public bodies to advertise by any other means and PPD A.5.5 requires that procurement opportunities under open international bidding must also be advertised on the official website of the Bureau where the value of the contract exceeds: Birr 20,000,000.00 for construction works; Birr 6,000,000.00 for procurement of goods; Birr 4,000,000.00 for consultancy services; and Birr 2,000,000.00 for any other services.</p>		<p>Criterion is partially met.</p> <p>It is unclear in the context of the Federal system whether ‘national’ means at the federal level or at the State level. It is assumed that it means country-wide, i.e., at Federal level but this needs to be confirmed.</p> <p>Publication of notices is done primarily through newspapers, which does not provide full transparency of procurement procedures.</p>		<p>It may be inefficient and technically difficult, in absence of an e-procurement platform to publish all notices, but adoption of an e-procurement platform where the procurement information is transparently disclosed, is absolutely critical for increasing the transparency and disclosure of procurement information.</p> <p>Until e-procurement is introduced and in use, consider use of centralized website (federal PPA’s website) for publication of procurement opportunities.</p>
(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.	<p>Summary: Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of the procurement, for potential bidders to obtain documents and respond to the advertisement.</p> <p>PD A.18.9 requires the Public Body to fix the timetable for the procurement process. In doing so it must take into consideration matters including the urgency and complexity of the procurement and the identity of the participants (international or otherwise). The minimum time periods are defined in PPD A.18.9(5).</p>	Not applicable.	Criterion is met.		

Assessment criteria [1(c) Advertising rules and time limits]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations																																																																														
	<table border="1"> <thead> <tr> <th rowspan="2">Sr. No.</th> <th rowspan="2">Type of procurement</th> <th rowspan="2">Complexity</th> <th colspan="4">Coverage of participation in procurement</th> </tr> <tr> <th>Open international tender</th> <th>Open national tender</th> <th colspan="2">Restricted Tendering</th> </tr> <tr> <th></th> <th></th> <th></th> <th></th> <th>Involvement of foreign bidders</th> <th>Involvement of domestic bidders</th> <th></th> </tr> </thead> <tbody> <tr> <td rowspan="2">1</td> <td rowspan="2">Construction works</td> <td>Complex</td> <td>45 days</td> <td>30 days</td> <td>45 days</td> <td>30 days</td> </tr> <tr> <td>Non-complex</td> <td>35 days</td> <td>21 days</td> <td>35 days</td> <td>21 days</td> </tr> <tr> <td rowspan="2">2</td> <td rowspan="2">Goods</td> <td>Complex</td> <td>45 days</td> <td>30 days</td> <td>45 days</td> <td>30 days</td> </tr> <tr> <td>Non-complex</td> <td>35 days</td> <td>15 days</td> <td>35 days</td> <td>15 days</td> </tr> <tr> <td rowspan="2">3</td> <td rowspan="2">Other services</td> <td>Complex</td> <td>45 days</td> <td>30 days</td> <td>45 days</td> <td>30 days</td> </tr> <tr> <td>Non-complex</td> <td>35 days</td> <td>15 days</td> <td>35 days</td> <td>15 days</td> </tr> <tr> <td rowspan="2">4</td> <td rowspan="2">Consultancy services</td> <td>Complex</td> <td>14 days</td> <td>10 days</td> <td>-</td> <td>-</td> </tr> <tr> <td>Non-complex</td> <td>10 days</td> <td>7 days</td> <td>-</td> <td>-</td> </tr> <tr> <td rowspan="2">Expression of interest</td> <td rowspan="2">Request for proposals</td> <td>Complex</td> <td>45 days</td> <td>30 days</td> <td>35 days</td> <td>30 days</td> </tr> <tr> <td>Non-complex</td> <td>35 days</td> <td>15 days</td> <td>21 days</td> <td>15 days</td> </tr> </tbody> </table> <p>In the case of two stage bidding, the applicable minimum period for the first stage in the procurement process is the same time as specified for complex procurement either for ICB and NCB procurement as the case may be. The minimum period for the second stage is the time as specified for complex procurement under LIB and LNB.</p>	Sr. No.	Type of procurement	Complexity	Coverage of participation in procurement				Open international tender	Open national tender	Restricted Tendering						Involvement of foreign bidders	Involvement of domestic bidders		1	Construction works	Complex	45 days	30 days	45 days	30 days	Non-complex	35 days	21 days	35 days	21 days	2	Goods	Complex	45 days	30 days	45 days	30 days	Non-complex	35 days	15 days	35 days	15 days	3	Other services	Complex	45 days	30 days	45 days	30 days	Non-complex	35 days	15 days	35 days	15 days	4	Consultancy services	Complex	14 days	10 days	-	-	Non-complex	10 days	7 days	-	-	Expression of interest	Request for proposals	Complex	45 days	30 days	35 days	30 days	Non-complex	35 days	15 days	21 days	15 days				
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3	Other services	Complex	45 days	30 days	45 days	30 days																																																																													
		Non-complex	35 days	15 days	35 days	15 days																																																																													
4	Consultancy services	Complex	14 days	10 days	-	-																																																																													
		Non-complex	10 days	7 days	-	-																																																																													
Expression of interest	Request for proposals	Complex	45 days	30 days	35 days	30 days																																																																													
		Non-complex	35 days	15 days	21 days	15 days																																																																													
<p>(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).</p>	<p>Publication in national newspaper is mandated as described in (a) above. In the case of international competitive bidding, public bodies are mandated to ensure that the advertisement is published in a newspaper that may attract foreign bidders.</p> <p>Publication on Bureau website is also permitted required as described above although none is yet available.</p>	Not applicable.	<p>Criterion partially met.</p> <p>There are physical constraints to accessing the press agency for publication of IFBs. PBs have to appear in person in the press agency that requires travel from the work location to Addis Ababa, which is inefficient and transaction intensive.</p>		Streamline the process for advertising bids on the newspaper in collaboration with the Press Agency. Consider establishing e-mail communication and wire transfer for payment of services charges.																																																																														
<p>(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.</p>	<p>PD A.18.2.3 sets out the information to be included in the invitation to bid advertisement. This includes a description of the requirement, qualification criteria, amount of bid security and bid closing time and place. In the case of international competitive bidding, the invitation to bid advertisement and bidding document must be prepared in English (PD para 19.4).</p>	Not applicable.	<p>Criterion is partially met.</p> <p>When placing an advertisement of procurement opportunities in the newspaper, public bodies receive no planned date of publishing given. Therefore, the published invitation does not include the exact date for submission of bids. Instead, the period for preparation of bids is included.</p>	✓ Yes	The process of placing an ad in the newspaper should allow agreeing on the publishing date, thus enabling the public bodies to calculate and include dates of submission of bids and their opening. Or else, the PBs should consider specifying the bid closing/opening date in the bidding documents.																																																																														

1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criteria [1(d) Rules on participation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.</p>	<p>Summary: The legal framework requires candidates to satisfy qualification requirements set out in the bidding documents. A non-exhaustive list of qualification criteria is set out in the PPL. The principles of non-discrimination, transparency and fairness are underlying requirements.</p> <p>Non-discrimination - General principles PPL A.5(2) refers to the principle of non-discrimination among candidates on grounds of nationality, religion, gender or any other criteria not having to do with their qualification, except in case of preference specifically provided for in the PPL. PPL A.5(3) refers to the principles of transparency and fairness on the basis of which decisions are given.</p> <p>Exclusion See comment at 1(d)(c).</p> <p>Qualification PPL A.14 refers to the principle of non-discrimination, providing that candidates shall not be discriminated against “on the basis of nationality, race or any other criterion not having to do with their qualifications.” This is subject to price preference provisions in PPL A.15.</p> <p>PPL A. 18 provides that, in order to participate in public procurement, candidates must meet criteria listed in PPL A.18 “and such other criteria, as the public body considers appropriate under the circumstances.”</p> <p>The criteria listed in PPL A.18(1) require candidates to have relevant professional and technical qualifications and competence, financial resources, equipment and other facilities, capability, experience, reputation and personnel. Candidates must have legal capacity to tender the contract, have a bank account, and not be insolvent or bankrupt or in analogous situations. They must not be subject to a suspension from participation in public procurement and must have the relevant trade license and have paid taxes according to Ethiopian tax laws.</p> <p>However, the PPD A.18.21 provides a list for disqualification of the bidders, which is not contained in the PPL and includes the following grounds: when the bidder supplies goods, works or services originating from a country with which Ethiopia has a trade embargo; when the bidder commits an act violating the provisions of the PPL and PD; when there has been a failure to perform a previous obligation; when the bidder has offered bribe to an official or procurement staff to influence the public body’s decision; when the bidder has committed a corrupt practice; or when the bidder has provided false documents.</p> <p>Suppliers list: They must also be registered on the suppliers list A.18(1)(d). There are some references in the PPL to the suppliers list: PPL A.11(7) Bureau function: introduce an efficient system of listing of interested suppliers and receive, review, and record applications by candidates and distribute the suppliers list. PPL A.18(1)(d) Pre-qualification requirements. PPL A.40(2) Restricted tenders - selection of bidders from the suppliers list.</p> <p>PPL A.18(5) provides that the public body shall disqualify a candidate who submits a document containing false information for the purposes of qualification or if qualification information is materially inaccurate or materially incomplete.</p> <p>PPL A.18(2) A public body may require candidates to provide appropriate documentary evidence or other information so that the public body may satisfy itself that candidates meet the qualification criteria.</p>	<p>Not applicable.</p>	<p>Criterion is not met.</p> <p>Overall, the currently existing procedures and requirement do not offer full fairness with respect to the participation of bidders.</p> <p>Qualification of foreign bidders: The obligations on foreign bidders in terms of qualification requirements and evidence (other than in the case of trade licenses PPD A.18.4(3)(d)), including acceptance of equivalent qualifications and/or documents, is not expressly provided for.</p> <p>PPL A.18.2 provides that public bodies may use additional qualification criteria “as they consider appropriate under the circumstances.” The general principles in PPL A.5 should apply to the setting of additional qualification criteria. PPL A.18 does, however, provide a potentially wide margin of discretion to public bodies and, if not carefully monitored, it raises the possibility of inappropriate, disproportionate or discriminatory qualification criteria, which cannot be challenged anyway through the complaints review mechanism.</p> <p>The grounds for eligibility and disqualification of the bidders in the PPL and PPD are very different, creating confusion as to which list applies and or all requirements should be cumulatively met.</p>		<p>Ensure consistency of all levels of legislation with the requirement of the PPL that public procurement will comply with the principle of non-discrimination and remove the provisions that differentiate the qualification criteria depending on the bidder’s nationality. The bidder/candidate should not be denied qualification for reasons unrelated to its capability and resources to successfully perform the contract. The qualification requirements should be defined as skills, experience, and resources necessary to perform the contract.</p>

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	PPL A.18(3) requires qualification requirements to be set out in the bid documents and for them to apply equally to all candidates. Evaluation of qualification must be based on published criteria and procedures (PPL A.18(4)).				
(b) It ensures that there are no barriers to participation in the public procurement market.	<p>Qualification criteria: PPL A.18(1)(f) Qualification requires that candidates have renewed their trade license and have fulfilled their obligations to pay taxes according to Ethiopian laws. PPD A.18.4 confirms these requirements and requires domestic bidders to present tax and registration certificates. It provides at 18.4(3)(b) that foreign bidders may submit registration certificates or trade license issued by the country of establishment.</p> <p>Foreign bidders PPL A.18(1)(f) – qualification - requires candidates to demonstrate that they have renewed trade licenses and fulfilled their obligations to pay taxes according to Ethiopian tax laws.</p> <p>Price preference PPL A.15 sets out preference provisions. It allows for a price preference margin, to be determined by a Directive issued by the Bureau, for goods produced in Ethiopia, for works carried out by Ethiopian nationals and for consultancy services rendered by Ethiopian nationals. In addition, further preference margin may be allowed for small and micro-enterprises.</p> <p>Any goods to which more than 35% of the “value added” occurs in Ethiopia shall be deemed to be one which is produced in Ethiopia.</p> <p>PPL A.15 also provides that where evaluation of bids results in the award of equal percentage points for bidders offering similar price and quality, preference shall be given to local goods, services, or companies.</p> <p>Preferences must be clearly stated in the bidding documents.</p> <p>In addition, a set aside may be allowed for small and micro-enterprises. Details of these set asides are included in PPD 18.20 and the amendment to the PPD (2/2011)¹⁶ reserves market to MSEs for contracts with a value up to Birr 10 million (construction), Birr 4 million (Services) and Birr below 5 million (manufacturing). The amendment to PPD A 3.7 further requires mandatory sub-contracting of 40% for contracts above Birr 10 million. The definition of MSEs is not based on capital and personnel only but rather, targets the unemployed youth (graduates from universities, TVETs, etc.).</p>	Not applicable.	<p>Criterion is not met.</p> <p>Ensure consistency of rules, including obligations that change the rights of parties is incorporated in the primary legislation.</p> <p>The obligations on foreign bidders in terms of other qualification requirements and evidence, including acceptance of equivalent qualifications/documents is not expressly provided for.</p> <p>PD A.18.20.5 and amendment 2/2011 are cause for concern given the manner states in which Micro and Small Enterprises are being incentivized as a result of the definition of MSEs, thus the exclusion of ‘properly’ defined MSEs from the market below Birr 10 million.</p> <p>Mandatory sub-contracting: such an obligation should be placed in the PPL since new obligations which change the rights of parties should not be created in secondary legislation. Besides, it is important to assess the impact on value for money.</p>		<p>The recommendation proposed under the criterion 1 (d) (a) above applies.</p> <p>Ensure consistency of rules including obligations that change the rights of parties is incorporated in the primary legislation.</p> <p>Support the different incentives (“MSEs” and “mandatory sub-contracting”) with adequate study and ensure consistency with other social and economic objectives including the achievement of value for money in procurement.</p>
(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.	<p>PPL A.18 sets out requirements for bidder qualification. See indicator 1 a) above. Grounds for exclusion from qualification include debarment (PPL A.18(1)(e)), although there is no reference to any debarment procedure or requirement for due process in the PPL.</p> <p>Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for: participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting, or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings, or the equivalent of those offences.</p> <p>PD A.18.21 Disqualification of bidders lists additional grounds for disqualification of bidders (not candidates): see (a) above.</p> <p>PPL A.20 Rejection of bids, proposals and quotations: The grounds for rejection of bids, proposals and quotations are numerous and broadly drafted, providing ample opportunity for public bodies to reject bids but also abandon</p>	Not applicable.	<p>Criterion is partially met.</p> <p>PPL: Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for specified offences.</p> <p>PPL and PPD Alignment It appears that PPL and PPD are not fully aligned in terms of eligibility criteria (PPL A.18) and grounds for disqualification of bidders (PD A.18.21). More importantly, all grounds for eligibility and qualifications of the bidders should be set out in detail in primary legislation, the PPL.</p>		<p>PPL</p> <p>Include specific exclusion provisions in PPL for criminal and corrupt activities.</p> <p>All grounds for the eligibility and qualifications of the bidders should be set out in detail in the primary legislation, the PPL.</p>

¹⁶ Amendments to the Accomplishment of Procurement Directive of the Regional State of Oromia No. 02/2011 in Relation to the Exceptional Consideration to be Made for Micro and Small Enterprises.

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>procurement processes in both appropriate and inappropriate circumstances. Public bodies are required to disclose, but not justify, the reasons for rejection and this lacks transparency. Public bodies shall incur no liability for rejection in accordance with PPL A.30(1).</p> <p>PPL A.20.1(f) provides that public bodies may reject bids, proposals or quotations where there is proof of concerted practices, collusion [connivance] and the bidding is not sufficiently competitive as a result.</p> <p>Suspension (otherwise known in other jurisdictions as “Debarment”)</p> <p>PPL A.62(7) Review by the Bureau: this appears to implement A.11.9, under which public bodies can complain against the actions of bidders. Thus, two functions of the Bureau have been subsumed under one process: it would seem that PPL A.62.7 establishes a process which may lead to a decision by the Bureau to suspend a supplier from participation in public procurement for a definite or indefinite period (debarment). The details of the process are set out in PPD A.55.</p> <p>The process is triggered when the Bureau receives a notification from a public body of alleged misconduct by bidders or suppliers. The Bureau must investigate the complaint within 15 working days of receipt of such complaint. The complaint may result in debarment of a fixed number of years (between 2 and 6 depending on severity).</p>		<p>Suspension (debarment) PPL A.62.7 Use in the English language version of the PPL of the term “complaint” in the context of suspension/debarment is potentially misleading, as the term is commonly understood to refer to procurement review and remedies.</p> <p>Suspension (debarment) Right of referral to Bureau: it appears from the PPL A.11.9 that the trigger for investigation leading to possible suspension/debarment is limited to where a public body notifies the Bureau and that other stakeholders are not afforded the right of referral. Whilst procuring entities are generally best placed to identify problems, the right to referral should be widened in the PPL to cover other stakeholders such as auditors, regulatory authorities, private sector and civil society.</p> <p>The conflation of (1) the review of complaints against the procuring entity and (2) review of complaints against bidders within the same process is a cause for confusion.</p> <p>There is no clarity on what resources and skills the Bureau has for investigating and proving corruption, bribery, fraud, collusion or coercion. Additionally, it is not clear whether debarment extends to affiliates and parents of debarred entities.</p> <p>Reference to a right of appeal against a debarment decision and venue for appeal should be included in the PPL (primary legislation).</p>		<p>Suspension (debarment) Consider use of an alternative term to “complaint” in the context of suspension/debarment.</p> <p>Clarify and distinguish between the two procedures.</p> <p>Right of referral to Bureau: widen right of referral to cover other stakeholders such as auditors, regulatory authorities, anti-corruption commission, private sector and civil society.</p> <p>Include reference to a right of appeal against a debarment decision and venue for appeal in the PPL.</p>
(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.	The legal framework does not establish rules for participation of state-owned enterprises in public procurement.	Not applicable.	Criterion is not met. PPL does not establish rules for participation of state-owned enterprises in public procurement.		Amend PPL to include provisions on rules for participation of state-owned enterprises as bidder to promote fair competition.
(e) It details the procedures that can be used to determine a bidder’s eligibility and ability to perform a specific contract.	<p>Summary: The legal framework details procedures used to determine eligibility and ability to perform a specific contract. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. Multi-stage procedures are permitted for specified types of contracts and circumstances for use are defined.</p> <p>In general, bidders are required to submit qualification information with their bids. The Federal Standard Bidding Documents (SBD) provide a section for bidders to demonstrate their qualification against the requirement specified in the bidding document.</p>	Not applicable.	Criterion is met.		

1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.	<p>Summary: The legal framework establishes the minimum content of the procurement documents and requires that the procurement documents must contain sufficient and relevant information to permit suppliers to respond to the requirement.</p> <p>PPL A.26 lists information which must be included in the Invitation to Bid. It requires public bodies to prepare bidding documents using the standard bidding documents (SBD) developed by the Bureau.</p> <p>PPL A.27 requires that bidding documents shall contain sufficient information to enable competition among bidder on the basis of complete, neutral and objective terms. PPL A.27 goes on to list required minimum content of the bidding documents.</p> <p>PD A.18.3 sets out further detail on the Invitation to Bid and bidding documents.</p>	Not applicable.	Criterion is met.		
(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.	<p>Summary: The legal framework requires the use of neutral specifications, cites international norms, and provides for the use of functional (performance) specifications, as far as possible.</p> <p>PPL A.19(3)(c) requires technical specifications to invite open competition and be devoid of any statement having the effect of restricting competition.</p> <p>PPL A.19(3)(b) requires technical specifications to be based on national standards where such exist, or otherwise on internationally recognized standards or building codes. National standards are issued by the Ethiopian Standard Authority and are applicable in all States.</p> <p>PPD A.18.5(7) refers to the use of standards set by the Ethiopian Quality and Standard Authority (now the Ethiopian Standards Agency,¹⁷ which is an ISO member¹⁸) or by other similar institutions.</p> <p>PPL A.19(3) (a) provides that technical specifications shall, as far as possible, be in terms of performance rather than design or descriptive characteristics. These provisions are expanded upon in PPD A.18.5.</p>	Not applicable.	Criterion is met.		
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	<p>PPL A.29(4) provides that there shall be no requirement or reference in technical specifications to a particular trademark, name, patent, design or type or a specific producer/provider. Where this is not possible, the words "or equivalent" must be included in the specification.</p> <p>These provisions are expanded upon in PPD A.16.5.</p>	Not applicable.	Criterion is met.		
(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)	<p>Summary: the PPL does not include a specific provision confirming potential bidders that they are entitled to request clarification. The PD, on the other hand, does require public bodies to inform bidders of their right to seek clarification of the procurement documents. It sets out details of how and where such clarification may be made, the timescales for providing responses, and a requirement to inform all participating bidders in writing.</p> <p>PD A.18.4.3 (r) provides for requests for clarifications and requires them to be submitted 5 days prior to bid opening for NCB and 21 days for ICB. There is, however, no corresponding duty on the public body to reply. PPD 18.12 which is ostensibly based on PPL A.29 (though this is not what A.29 appears to say) gives the public body the responsibility to provide replies to request for clarification or amendments. The duty is also to provide clarifications in writing and share them with all potential bidders at the same time. A duty is also imposed on the procurement unit to provide or cause the provision of clarification (A. 5.7) but there are no further details. The time period within which clarifications should be provided is not entirely consistent with (but does not contradict) those set out in PPD A.18.4.3(r). In PPD A.18.12, the request should be submitted 10 days prior to the bid submission date in the case of complex NCB.</p>	Not applicable.	Criterion is partially met. The right of potential candidates/bidders to seek clarification is not set out in the PPL. This is an important right for bidders and so it is advisable to include at least the principle of the right to seek clarification in clear terms in primary legislation.		Include clear provision in the PPL confirming that potential candidates/bidders have the right to seek clarification.

¹⁷ Ethiopian Standards Agency website, accessed 4 October 2019 <http://www.ethiostandards.org/>

¹⁸ ISO website membership list, accessed 4 October 2019 <https://www.iso.org/member/1725.html>

Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	PPL A.29 provides that the public body may modify the bidding documents in response to an inquiry from a candidate by issuing an addendum which must be communicated at the same time to all candidates who purchased the bidding documents. The time limit for submission of bids may be extended where there is not enough time for bidders to take account of the amendments in their bid.				

1(f) Evaluation and award criteria

The legal framework mandates that:

Assessment criteria [1(f) Evaluation and award criteria]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.	<p>Summary: The legal framework requires the evaluation to be objective and relevant. There are clear provisions requiring that criteria, and also methodologies and weightings, where used, are disclosed in advance in bidding documents. The award decision must be made only on the basis of pre-disclosed criteria.</p> <p>PD A.7 provides that it is the duty of the public body's Procurement Endorsing Committee to ensure that the evaluation criteria are those set out in the bidding documents.</p> <p>PD A.18.8 covers the preparation of bid evaluation criteria including requirements for advance disclosure and the objective nature of the criteria.</p> <p>PPL A.27.2(i) requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents. PPD para 17.8 requires public bodies to precisely specify the evaluation and qualification criteria in the bidding documents. The evaluation criteria should be based on the objective context and quantifiable and should be to the extent feasible translated into monetary values.</p> <p>PPL A.33(6) provides that, in selecting the successful bidder, the public body shall only consider substantially responsive bids and shall evaluate on the basis of the criteria set out in the bidding documents. No criterion shall be used that is not set out in the bidding documents.</p> <p>There are additional provisions specifically addressing the procurement of consultancy services (PD A.23).</p>	Not applicable.	Criterion is met.		
(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.	<p>Summary: Objectivity is an underlying principle. The use of price and non-price attributes are permitted and value for money is a consideration in the award of contracts.</p> <p>PD A.18.8 covers the preparation of bid evaluation criteria (see (a) above).</p> <p>In the case of procurement of consultancy services, the relative weighting ascribed to price is 80% and for price 20% of the total merit points (PD A.24).</p> <p>PPL A.33(8)/PD 18(8)(2): There are two bases for award of contract: (1) lowest evaluated bid from among bidders meeting technical requirements; and (2) highest scoring bid against ascribed criteria, which may include both quality and cost/price.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>While there is the possibility of using price and non-price attributes, life cycle costing is focused on property/assets management.</p> <p>In practice, setting a standard minimum weighting for price criteria may not deliver the best value for money outcome. It is also understood that procuring entities are unclear whether the same minimum weighting should be applied to goods and works procurement. This indicates a need for further clarity and also emphasizes that the use of quality criteria, weightings and methodologies including life-cycle costing requires substantive practical guidance and training for public bodies conducting evaluation.</p>		Consider preparing substantive practical guidance and provide practical training for public bodies conducting evaluation using quality and other criteria.
(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.	<p>Summary: Quality is a major consideration in evaluating Requests for Proposals for consulting services and clear procedures and methodologies are defined.</p> <p>PPL A.43 & A.44 concern the use of the Request for Proposals Method. The selection of consultants can be made in a number of ways but, with the exception of contracts for standard, simple requirements, the focus of evaluation is on qualitative factors.</p> <p>The PPD (para 24) specifies the factors that should be considered in determining the quality of proposals which are relative experience of the firm, proposed methodology, transfer of knowledge, key staff and participation of locals. It provides a minimum 70% technical threshold</p>		Criterion is met.		See comment at 1(f)(b) on need for substantive practical guidance and training for public bodies using quality criteria in evaluation.

Assessment criteria [1(f) Evaluation and award criteria]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>to consider proposals for further evaluation. The PDs determined the relative weight as 80% for technical evaluation and 20% for price.</p> <p>There are clear and detailed procedures as well as methodologies for assessment of technical capacities in the PPD A.24.</p>				
(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.	<p>PPL A.27.2(k) requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents.</p> <p>PD A.24 and PPD A.18(8) expand on these requirements and include reference to disclosure of methodology and weightings.</p> <p>PD A 34 further describes the evaluation criteria and the scores that can be applied in selection of consultants.</p> <p>The SBD include a separate section on Evaluation Criteria and Methodology.</p>	Not applicable.	Criterion is met.		
(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.	<p>Summary: The legal framework provides that information on examination, clarification and evaluation of bids is not disclosed to participants during the evaluation period.</p> <p>PPL A.34 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced.</p>	Not applicable.	Criterion is met.		

1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	<p>Summary: Opening of tenders, immediately following the closing date for bid submission, is a proceeding defined and regulated by the legal framework. Information on time limits and the process must be included in the bidding documents.</p> <p>PPL A.26 and A.27 require the Invitation to Bid/Bidding documents to include information on the place and time for opening of bids, along with an announcement that bidders or their representatives may be present.</p> <p>PPL A.32 requires that at the time stipulated in the bidding document the public body shall open all bids received before the deadline and specifies the information to be read out at the bid opening.</p> <p>PD A.18(18) provides further detail on the process of bid opening, including number of representatives from the procurement unit, the presence so far as possible of a representative of internal audit and others.</p> <p>There are special provisions concerning two-stage tendering and requests for proposals.</p>	Not applicable.	Criterion is met.		
(b) Records of proceedings for bid openings are retained and available for review.	<p>Summary: the legal framework details the process for bid opening and requires records of the process to be maintained, with copies of those records to be made available to any bidder on request.</p> <p>PPL A.8.3 lists the responsibilities of the procurement unit as including maintaining complete records for each procurement. PPL A.13 sets out a non-exhaustive list of the records required to be kept.</p> <p>PD A.18(18)(4) specifies information to be included in the bid opening minutes, being the names of bidders, their bid price and any other salient points. A signed attendance sheet is also required.</p> <p>PPL A.32 (2) requires that a copy of the record of the bid opening is made available to any bidder on request.</p>	Not applicable.	Criterion is met.		Introduce a provision in the PP/PD requiring public bodies to send the minutes of bid opening to all bidders who submitted bids, as opposed to sharing upon request.

Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	<p>Summary: Security and confidentiality of bids until after award of contracts is maintained.</p> <p>PPL A.34 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced.</p> <p>PD (para. 18.17) requires public bodies to prepare and receive bids through a secured 'tender box'. In case the bids do not fit in to the tender box, the public body must assign staff to receive bids against receipts. The PPD further elaborates on the safekeeping of the tender box which should be the responsibility of the procurement team until the bid is opened.</p>	Not applicable.	Criterion is met.		
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	<p>PPL A.13(4)(a)) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition". Legitimate commercial interest is not defined in the PP, and it is not clear how it is applied in practice.</p> <p>PPL A.13(4) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body).</p> <ul style="list-style-type: none"> - See 1(k)(a) for comment on impact of this provision on overall transparency of the procurement system. - 	Not applicable.	<p>Criterion is partially met.</p> <p>Legitimate commercial interest is not defined in the PPL, and it is not clear how it is applied in practice.</p>		Define the commercial interest for the purpose of non-disclosure of information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition."
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	<p>PPL A.31 sets out basic provisions concerning the submission and receipt of bid proposals. The PPD includes provisions on submission of bids, including rejection of bids submitted late. The Federal SBDs contain detailed instructions and clear rules on bid submission. For example, SBD for procurement of Information Systems under NCB, Section D Submission and Opening of Bids.</p>	Not applicable.	Criterion is met.		

1(h) Right to challenge and appeal

The legal framework provides for the following:

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	<p>Summary: Participants in procurement have the right to challenge decisions or actions taken by the procuring entity in the conduct of public procurement, subject to specified exclusions. In the English language version of the PP, the right to challenge is given to "candidates."</p> <p>Standing to make a complaint PPL A.60(1) provides that a "candidate" shall be entitled to submit a complaint to the head of the public body or the Bureau "against an act or omission of the public body in regard to public procurement...where he believes that such act or omission violates this Proclamation or the directives." PPD A.44 refers to this right being available to a bidder who claims that it incurred or may have incurred loss or damage due to the failure of the procuring entity.</p> <p>As noted earlier, the terms "candidates" and "bidders" are not always used consistently.</p>	Not applicable.	<p>Criteria is partially met.</p> <p>PPL A.73(1) refers to "candidates" having standing to make a complaint. Standing to make a complaint should also be expressed to be available to "bidders".</p>		PPL Standing to make a complaint: Amend PPL to provide clarity and certainty on who has standing to make a complaint.
(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies,	<p>Summary: the legal framework allows for challenges to be brought before the Bureau which is a body independent of the procuring entity. The Bureau has authority to suspend the award decision and grant a range of remedies. There is a right of judicial review.</p> <p>Venue for complaint: The complaint must, in the first instance, be submitted the head of the public body (the procuring entity).</p>		<p>Criteria is not met.</p> <p>PPL Right of judicial review is set out in the PPD. This is a fundamental right which should be specified in the primary legislation.</p>		PPL Right of judicial review: Amend PPL to refer to right of judicial review and venue for judicial review. Consider establishing independent review mechanism or consider the

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>and also establish the right for judicial review.</p>	<p>There is a right to file a complaint with the Bureau where the head of the public body does not issue the decision within the specified time period or if the complainant is not satisfied with the decision.</p> <p>Bureau independent of the procuring entity: Although Oromia has not created a Review Board as in some other States, the PPD A 49 stipulates that the Bureau to whom responsibility is given for the hearing of complaints, set up a separate Committee, with knowledge and experience of procurement activities, to review the complaints and to provide recommendations. The composition of the Committee as per the provision is as follows:</p> <ul style="list-style-type: none"> • Bureau of Oromia member - Chair • Chamber of Commerce -Member • Public Institutions - Member • Procurement and Property Disposal Agency - Member • Regional Procurement Works Unit - Member and Secretary <p>However, the primary legislation assigns the responsibility for appeal to the Bureau. Even if the Bureau is independent of the procuring entity, there may, however, be a conflict between the functions of the Bureau.</p> <p>Remedies: PPL A.62 provides for a range of remedies. The Bureau may, on the recommendation of the Committee: a) prohibit the public body from acting or deciding unlawfully; b) order the public body to proceed in a manner conforming to the PPL (other than a decision to award or conclude a contract); c) annul in whole or in part, an unlawful act or decision by the public body.</p> <p>Right to appeal against decision of the Bureau: PD A.57 refers to a right of appeal to the competent court, though it does not specify which court it is.</p>		<p>The primary legislation assigning the responsibility for appeal to the bureau could create significant effect on the confidence of bidders in the review mechanism.</p> <p>Composition of the committee raises at the minimum a lot of questions in terms of independence and impartiality of the parties representing the various stakeholders. Their appointment by the Minister lacks transparency and independence.</p> <p>Detailed criteria and qualifications of the bureau members are missing from the PPL or PPD.</p>		<p>option of sharing same review arrangement with the federal and AA to access competent service at optimal cost.</p> <p>Qualification requirements, procedures for appointment/dismissal of the Committee members, should be reconsidered to enhance independence of the Committee.</p>
<p>(c) Rules establish the matters that are subject to review.</p>	<p>Summary: The PPL establishes the matters that are subject to review. The bidder’s right of review is not available in respect of <u>all</u> acts or omissions of the public body in regard to public procurement and the exclusions from coverage are [significant], severely impairing the effectiveness of the review system.</p> <p>Decisions or actions which are the subject matter of review – and exclusions PPL A.60(1) provides for a right to submit a complaint “against an act or omission of the public body in regard to public procurement...”</p> <p>The right of review is not available in respect of <u>all</u> acts or omissions of the public body in regard to public procurement. PPL A.60(2) provides that the right of review is not available in respect of four matters, the most relevant of which for public procurement are; a) the selection of procurement method, and b) rejection of bids, proposals or quotations pursuant to PPL A.20. PPL A.60(3) & (4) provide that a complaint may not be brought after a contract has been signed with the successful bidder, subject to specified conditions being satisfied.</p> <p>PD A.45 elaborates on and adds to these exclusions from the right to review to cover: special conditions given under PPL A.15 (domestic preferences); and complaints submitted late.</p>	<p>Not applicable.</p>	<p>Criterion is partially met.</p> <p>PPL A.72 Acts or omissions not subject to the right to review: The exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria, mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p> <p>Alignment between the PPL and PD PD expands on exclusions from the right to review.</p>		<p>Acts or omissions not subject to the right to review: Reconsider the exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria, which mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p> <p>Alignment between the PPL and PPD. PPD expands on exclusions from the right to review. All exclusions from right to review should be set out in primary legislation and the PPL and PPD should be aligned.</p>

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.	<p>Summary: There are rules establishing time frames for the submission of challenges and appeals. There are also rules for issuance of decisions at the initial review stage, by the head of the public body and for issuance of decisions by the Bureau, the independent appeals body.</p> <p>Time frame for submission of challenges and appeals: PPL A.61((2) requires the candidate to submit the complaint to the head of the public body within five (5) working days from the date he knew, or should have known, the circumstances giving rise to the complaint.</p> <p>Time frame for issuance of decision by the head of the public body: PPL A.61(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons. PPD A.46.4 requires the public body to give the complainant a copy of the decision within five (5) working days from the date the decision was made.</p> <p>Time frame for complaint to the Bureau: PPL A.61(4) If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Bureau. The complaint to the Bureau must be submitted within 5 five working days from the date on which the decision had been or should have been communicated to the candidate.</p> <p>Time frame for issuance of decision by the Bureau: PPL A.62(5) requires the Bureau to issue its decision within 15 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any. The Bureau is given 3 days from receipt of the Committee recommendation to issue its decision with immediate effect – this gives the Committee 12 days to reach its recommendation.</p> <p>The PPD (A.18.27(5)&(6)), which provides for a maximum days for signature of the contract following notification, appears to recognize that there may be delay due to complaints but falls short of establishing a ‘standstill’ period.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>PPL: Time frames for issuance of decisions of the Bureau are expressed inconsistently. The PPL and PPD should be aligned.</p> <p>It is not clear if the suspension of the procurement process is notified to all bidders and if so, when.</p> <p>In addition, it is not clear what happens to the suspended procurement process when the head of public body does not respond to the complaint within 5 working days as contemplated in the PPL. Is the suspension automatically lifted or public body should inform all bidders of the lifting?</p>		<p>PP: Time frames for issuance of decisions of the Bureau: Align time frames in PPL and PPD.</p> <p>PPL should make clear that the suspension of the procurement process should be notified immediately to all bidders who submitted bids.</p> <p>Additionally, the PPL should clarify what happens to the suspended procurement process when the Head of public body does not respond to the complaint within 5 working days as required by PPL A.74(4).</p>
(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.	<p>Summary: Applications for appeal and full decisions are not published in easily accessible places. There is no timeframe for publication in the legal framework.</p> <p>Publication of appeal decisions is not mandatory in the PPD. PPD (para 54.2) requires the Bureau to make sure that its decision is made available to the applicant and the Government.</p>		<p>Criterion is not met.</p> <p>PPL PPL A.5(3) sets out general principles requiring transparency, fairness and accountability for decisions made in procurement. Failure to publish sufficient information on complaints and decisions is in breach of these principles.</p> <p>Notification of decisions to parties: In the interests of efficient operation of the system, the legal framework (ideally primary legislation) should require prompt notification of decisions to parties within specified timescales.</p>		<p>PPL Publication of applications and decisions: Include provision requiring applications for appeal and full decisions to be published in easily accessible places and within a specified time period.</p> <p>Notification of decisions to parties: Include provision requiring prompt notification of decisions to parties within specified timescales.</p>
(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).	<p>Judicial review/right of appeal: PPD A.57 specifies the right of the aggrieved bidder to appeal to a judicial body if it is not satisfied with the decision of the public body and the Bureau. First, the clause itself as drafted as problematic as it leapfrogs from a Public Body to the Court - while the highest administrative body is the Bureau. Second, it does not specify competent court who reviews the Bureau’s decision.</p> <p>It is advisable to include provisions concerning right of appeal in primary legislation.</p>		<p>Criterion is Partially met.</p> <p>PPL Judicial review/right of appeal: It is advisable to include a provision confirming the right of appeal, venue for appeal and time limits in primary legislation.</p> <p>If PPD at A.57 is intended as drafted, i.e., to allow filing of appeals of decisions of a public body to court - without going through the Bureau, it creates inconsistency with the PP, which</p>		<p>PPL Judicial review/right of appeal: Include provision confirming right of appeal, venue for appeal and time limits.</p>

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
			establishes a two-tier system of complaints with Head of Public Body as first tier and Bureau as the second. Leapfrogging from Public Body to the Court seems to leave out the role of the Bureau as second-tier reviewer. Some countries have adopted this model, but it is not clear if this is the intention.		

1(i) Contract management

The legal framework provides for the following:

Assessment criteria [1(i) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,	PPL A.36(5) states that the procedure for administering contract shall be prescribed by the Bureau. PD A.36 defines the functions for undertaking contract management and performance monitoring. Responsibility lies with the public body.	Not applicable.	Criterion is met.		
(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.	PD A.37.4 provides that a contract may be amended in the course of its performance, but must not endanger the interests of the public body and not favor the winning bidder compared to prices offered by the other bidders. PD A.18(14) requires a public body to include in the bidding documents information on whether it is possible to make a price adjustment to the contract and the condition applying if it is allowed (A.18(14)(2)), an indication that the public body has a right to decrease or increase the quantity of goods of services by up to 20% without changing the unit price offered by the bidder or other terms of the contract (A.18.19.3(3) and A 18.4(3)(u)). There are also price adjustment provisions for consultancy service contracts (PD A.18(14)(5)).		Criterion is met. The provision on contract amendments and price adjustment are broadly drafted and have the potential to be interpreted widely, to the detriment of competition.		Amend the provisions on contract amendments and price adjustment for more precision and avoidance of unjustified discretion in their application.
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	PD A.18(27)(5) requires that the signed contract provide for the procedure for resolution of disputes that may arise in the performance of the contract. PPD A.19.4(h) further provides that disputes shall be settled according to Ethiopian law. The Civil Procedure Code A.315(2) provides that “No arbitration may take place in relation to administrative contracts of the Civil Code” ¹⁹ , i.e., public bodies are not subject to arbitration. PD A.30.13(c) concerning framework agreements confirms that the authorized body has responsibility to make every offer to resolve disputes collaboratively in connection with performance of the contract. It is not clear whether parties can go to court for resolution of disputes. The General Conditions of Contract (GCC) in the Federal SBD include dispute provisions. The PPD para 16.3.1 requires public bodies to prepare bidding documents using the SBDs issued by the Bureau. The SBDs GCC clause 26 provides provisions on settlement of disputes including preference for amicable settlement.		Criterion is partially met. As noted earlier under Indicator 1 (a), it appears there is a lack of certainty for public bodies and suppliers as to the correct classification of contracts awarded under the PPL and the impact of this on the availability of arbitration. Arbitration is not appropriate in all cases, but for contracts where it is appropriate, the legality of its use should be clear. We understand that there is a current review of certain aspects of the Civil Code and it is possible that this is already being addressed.		The PPL or PPD should clarify when the arbitration shall be used as a forum. Arbitration would enable parties to settle their disputes using professional arbitrators, who are conversant on the matter instead of ordinary judges who have no specialization in the area of the contract subject matter.
(d) The final outcome of a dispute resolution process is enforceable.	The General Conditions of Contract in the Federal SBD include dispute provision and provide that in the event of a failure to resolve a dispute it may be referred for resolution through the Courts. There is no specific provision concerning enforceability of the outcome of a dispute resolution process.		Criterion is partially met. There is no specific provision concerning enforceability of the outcome of a dispute resolution process. No evidence is obtained that mandates the use of the federal SBDs.		Include a provision concerning enforceability of the outcome of a dispute resolution process.

¹⁹ Thus, if public procurement contracts are classified as administrative contracts, and the provisions of the Civil Procedure Code are strictly interpreted, they cannot be subject to arbitration. For further discussion on this issue see: Conflicting Legal Regimes Vying for Application: The Old Administrative Contracts Law or the Modern Public Procurement Law for Ethiopia, Teclé Hagos Bahta, African Public Procurement Law Journal (2017) 4 APPLJ 1.

1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria [Electronic Procurement (e-Procurement)]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.	<p>Summary: The legal framework allows for e-Procurement solutions at a general level, but the implementation of e-GP will require substantial amendments and additions to the legal framework.</p> <p>PPL A.21(1) allows for the Bureau to issue a Directive to determine the extent to which communication by electronic means may be used in addition to, or instead of, writing.</p> <p>PPL A.21 confirms that the Bureau may authorize the use of electronic means as a method of procurement. In order to implement this, the PPL provides for the Bureau to conduct a study and submit proposals, ensure that public bodies, suppliers and supervising entities have capacity to implement, and to authorize the implementation of an electronic system in all or certain procurements.</p> <p>It is early days in the introduction of e-GP and much work remains. It has not yet begun in Oromia.</p>	Not applicable.	<p>Criterion is not met.</p> <p>The PPL provides general permissive provisions for the development of an electronic procurement system. However, it stops there and does not contain any further specific provisions, covering areas needed to operationalize an e-procurement system. In reality, no steps have yet been taken to introduce e-procurement. Currently, the PPL includes provisions throughout the procurement cycle that are relevant for manual system only.</p>		Initial steps need to be taken to establish e-procurement. Once it begins, there will be a need for reviewing and updating the PPL and the corresponding secondary documents that guide the manual procurement process to reflect the new practices to be followed when conducting procurement electronically.
(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.	See 1 (j) (a).		<p>Criterion is not met.</p> <p>See gap under 1(j) (a).</p>		See 1 (j) (a).
(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.	See 1 (j) (a). See above in respect of PPL A21.		<p>Criterion is partially met.</p> <p>See gap under 1 (j) (a).</p>		See 1 (j) (a).

1(k) Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.	<p>Summary: The legal framework includes a list of procurement records and documents related to transactions, including certain aspects of contract management. Procurement records and documents are prepared and maintained at an operational level by the public body's procurement unit. Procurement records and documents are not available for public inspection.</p> <p>PPL A.8.3 requires the procurement department in a public body to maintain a complete record for each procurement in accordance with PPL A.13(2).</p> <p>PPL A.13 Records of Procurement requires the public body to maintain records and documents. It sets out a non-exhaustive list of information to be maintained. The list in the PPL does not specifically refer to contract management information.</p> <p>PPL A.13(4)(a)) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would "prejudice legitimate commercial interest of the parties or would inhibit fair competition."</p>	Not applicable.	<p>Criterion is partially met.</p> <p>PPL A.13 Records of procurement</p> <p>The drafting of PPL A.13 is confusing, particularly the interaction between A.13(4)(a) and A.13(4)(b) and what is, or is not, available for public inspection.</p> <p>PPL A.13(4)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body. This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p>		There is a need for separate guidance on the identification and managing of information of commercial sensitivity/confidentiality during bid evaluation process and after contract award.

Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>PPL A. A.13(4)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed, except when ordered to do so by a competent court or other authorized body.</p> <p>This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p> <p>PPL A.32 on Opening of Bids requires the recording of the announcement of names of bidders, total amount of bids, discounts etc., and that a copy of the record shall be made on request to bidders.</p>				
(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.	PPL A.13 Records of Procurement requires the public body to maintain records and documents regarding public procurement for a period of time determined by a Directive issued by the Bureau. PPD A.40.2 states that this period is to be notified.		Criterion is met.		
(c) There are established security protocols to protect records (physical and/or electronic).	Unable to find established security protocols to protect records.	Not applicable.	Criterion is not met. Unable to find established security protocols to protect records.		Consider establishing security protocol to protect records.

1(l) Public procurement principles in specialized legislation

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

Assessment criteria [1(l) Public procurement principles in specialized legislation]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Public procurement principles and/or the legal framework apply in any specialized legislation that governs procurement by entities operating in specific sectors, as appropriate.	There is no specialized legislation that governs procurement by entities operating in specific sectors, and the legal framework apply to procurement carried out by all public bodies.	Not applicable.	Criterion is met.		
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	No such provisions exist at the level of the Region.	Not applicable.	Criterion is not met. PPP not yet considered in the Region.		To the extent that PPPs are being initiated in Oromia, it is imperative that a Directive on PPPs be issued.
(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	No such provisions exist at the level of the Region.	Not applicable.	Criterion is not met. PPP not yet considered in the Region.		Consider introducing a responsible body for developing and implementing PPP in the next round of revisions to the PPL.

2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria [2(a) Implementing regulations to define processes and procedures]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	<p>There is a comprehensive Procurement Directive adopted in 2012: Procurement Directive 02/2012.</p> <p>The PPD provides details on the issues covered in the PPL. In some cases, however, there are observed contradictions with the PPL.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>The PPD, on occasions, appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD (see specific comments elsewhere in this assessment).</p>		<p>Alignment between PPL and PD</p> <p>Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, that PPD should not introduce provisions that materially limit or inappropriately expand the provisions of the PP.</p>
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	The PPD is a document but is not accessible electronically.	Not applicable.	<p>Criterion is partially met.</p> <p>The Procurement documents including the PPD are not accessible electronically.</p>		Consider using federal PPA's website for the short term and upload procurement information including the legal documents for public accessibility. Consider establishing own website for the long term.
(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	<p>PPL A.65(1) provides that the Council of the Region may, where necessary, issue regulations for the implementation of the PPL.</p> <p>PPL A.65(2) provides that the Bureau may issue directives implementing the provisions of the PPL.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>The responsibility for maintenance of the secondary legislation is clearly established. The secondary legislation is updated from time to time. However, as discussed above, the PPD on occasion appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD.</p>		See recommendation under 2 (a) (a).

2(b) Model procurement documents for goods, works, and services

Assessment criteria [2(b) Model procurement documents for goods, works, and services]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.	<p>Summary: There are model procurement documents for use for a wide range of goods, works and services including consulting services.</p> <p>Standard Bidding Documents: There are no model Standard Bidding Documents (SBD) published by the Bureau yet. In practice, the Federal SBDs are used. There are separate SBDs for international competitive bids (ICB) and national competitive bids (NCB). There are also ICB and NCB SBDs for the procurement of goods under framework agreements and for procurement of Information Systems, Textbooks and Health Sector Goods. There is no SBD for procurement of goods where no framework agreement is used.</p> <p>The SBDs include Instructions to Bidders with information on the bidding process including evaluation and award, Statement of Requirements, General and Special Conditions of Contract and Bidding/Contract Forms including the bid submission sheet.</p> <p>Standard forms for bid opening and evaluation: In addition, there are standard templates covering invitation to bid, bid opening and evaluation; including a bid opening checklist, minutes of bid opening, report on bid submissions and bid evaluation report. There is also a sample letter of notification of award.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>There are no SBDs issued by the region. Use of the federal SBDs is not mandatory and not officially adopted by the Bureau.</p>		Consider use of national SBDs in consultation with the federal PPA and other regions to ensure consistency. Provide adequate guidance and official instruction mandating for use of SBDs by all PEs.

Assessment criteria [2(b) Model procurement documents for goods, works, and services]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.	PPL A.27 sets out the mandatory content of the Bidding Documents PD A.18.4 provides that public bodies must use the standard bidding documents prepared by the Bureau without making any changes in the Instruction to Bidders and General Condition of Contract section of the SBDs. Changes to the procurement schedule (equivalent of data sheet) and special conditions of contract are permitted to suit the context. The assessment was not provided with any official authorization issued by the Bureau mandating the PEs to use the federal SBDs.	Not applicable.	Criterion is partially met. Please see 2 (b) (a) above.		Please see 2 (b) (a) above.
(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	PPL A.11(5) Functions of the Bureau: provides that the Bureau is responsible for preparing, updating, and issuing authorized versions of the Standard Bidding Documents, procedural forms, and other attendant documents. The Bureau has not issued SBDs and the federal SBDs are not updated.	Not applicable.	Criterion is not met. Please see gap under 2 (b) (a), above.		Please see recommendation under 2 (b) (a), above.

2 (c) Standard contract conditions

Assessment criteria [2 (c) Standard contract conditions]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	The SBDs include standard contract conditions for works, goods, consultancy services and non-consultancy services contracts. There are both general conditions of contract and special conditions of contract. PPL A.27 Bidding Documents requires the bidding documents used by public bodies to include the general and specific conditions of contract. PD 18.7.2 provides that public bodies must include the general conditions of contract in bidding documents without making any changes.	Not applicable.	Criterion is partially met. Please see gap under 2 (b) (a) above.		Please see recommendation under 2 (b) (a) above.
(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	The standard general contract conditions contain provisions which are consistent with internationally accepted practice, including defining the parties to the contract, their respective obligations, assignment and sub-contracting, contract changes, payment provisions, liability, dispute and termination. PD A.37.4 Contract amendments: The drafting in the procurement Directive is too wide. It has the potential to be interpreted widely to the detriment of competition. The legal documents do not specify the review and approval process for contract amendment.	Not applicable.	Criterion is partially met. Please see 2 (b) (a) above.		Please see 2 (b) (a) above.
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	The standard contract conditions are an integral part of the Federal SBDs (PPL A.27, PPD A.18.7.2) which are included in the Bidding Documents issued to candidates. Charge for bidding documents: Public bodies may charge candidates for bidding documents at a price not exceeding the cost of reproduction and delivery of those documents to the candidate (PPL A.38(1) and PPD para. 18.10).	Not applicable.	Criterion is partially met. Please see 2 (b) (a) above.		Please see 2 (b) (a) above.

2 (d) User's guide or manual for procuring entities

Assessment criteria [2 (d) User's guide or manual for procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.	There is no user's guide or manual outside the PPL and PPD.	Not applicable.	Criterion is not met.		Consider preparing a comprehensive manual and user's guide that detail the procedures for correct implementation of the rule.
(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	There is no manual.	Not applicable.	Criterion is not met.		See recommendation under 2 (d) (a) above.

3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

3(a) Sustainable Public Procurement (SPP)

Assessment criteria [3(a) Sustainable Public Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	No evidence of a policy/strategy in place to implement SPP in support of broader national policy objectives. There is, however, in place an incentive scheme for the benefit of MSEs.	Not applicable.	Criterion is partially met. There is no SPP strategy for promotion of broader national and regional objectives. The MSEs scheme doesn't include all MSEs that fall under the category. The detailed description is available under indicator 9 (a) (c).	✓ Yes	Develop a policy for promotion of sustainable procurement in accordance with the Transformation and Growth Agenda in the region.
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalize, facilitate and monitor the application of SPP.	No evidence of SPP implementation plan.	Not applicable.	Criterion is not met. See gaps under 3 (a) (a).	✓ Yes	See 3 (a) (a).
(c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.	Summary: the legal provisions address "lifetime approach" and environmentally friendly procurement only at a high level – see 3(a)(d) below. There is also an incentive to procure locally manufactured goods/ local contractors etc., and the MSCs which is intended to provide jobs to young graduates – see 1(d)(b) above.	Not applicable.	Criterion is partially met. Sustainability provisions don't cover all aspects of sustainable procurement and all stages of the procurement cycle.	✓ Yes	See 3 (a) (a). Consider introducing sustainability provisions based on adequate study.
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	Summary: the legal provisions address "life-time approach" and environmentally friendly procurement only at a high level and do not address the issue of well-balanced application of sustainability criteria to ensure value for money. PPL A.5 provides that one of the principles of procurement is to ensure value for money in the use of public funds. PPL A.54 requires heads of public bodies to adopt a "life-time approach" to the management of public property. This means a system which takes into account all associated activities and costs including acquisition, maintenance, consumption, disposal and deletion. Similar general provisions are not included in the PPL in the context of public procurement. PD A.11(f) requires a public body to ascertain that the procurement requirement in no way harms public safety and environmental protection.	Not applicable.	Criterion not met. The MSE incentive does not appear well balanced to ensure value for money.	✓ Yes	Assess the economic and social impact of SMEs scheme and ensure that it is balanced with value-for-money consideration. Consider life cycle costing approach in the procurement and provide adequate guidance.

3(b) Obligations deriving from international agreements

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

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) clearly established	As explained under Indicator 1(a)(a), the PPL confirms in A.6 that to the extent that the PPL conflicts with an obligation of the Region under or arising out of an agreement with one or more states or with international organizations, the provisions of that agreement shall prevail. However, the PPL is silent in respect of international obligations attaching to funds passed on to the Region by way of an agreement entered into by the Federal Government. These provisions are unclear.	Not applicable.	Criteria is partially met. The PPL is silent in respect of international obligations attaching to funds passed on to the Region by way of an agreement entered into by the Federal Government. Given that it is the federal government that enters into international agreement, it is important to provide clear provision in the primary legislation.		Consider introducing a provision regarding international agreement signed by the federal government. See 1 (a) (a).
(b) consistently adopted in laws and regulations and reflected in procurement policies.	The procurement framework does not make mention of any international agreement or obligations arising from such agreements. Similarly, it is not clear from where the thresholds for international competitive bidding are coming. Ethiopia is a member of the Agreement Establishing the African Continental Free Trade Area (AfCFTA). Member States of AfCFTA are working on harmonization of public procurement policies. Accordingly, a continental procurement policy is planned to be developed to ensure	Not applicable.	Criterion is partially met. The international agreements are adopted into laws through proclamation ratifying the agreements. However, the procurement policies are not updated for consistency.		Amend the legislation to introduce the level of transparency at a minimum, as recommended for different indicators of this assessment and for compliance with UNCAC, also in practice.

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>that procurement policies are in harmony. AfCFTA will develop a model law that can be adopted by member states.</p> <p>Ethiopia signed the United Nation Convention against Corruption (UNCAC) on 10 December 2003 and through Proclamation no 544/2007 on 26 November 2007. UNCAC calls for:</p> <ul style="list-style-type: none"> Article 9 (1) (a) of UNCAC, calls for the “public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders”. Article 9 (1) (b) of UNCAC, calls for the “establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication”. <p>The African Union Convention on Preventing and Combating Corruption is another international agreement with impact on procurement. Member states of this Convention undertake to adopt legislative measures to create, maintain and strengthen their procurement system and management of public goods and services. The UN Convention for Anti-Corruption provides that parties undertake to establish appropriate systems of procurement based on transparency, competition, and objective criteria to prevent corruption.</p> <p>In addition, Ethiopia is also a member state of the African Union whose headquarters are hosted by Ethiopia in Addis Ababa. As its member, Ethiopia can benefit from the AU’s work, for example of the New Partnership for Africa’s Development (NEPAD) Agency, which is the implementing arm for the AU’s Agenda 2063 development strategy. NEPAD’s structure includes several committees that are complemented by various panels such as procurement and recruitment as well as directorate and division level quality assurance task teams..</p>		<p>While UNCAC calls for a defined level of transparency, obligations stemming from these laws are not fully reflected in the specific laws and implemented in practice. The procurement legislation requires disclosure of procurement notices and contract award above a specified threshold, however, the procurement framework does not mandate adequate publication and disclosure of procurement related documents, information, and decisions.</p> <p>UNODC carried out a review of the implementation by Ethiopia of the UNCAC Convention. The government is currently preparing a response to the Country Review Report of Ethiopia by UNODC.</p>		

Pillar II. Institutional Framework and Management Capacity

4. The public procurement system is mainstreamed and well-integrated into the public financial management system

4(a) Procurement planning and the budget cycle

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

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	<p>Legal input:</p> <p>PPL A.12 requires public bodies to prepare an annual procurement plan prepared in accordance with the PPL and a Bureau Directive. The annual procurement plan must be approved and then communicated to the Bureau by a specified date.</p> <p>The PPD provides a section (Section 3) dedicated to the preparation of procurement plans; identifying, collecting and arranging needs; selection of procurement methods; scheduling, content of the plan, approval and update of the plan; and its publication. Accordingly, the annual plan must be approved and shared with the relevant work units including the Bureau.</p> <p>The Budget Directive of the region stipulates the need for preparing multi-year (3 Years) budget planning using the estimate of recurrent and capital expenditure and priority of the Regional government. In practice, the budget preparation process is informed by the Medium-Term Expenditure and Fiscal Framework (MTEFF) prepared in the BoF and approved by the council for 3 years in a rolling basis and updated each year to accommodate changes. Based on the MTEFF, the BoF allocates budget ceiling to PBs which marks the beginning of the actual budget preparation process. The PBs come up with their priority</p>		<p>Criterion is partially met.</p> <p>There is no requirement and practice of preparing a typical procurement plan (annual or multiyear) to inform the budget preparation process. To a certain extent information of a procurement planning nature (e.g., cost estimate, market analysis, scheduling) included project feasibility studies is considered in the budget preparation process.</p> <p>There is no legal requirement to submit a feasibility study and its independent verification for quality and realism.</p> <p>The annual procurement plan as required by the PPL and prepared by the Procuring entities is shared with the Regional regulatory agency after the budget has been approved and has no influence on the budget decision.</p>		<p>More explicit provisions that demand the integration of budgeting with procurement plan should be considered.</p> <p>Enacting and implementing the Public Project Administration and Management System Proclamation would help to integrate the budgeting and PPL process, at least for major projects.</p>

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	projects and required budget. The budget estimation depends on historical price data and does not benefit from credible feasibility studies and updated information acquired through market research. After budget is approved, PBs prepare Procurement plans and share with regional PPA which shows that there is no link between procurement plan and budget preparation process.				
(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).	<p>The Budget Administration Directive requires public bodies to consider financial requirements for ongoing and new programs while preparing their annual budget requirement. In general, the provisions in the Directive are followed by the public bodies.</p> <p>In practice, annual budget approval is made as late as July 15. During the time of budget approval, recurrent costs are covered based on 1/12 of the last year budget but there is no provision to address the impact on payment for capital projects. The budget release for capital projects normally takes place at the end of the 1st quarter of the year, impacting payments due during this period of the fiscal year.</p> <p>Because capital projects are not supported by reliable feasibility studies and cost estimates, most of the capital project run out of resources during the middle of implementation, requiring additional budget impacting timely payments.</p> <p>In addition, PBs are required to submit three months' cash flow requirements which is updated monthly in a rolling basis. The PBs are also required to submit copies of payment documents including invoices and certificates to support payments of ETB 1,000,000 and above. This hampers public bodies' ability to effect payment timely.</p>		Criterion partially met. The delay in budget approval process, the delay in budget transfer to PBs for capital projects, and the need to quest for additional budget during implementation affected the performance for timely appropriation of budget in the region. of budget transfer in the first quarter of the year does not consider requirements for capital projects leading to delay in their payments.		Streamline the budget preparation, approval, and transfer process from the federal to regions and regions to PBs.
(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.	<p>Article 61 (2) of the ONRS finance administration proclamation no 156/2010 requires the head of each public body to provide to BOF monthly reports showing the financial transactions of his/her Public Body.</p> <p>Article 61 (4) of the proclamation further stipulates that the report to be submitted shall include the amount received as grant and loan and utilization of the same.</p> <p>In practice, the budget utilization reports are submitted to BOF every month. Moreover, the regional council reviews the performance of the procuring entities Every 6 months. The region uses an activity-based budgeting system that allows to monitor budget utilization by activity including contract.</p>	Not applicable.	Criterion is met.		Consider reporting on budget utilization of major contracts separately.

4(b) Financial procedures and the procurement cycle

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

Assessment criteria [4(b) Financial procedures and the procurement cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	<p>Financial Administration Proclamation 156/2010 A.32 Commitments, provides that no contract or other arrangement shall be entered into by any public body unless there is sufficient unencumbered balance from the budget to discharge any debt incurred during the fiscal year in which the contract or other arrangement is made (A.32(2)). It goes onto provide that for long-term contracting lasting more than one fiscal year, the ascertainment of budget appropriated for the first fiscal year of the project shall be sufficient (A.32(3)).</p> <p>In line with this legal requirement, procuring entities do not undertake solicitation of tenders without certifying availability of funds. Procuring entities solicits tender after getting confirmation of the procuring entity's budget control unit or expert in relation to availability of budget for the planned procurement.</p> <p>On the other hand, procuring entities used to notify their procurement need for PPDA, without having sufficient budget and in some cases without allocating any budget. Such practice has caused PPDA to solicit tender and sign contract for supply of goods while there is no budget. PPDA has recommended that there should be a mechanism that enables PPDA to formally get copies of procuring entities' approved budgets so that it will process any bid only after confirming availability and sufficiency of funds allocated for the subject procurement item.</p>	Not applicable.	Criterion is not met. The Proclamation provides that no contract shall be signed before certification of availability of budget and not before solicitation of tenders. The legal requirement should look into and address the reputational risk and transaction cost associated with unsuccessful procurement in case of lack of funds at the time of contract signing.	✓ Yes	Consider introducing explicit provision and practice that provides confirmation of availability of budget before soliciting tenders, including for procurement of common user items.

Assessment criteria [4(b) Financial procedures and the procurement cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.*	<p>PD (A.36-38) set out the obligations to pay in a timely fashion and set out a procedure to be followed in processing payment for long term works contracts. Besides, Finance Administration Proclamation No 156/2010 A 32 (1 & 2) stipulates that the procedure and requirements for processing invoices includes consideration, such as:</p> <ol style="list-style-type: none"> 1) No payment shall be made by any public body unless, in addition to any other voucher or certificate required, the head of the public body or other person of his/her delegate: 2) confirming that that the work has been performed, the goods supplied, or the services rendered, and that payment request is according to the contract, etc. <p>However, for payment to works contract, the PBs have to get approval of the Bureau of Construction before payment request is submitted to BoF. This is not a procedure consistent with the procurement and finance documents and unclear to bidders.</p>		<p>Criterion is not met. The procedure for processing of invoice and authorization of payment are not publicly available. Most importantly, the procedure to submit all payment requests to Bureau of Construction and subsequently to BoF is not consistent with the payment procedures. There is inconsistency in the timeline specified among the different documents.</p>	✓ Yes	<p>Streamline the payment process to reduce delays in the timely payment of invoices. Ensure consistency between finance and procurement documents. Consider publishing payment procedures in websites for easy access to the bidding community and the public.</p>
// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.		Refer the analysis under Indicator 9 (c) (c)			

5. The country has an institution in charge of the normative/regulatory function

5(a) Status and legal basis of the normative/regulatory institution function

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

Assessment criteria [5(a) Status and legal basis of the normative/regulatory institution function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	<p>Summary: The procurement volume and number of PBs in Oromia significantly exceed the Regions that have established independent regulatory body (SNNPR). However, the regulatory function in Oromia is organized as department /Directorate in BoF and lacks dedicated management focus and resource PPL A.11 assigns the normative/regulatory functions to the Bureau. (See 5(b) below).</p>	Not applicable.	<p>Criterion is partially met. The regulatory function in Oromia is organized as a department /Directorate in BoF and lacks dedicated management focus and resource.</p>		Consider establishing dedicated regulatory function.

5(b) Responsibilities of the normative/regulatory function

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

Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) providing advice to procuring entities	PPL A.11(1) Bureau function: to advise the Regional Government on public procurement policies, principles and implementation, and provide technical assistance to regional public bodies, at regional, woredas and municipality administrations.	Not applicable.	Criterion is met.		
(b) drafting procurement policies	PPL A.11(1) Bureau function: to advise the Regional Government on public procurement policies, principles and implementation.	Not applicable.	Criterion is met.		


Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
(c) proposing changes/drafting amendments to the legal and regulatory framework	PPL A.11(3) Bureau function: monitor and report to the Regional Council, initiate amendment on law and implement system improvements.	Not applicable.	Criterion is met.		
(d) monitoring public procurement	PPL A.11(3) Bureau function: to monitor and report to the Regional Government on the performance of the public procurement system.	Not applicable.	Criterion is met.		
(e) providing procurement information	Not specifically provided for in the PPL. However, PPD (A.5.23) assigns the responsibility of providing procurement information, except for information restricted by the PP, to the procurement unit in the public bodies.	Not applicable.	Criterion is met.		
(f) managing statistical databases	PPL A.11(12) Bureau function: to set up, develop, maintain, and update a database that covers the entire spectrum of public procurement and property administration.	Not applicable.	Criterion is met.		
(g) preparing reports on procurement to other parts of government	PPL A.11(19) Bureau function: to submit quarterly and annual reports to the Regional Government regarding the overall functioning of the public procurement administration and provide such data as the Minister requests.	Not applicable.	Criterion is met.		
(h) developing and supporting implementation of initiatives for improvements of the public procurement system	PPL A.11(2) Bureau function: implementation of system improvements. PPL A.11(13) Bureau function: develop policies and maintain an operational plan on capacity building both for institutional and human resource development.	Not applicable.	Criterion is met.		
(i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement	PPL A.11(5) Bureau function: prepare update and issue SBDs, procedural forms and other attendant documents. As regards the integrity training programs, the responsibility lies with the State Ethics and Anti-corruption Commission, which among others, is in charge of overall responsibility for educating citizens on integrity and corruption matters. Ethic officers in public bodies are responsible to coordinate with the State Ethics and Anti-Corruption Commission in providing integrity training relevant to the public body.	Not applicable.	Criterion is met.		
(j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)	PPL A.11(4) Bureau function: in collaboration with competent authorities, ensure the setting of training standards, competence levels, certification requirements and professional development paths.	Not applicable.	Criterion is met.		
(k) designing and managing centralized online platforms and other e-Procurement systems, as appropriate	PPL A.21 provides that the Bureau shall conduct a study and submit a proposal concerning an e-GP system and ensure that public bodies, suppliers and supervising entities develop the necessary capacity. No action appears to have been taken to date.	Not applicable.	Criterion is met.		

5(c) Organization, funding, staffing, and level of independence and authority

Assessment criteria [5(c) Organization, funding, staffing, and level of independence and authority]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.	PP: The functions are assigned to the Bureau. However, in practice, the BoF delegated the role to the Public Procurement Administration Directorate organized under BoF. The Directorate is responsible for providing the procurement regulatory functions in the Regional State. The Head of the Directorate is assigned by the Head BoF and has no authoritative standing in government.	Not applicable.	Criterion not met. The Regulatory function is not organized in the appropriate level of structure and the Head has low level authoritative standing.	✓ Yes	Consider establishing independent procurement regulatory body.

Assessment criteria [5(c) Organization, funding, staffing, and level of independence and authority]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.	The regulatory function has no dedicated and secured financing.	Not applicable.	Criterion not met.	✓ Yes	See 5 (c) (a).
(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.	<p>The PPL assigns the regulatory function to BoF. However, the function is delegated to a unit under BoF which is the Public Procurement Administration Directorate. The directorate technically lead in all procurement regulatory function assigned to the Bureau. The procurement regulatory function is not organized with adequate institutional capacity and structure.</p> <p>The Directorate is organized under three Departments; the Public Procurement management Department, property administration department and Procurement & Property Administration Auditing and monitoring Department. However, the key responsibilities such as research, policy, advisory service, updating/amending procurement laws and SBDs and complaint review functions have no dedicated department/staffs and, as a result, are not being performed adequately or at all.</p> <p>At the time of the assessment, 13 out of 15 of the approved positions in the Directorate were filled.</p>	Not applicable.	<p>Criterion is not met.</p> <p>The unit responsible for regulatory function has not adequate organizational structure and staffing.</p>	✓ Yes	See 5 (c) (a).

5(d) Avoiding conflict of interest

Assessment criteria [5(d) Avoiding conflict of interest]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations										
<p>(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.</p>	<p>Conflicts of interest – institutional</p> <p>The objectives, functions and activities of the Bureau are wide-ranging, but this mix of duties and functions are incompatible in many respects, and in absence of clear rules on separation of duties, the system/structure currently in place is insufficient to avoid conflicts of interest.</p> <p>More specifically, the Bureau considers and decides on requests for use of non-standard procedures (PPL A.11(6) and (22)) but also has responsibility for auditing public bodies compliance with the procurement rules (PPL A.11(11)) and enforcement (PPL A.60(1)); the Bureau is responsible for operating and maintaining the supplier's list (PPL A.11(7)) but also for review and decisions on complaints concerning the conduct of suppliers (PPL A.11(9)), maintenance of the suspension/debarment list (PPL A.11(10)) and enforcement of non-participation of suspended (debarred) suppliers (PPL A.11(21)); and the Bureau is involved in procurement processes – advice and assistance, authorization but it also provides establishes and supports the Committee for reviewing complaints (PD A.49).</p> <p>Rules of Ethics and Conflicts of interest - personal</p> <p>PPL A.22 sets out basic Rules of Ethics in Public Procurement, subject to details to be specified in a Bureau Directive.</p> <p>PPL A.22(1)(a) requires persons engaged in public procurement to observe the obligation to notify any actual or possible conflicts of interest.</p> <p>PD A.42 expands upon the requirements in the PPL and includes a provision covering how a public body should respond and investigate a position involving a conflict of interest.</p>	<p>In the private sector survey, 30 respondents, who operate in Oromia (21 skipped the question), to the question whether there is a problem with conflict of interest in procurement processes responded as follows:</p>  <table border="1"> <caption>Conflict of Interest Responses</caption> <thead> <tr> <th>Response Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>no real or perceived conflict of interest</td> <td>10%</td> </tr> <tr> <td>conflicts of interest rarely appear to be a problem</td> <td>37%</td> </tr> <tr> <td>conflicts of interest are obvious</td> <td>53%</td> </tr> <tr> <td>abundant conflicts of interest</td> <td>10%</td> </tr> </tbody> </table> <p>As shown on the above graph, 53% respondents think that the conflicts of interest are obvious or abundant. 47% respondents think that the regulatory institution at the Federal level is free from conflict of interest or rarely it is a problem. It is noted, though, that some respondents also operate in the Regions and their response may have also considered regulatory institutions across the country.</p> <p>Out of 26 respondents, 64% responded that they experienced a situation where the regulatory institution faced a conflict of interest giving the following reasons:</p> <p>Unclear separation of duties between institutions: 32% Unclear competencies of officials: 32% An official positions used for private advantage: 77% An official's family or other personal relations: 23% An official's political affinities: 41% (more than one answer was allowed)</p>	Response Category	Percentage	no real or perceived conflict of interest	10%	conflicts of interest rarely appear to be a problem	37%	conflicts of interest are obvious	53%	abundant conflicts of interest	10%	<p>Criterion is not met.</p> <p>The functions and duties of the Bureau are wide-ranging with insufficient separation of duties to avoid actual or perceived conflicts of interest.</p> <p>For example, regarding procurement, the BoF is given the functions of auditing and monitoring. Whilst auditing would normally feed into a monitoring function, the monitoring function encompasses a much broader need for system measurement and analysis. Given the significance of procurement in the City administration, it appears that the regulatory role including responsibility for monitoring warrants a separate and dedicated management structure.</p> <p>With regard to procurement audit, there are other authorities responsible for auditing who have more staff, more capacity, and more knowledge of auditing in general. They may not have sufficient capacity in terms of procurement auditing but that can be learned or provided.</p> <p>Building and maintaining auditing capacity within the Regulatory function sufficient to provide more than superficial audit reports (of a limited number of entities/contracts) absorbs a good deal of resources and leads to some duplication.</p>		<p>See recommendation provided under 5 (c) (a). Consider review and clear definition of responsibilities among the institutions for best efficiency and avoiding overlap.</p> <p>For procurement regulatory function (currently carried out in the BoF), priority may be given preferably to the monitoring function which will also require new approaches, capacity, and possibly tailored software to allow for the collection and analysis of data and production of system reports.</p>
Response Category	Percentage														
no real or perceived conflict of interest	10%														
conflicts of interest rarely appear to be a problem	37%														
conflicts of interest are obvious	53%														
abundant conflicts of interest	10%														

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

6. Procuring entities and their mandates are clearly defined

6(a) Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
(a) Procuring entities are clearly defined.	<p>PPL A.2 Defines a “public body” (procuring entity) as “any public body which is partly or wholly financed by the Oromia Regional State Government budget.”</p> <p>“Public procurement” means procurement by a public body using public fund.</p> <p>“Public fund” means any monetary resource allocated to procurement from the Oromia Regional State Government treasury or aid grants and credits or from the internal revenue of that public body.”</p> <p>While the definition of “public body” could arguably encompass a wide range of entities, is unclear as to the coverage of utilities, public enterprises/state owned enterprises, resulting in different perception or practical realities.</p> <p>Also, a list of all public bodies subject to the PPL is not published anywhere. Procurement at local level (woreda and zonal level) is organized in a centralized structure in which the respective finance office consolidates requirements of sector office and carry out procurement centrally. This is managed by the Pool Administration Directive issued by MoF which was expected to be endorsed by the Regional council of each region. The BoF included the pool structure in the PPD section 7 which was issued by the BoF. However, the pool structure and the roles and responsibilities it defines is inconsistent with the procurement structure and roles and responsibilities defined in the PPL.</p> <p>See notes at indicator 1(a)(b) for more detailed discussion.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>See gap analysis at 1(a)(b).</p> <p>There is no published list of all public bodies subject to the PPL. The Pool arrangement at sub city and woreda level is not specified in the primary document.</p> <p>The centralized procurement system at Zone and Woreda level is not supported by legal provisions. Both the primary and secondary documents do not stipulate the centralized procurement structure. The assessment team has not been able to access the pool directive issued by the Region. Since the centralized arrangement is not consistent with the arrangement specified in the PPL and PD, it is appropriate to ensure that the arrangement is adequately legalized through legislation preferably in the primary document.</p> <p>The procurement responsibility in case of procurement of works contract is not clear. While the PPL provides delegation to PBs to carry out procurement of all categories (Goods, Works, Consultancy and Non-consultancy services), the Regional construction Bureau is involved in the process of preparation, review and approval of procurement documents including the bidding documents, bid evaluation reports and supervision in case of procurement of works. The practice has a benefit of accessing the technical expertise available in the construction Bureau. However, the role of the construction Bureau is not clarified in the procurement documents, creating inconsistency between the rules and the practice.</p>		<p>It should be considered that the PPL provides a more complete and elaborate definition of “public body.”</p> <p>Also, it should be considered to publish the full list of public bodies subject to the PPL. This would already increase the certainty on the scope of entities included within the scope of the PPL.</p> <p>Consider covering the centralized procurement arrangement (pool System) in the primary document.</p> <p>Clarify the role of the construction Bureau in the procurement of works contract and specify in the legal documents, preferably in the primary legislation.</p>
(b) Responsibilities and competencies of procuring entities are clearly defined.	<p>There is no single list of responsibilities and competencies of procuring entities, but their responsibilities and competencies are set out in the PPL.</p> <p>The Responsibilities of the Heads of Public Bodies are listed at PPL A.7. The position of Head of Public Body itself is not defined in the PPL.</p> <p>The Duties and Responsibilities of the Procurement and Property Administration Unit within the public body are listed at PPL A.8, the Procurement Endorsing Committee at PPL A.9. PPL A.10 Accountability: confirms that heads of public bodies, heads and staff of procurement administration units and endorsing committees are accountable for their actions. Please see 6 (a) (a) regarding procurement responsibilities at local level.</p>		<p>Criterion is partially met.</p> <p>See gap analysis under 6 (a) (a).</p>		See recommendation under 6 (a) (a).
(c) Procuring entities are required to establish a designated, specialized procurement function with the necessary management structure, capacity and capability.*	<p>The PPL requires Heads of public bodies to establish:</p> <p>(1) a Procurement and Property Administration Unit whose duties and responsibilities are listed at PPL A.8.</p> <p>(2) a Procurement Endorsing Committee (PEC) whose duties and responsibilities are listed at PPL A.9.</p> <p>A.10 of PPL “Accountability” provides that staff from the procurement unit staff, head of such unit and PEC shall be accountable for their actions in accordance with the PPL and PPD.</p>	All 412 Public Bodies including 336 woredas, 20 zones that follow centralized procurement arrangement have a designated, specialized procurement function	<p>Criterion is partially met.</p> <p>Capacity and capability of the procurement function of public bodies vary and in many cases are insufficient. ,</p>		Carry out regular audit to assess structure, capacity and capability of the procurement function of the public bodies to discharge their responsibilities.

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities with a designated, specialized procurement function (in % of total number of procuring entities). Source: Normative/regulatory function.</i>	The accountability appears to stop at the technical level of the public body.				
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.	The PPL A 9 provides the authority to approve procurement decisions to the Bid Endorsing Committee for all categories of procurements above the threshold specified in the directive. PPD A 7.3, states that the BEC approves procurement above the values stated in A 19/2. However, the amended) the public body requires the approval of the bid endorsing committee for procurement of Works Birr 50,000,000, Goods Birr 10,000,000, Consultancy Birr 2,500,000 and Services Birr 7,000,000. The threshold is consistent with the threshold for use of International Competitive Bidding. The Head of the public body or his/her delegate has the authority to approve the procurement below the specified threshold. Normally, the Heads of public bodies delegate this authority to the Head of the Procurement Directorate, which is a middle level management structure in public bodies. Thus, lower-level units do not have procurement delegation and the threshold for review and approval by the BEC appears high.		Criteria is not met. Decision making authority is not delegated to lowest competent level in consistent with the risks. The threshold for BEC is too high which excludes the role of the BEC almost in all procurements except few.		Ensure that procurement decisions are expedited through delegation to the appropriate level of structure. Ensure the delegation to the Bid Endorsing Committee is clear and balanced with the risk.
(e) Accountability for decisions is precisely defined.	PPL A 10 specifies accountability for decision making. But the accountability provision is limited to few actors only - staff or head appointed to lead procurement / administration units and members of the procurement endorsing committee in public bodies. Other actors are not covered in the accountability provision.	Not applicable.	Criterion partially met. Accountability provision is limited to few actors and doesn't include all actors that directly or indirectly involved in procurement.		Consider expanding accountability provisions to include all actors that are directly or indirectly involved in procurement decisions.

6(b) Centralized procurement body

Assessment criteria [6(b) Centralized procurement body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has considered the benefits of establishing a centralized procurement function in charge of consolidated procurement, framework agreements or specialized procurement.	Yes. See 6(b) below.		Criterion is met.		
(b) In case a centralized procurement body exists, the legal and regulatory framework provides for the following: • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is	Chapter XI of the PPL provides for "Special Procurement", which includes: (i) Large Value Procurement ²⁰ and (ii) Procedure for Framework Contract. ²¹ For that purpose, the PPL requires establishment of a central body. More specifically: A.50(1) provides that a central body shall be established, by Regulation of the Regional Administration Council, to be in charge of large-value procurements having national significance, and procurement of supplies for which a demand is shown by more than one public body.		Criterion is met.		

²⁰ A.50(1) envisages establishment of a central body in charge of procurement of "large value having national significance of supplies for which a demand is shown by more than one public body and sale of public property to be disposed of..."

²¹ A.51.1 provides that "framework contracts may be used to fulfill similar procurement requirements of various public bodies or recurrent procurement requirements of a public body."

Assessment criteria [6(b) Centralized procurement body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>precisely defined.</p> <ul style="list-style-type: none"> The body and the head of the body have a high-level and authoritative standing in government. 	<p>PPL A.51(2)(c) provides that the central body set up in accordance with PPL A.50(1) shall conclude and administer framework contracts in the manner prescribed in the PPL and Bureau Directive.</p> <p>PD A.30 sets out details on the special procurement of common user items by an agency to be established by law using framework agreements. There are related obligations on public bodies to inform and cooperate with that agency.</p> <p>Manual on the Use of Framework Agreements: The Agency has issued a Manual on the Use of Framework Agreements, May 2011.</p>				
<p>(c) The centralized procurement body's internal organization and staffing are sufficient and consistent with its responsibilities.</p>	<p>The Public Procurement and Property Disposal Service (PPDS) is led by Bureau Head and reports to the BoF. The core functions of PPDS is organized under 4 directorates (Public Procurement, Market Assessment Directorate, Contract Administration Directorate and Asset Management Directorate). The structure provided adequate management focus for the key milestone activities Procurement, contract administration and market assessment. During the assessment, 62% of the approved positions in the core departments were filled.</p>		<p>Criterion is met.</p>		

7. Public procurement is embedded in an effective information system

7(a) Publication of public procurement information supported by information technology

The country has a system that meets the following requirements:

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.</p>	<p>The region has no system for publication of public procurement information. The only information publicly available for bidders is the invitation to bid posted in Ethiopian Herald and Addis Zemen Newspapers.</p> <p>The only platform in use is the Attorney General's website on which all proclamations of the region are published. The BoF claims that it has a website on which basic procurement legal documents are published, which the assessment team was not able to verify. (https://www.oromiabofed.gov.et/)</p>	<p>Not applicable.</p>	<p>Criterion is not met. Information on procurement is not easily accessible to the public.</p>		<p>In the short term, the Bureau should discuss and consider use of the federal PPA's website as a central portal and ensure that documents are published and made accessible to the public. In the long term, the Bureau should consider developing its own website.</p>
<p>(b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.</p>	<p>See 7 (a) (a) above.</p>	<p>Not applicable.</p>	<p>Criterion is not met. There is no integrated information system or online portal used at regional or national level.</p>		<p>See recommendation provided under 7 (a) (a) above.</p>
<p>(c) The information system provides for the publication of:</p> <ul style="list-style-type: none"> procurement plans information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, 	<p>There is no centralized information system for publication of procurement information. However, some sector offices publish procurement notices through their own websites and Facebook pages.</p> <p>See 7 (a) (a).</p>	<p>While there is no centralized online portal or website to publish procurement information, assessment was made what procurement information is published in other means.</p> <p>The quantitative assessment has shown that none of the PEs publish procurement plans. The only procurement information PEs publish is bid opportunities in the national newspaper. For the contracts covered in the assessment, 74% procurement opportunities were published in the national newspaper.</p>	<p>Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).</p>		<p>See recommendation provided under 7 (a) (a) above.</p>

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>including amendments, payments and appeals decisions</p> <ul style="list-style-type: none"> • linkages to rules and regulations and other information relevant for promoting competition and transparency. <p>// Minimum indicator //</p> <p>Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):</p> <ul style="list-style-type: none"> • procurement plans published (in % of total number of required procurement plans) • key procurement information published along the procurement cycle (in % of total number of contracts) : • invitation to bid (in % of total number of contracts) • contract awards (purpose, supplier, value, variations/amendments) • details related to contract implementation (milestones, completion and payment) • annual procurement statistics • appeals decisions posted within the time frames specified in the law (in %). <p>Source: Centralized online portal.</p>					
<p>(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).</p>	See 7 (a) (a) above.	Not applicable.	<p>Criterion is not met.</p> <p>See gap under 7 (a) (a) and 7 (a) (b).</p>		See recommendation provided under 7 (a) (a) above.
<p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p>	See 7 (a) (a) above.	Not applicable.	<p>Criterion is not met.</p> <p>See gap under 7 (a) (a) and 7 (a) (b).</p>		See recommendation provided under 7 (a) (a) above.

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e): - Share of procurement information and data published in open data formats (in %). Source: Centralized online portal.					
(f) Responsibility for the management and operation of the system is clearly defined.	See 7 (a) (a) above.	Not applicable.	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a) above.

7(b) Use of e-Procurement

Assessment criteria [7(b) Use of e-Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) E-procurement is widely used or progressively implemented in the country at all levels of government.* // Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement - number of e-Procurement procedures in % of total number of procedures - value of e-Procurement procedures in % of total value of procedures Source: e-Procurement system.	E-procurement is not considered. The establishment of an e-Procurement system is a work in progress and not yet completed at federal level. There is no strategy that shows how the e-GP will be rolled out in regions.	Not applicable.	Criterion is not met. The establishment of e-Procurement system is a work in progress and not yet completed at federal level. There is no strategy that shows how the e-GP will be rolled out in regions.		Consider preparing an E-procurement strategy aligned with the progress at the federal level.
(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.	See 7 (b) (a).	Not applicable.	Criterion is not met.		See 7 (b) (a).
(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.	See 7 (b) (a).		Criterion is not met.		See 7 (b) (a).
(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.* * Recommended quantitative indicators to substantiate assessment of sub-indicator	See 7 (b) (a).	Not applicable.	Criterion is not met.		See 7 (b) (a).

Assessment criteria [7(b) Use of e-Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
7(b) Assessment criterion (d): - bids submitted online (in %) - bids submitted online by micro, small and medium-sized enterprises (in %) Source: e-Procurement system.					
(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.	See 7 (b) (a).	Not applicable.	Criterion is not met. No roadmap for rollout at regional level.		See 7 (b) (a).

7(c) Strategies to manage procurement data

Assessment criteria [7(c) Strategies to manage procurement data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.	A procurement performance measurement tool through performance indicators (KPIs) is implemented in few PEs. It is an excel format introduced by the federal PPA to capture procurement data starting from planning until contract completion. The implementation of the KPI system at the regional level is supervised and supported by the BoF (Regulatory function). The KPI report covers performance including share of procurement through open competition, competition level, performance on contract management, price trend, and complaint management in procurement of goods, works, non –consultancy and consultancy service. The KPI system was supposed to capture data on a real-time basis. In practice, the PEs collect the procurement information from contract files after procurement activities are completed. It appears that the PEs implement the KPI system to comply with the requirements from RPPA's and federal PPA's, instead of using it as a management tool in the PEs. There was no practice of sharing the report with own management in the PEs, and hence, there has not been any follow-up action to improve procurement performance. The system has not been reviewed or audited by an external party.		Criterion is partially met. The KPI system is not integrated with the procurement system to capture real-time information; the accuracy of the data collected has not been verified; the KPI system has not been audited; and it is implemented only in few PEs.		Consider integrating the KPI system with the procurement system, expand its application in all PEs, and enhance its quality and use.
(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.	See 7 (c) (a).		Criterion is partially met. See 7 (c) (a).		See 7 (c) (a).
(c) The reliability of the information is high (verified by audits).	See 7 (c) (a) The system has not been audited and there is no evidence that shows the information is reliable.		Criterion is not met. See 7 (c) (a).		See 7 (c) (a).
(d) Analysis of information is routinely carried out, published and fed back into the system. * <i>// Minimum indicator //</i> * <i>Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):</i> • <i>total number and value of contracts</i> • <i>public procurement as a share of government expenditure and as share of GDP</i> • <i>total value of contracts</i>	See 7 (c) (a) Analysis was carried out but not for purpose of improving the procurement system. Instead, it was done to comply with requirements imposed by the BoF and federal PPA. The KPI report has not been published.	The team was not able to access any official report or analysis showing public procurement as a share of government expenditure and as a share of GDP. No report on total value of contracts awarded through competitive methods in the most recent fiscal year.	Criterion is not met. See 7 (c) (a).		See 7 (c) (a).

Assessment criteria [7(c) Strategies to manage procurement data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<i>awarded through competitive methods in the most recent fiscal year.</i> <i>Source: Normative/regulatory function/E-Procurement system.</i>					

8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria [8(a) Training, advice and assistance]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) substantive permanent training programs of suitable quality and content for the needs of the system.	There are no permanent procurement training programs in the region. However, the BoF provides Procurement and Property administration training as part of the PFM Institutionalized training using in-house capacity. The training was designed to create awareness on the procurement rules and regulations.		Criterion is not met. There is no permanent procurement training programs of suitable quality in the region.		Consider establishing permanent training programs of suitable quality or work with the federal PPA to access training programs offered at federal level.
(b) routine evaluation and periodic adjustment of training programs based on feedback and need.	There is no routine evaluation of the training program except the feedback collected by BOF at the end of every training.		Criterion is not met.		See the recommendation provided under 8 (a) (a).
(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.	The BoF provides technical clarification and advice on the procurement rules and procedures when requested. The technical support is accessible and valued by staff in the public bodies. The staff in the visited PEs confirmed the benefit and accessibility of the services from public procurement administration directorate of BOF. However, there is no dedicated advisory service (Desk or staff) but the staff in the procurement audit case team provide support to PE and bidders, if requested.		Criterion is partially met. No dedicated staff to provide advisory service. The service is provided by staff not assigned for this purpose and hence, compromising on quality and accountability.		Improve the organization structure and capacity of the procurement regulatory function in Oromia.
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	Capacity Building and Good Governance is one of the pillars in the current Growth and Transformation Plan (GTP) II (2016-2021) of Ethiopia. The plan recognizes the need to develop public procurement capacity and to strengthen transparency and accountability in the use of public resources. Following the GTP document and based on the prototype from the MoF, the BoF (Oromia) prepared the PFM strategy that has also identified public procurement capacity building as one focus area. However, the strategy is not well-integrated with other measures for developing the capacity of key functions in public procurement, like improving the procurement Regulatory framework. Though the regulatory function lacks the capacity in terms of qualified staff and structure to deliver its responsibilities, this is not covered in the strategy document. Similarly, there is no strategy in place to improve the capacity of the private sector as key players in public procurement, despite the challenges PE's face due to limited local market and capacity of the private sector, particularly the small-scale suppliers and contractors.		Criterion is partially met. The PFM strategy document is not comprehensive in addressing the capacity need of key actors in procurement. The capacity of the key actors like the Regulatory function and the private sector is overlooked. The strategy document appears the same in all regional states and may not be adequately customized to the reality of the region.		Update and expand the BoF's PFM strategy to address capacity challenges of key public procurement stakeholders including the regulatory function and the private sector.

8(b) Recognition of procurement as a profession

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

Assessment criteria [8(b) Recognition of procurement as a profession]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Procurement is recognized as a specific function, with procurement positions defined at different professional levels,	The civil service bureau has defined procurement as a profession, and it is included in the regional civil Service structure. In most PEs, the procurement function is organized as a "team" under the "Procurement Finance and Property Administration Directorate," together with finance and property administration. In addition, the procurement technical positions	Not applicable.	Criterion is partially met. Procurement job requirements are generic and not based on competencies (technical and behavioral) and not linked with the certification requirements.	✓ Yes	Revise the procurement job requirements to include required technical and

Assessment criteria [8(b) Recognition of procurement as a profession]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
and job descriptions and the requisite qualifications and competencies specified.	are graded as Senior and Junior procurement Specialist, with seniority granted based on years of service. However, the procurement jobs grading focuses only on educational qualifications and generic experiences and doesn't consider other essential competencies required to deliver on the procurement responsibility. It specifically misses competence requirements (skills and behaviors) required to carry out the procurement responsibility successfully.				behavioral competencies at different levels.
(b) Appointments and promotion are competitive and based on qualifications and professional certification.	The procurement job grades are not linked with procurement professional certifications and competency requirements. Instead, they are based on generic educational qualifications and experiences that are not directly relevant to perform procurement tasks at different level of complexities. As a result, though procurement positions are filled competitively, the selection criterion does not allow for identification of the right expert based on skill and competency requirement.	Not applicable.	Criterion is partially met. While the appointments are competitive, they are not based on skill and competency requirements specific to the job.	✓ Yes	Consider developing a performance evaluation system specific to public procurement and link with incentives and promotion.
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	Staff performance is evaluated every six months on a regular basis as part of the human resource management function in public bodies. There are no separate evaluation criteria for procurement staffs related to measuring the procurement performance. The staff's performance score is considered for internal promotion or job competition.	Not applicable.	Criterion is partially met. Performance evaluation is generic and not tailored to procurement job requirements. Besides, performance evaluation is not linked to promotion or training requirements and are carried out to meet HR requirement.	✓ Yes	Consider developing a performance evaluation system specific to public procurement and link with incentives and promotion.

8(c) Monitoring performance to improve the system

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	There is no workable and consistently applicable performance measurement system that focuses on both qualitative and quantitative aspects. However, the federal PPA introduced (and Afar adopted) a performance measurement system based on identified Key Procurement Performance Indicators (KPI). The system uses an Excel format to collect, analyze, and report procurement performance against the indicators. The system has not been systematically integrated into the procurement system and hence, the use of the system is left at the discretion of the procuring entities and staff. The system has been introduced in 2015 but the use of the system in Oromia level is limited to few PBs. There is a clear lack of ownership and of high-level commitment to roll out and use the system. It appears that it is implemented largely because it was linked with disbursement in the World Bank-financed PforR project (PBS III ²² and ESPES ²³).	Not applicable.	Criterion is not met. The KPI system is not rolled out successfully. It is not a comprehensive tool in measuring performance in qualitative and quantitative terms. It is important to enhance the KPI system and integrate it with the procurement system to allow real-time data collection, analysis and reporting both on qualitative and quantitative terms.		Develop a comprehensive data capture and performance measurement system integrated with the e-procurement system to be introduced. Consider integrating the KPI into the procurement measurement system.
(b) The information is used to support strategic policy making on procurement.	There is no system used for collection and analysis of procurement data to support strategic policy making on procurement. The information collected through the KPI system doesn't appear to be complete and accurate and used as reliable data for procurement policy making. It appears that the limited report generated from the system is meant to satisfy the donor requirements in the World Bank-financed PforR projects and is not used for procurement strategic policy making decisions.	Not applicable.	Criterion is not met. The information generated through the KPI system is not used for strategic policy making.		In addition to enhancing the functioning of the KPI system into a comprehensive data capture and performance measurement system, it is appropriate to establish a procurement policy team that utilizes the data to make procurement policy recommendations. The team should ensure the consistency of the procurement system and implementation with the broader policy objectives of the government.

²² Promotion of Basic Services phase III program.

²³ Enhancing Shared Prosperity for Equitable services Program.

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	No evidence was obtained that supports the existence of a strategic plan including results framework.	Not applicable.	Criterion is not met. No evidence was obtained that supports the existence of a strategic plan including results framework.		Introduce a strategic plan supported by a results framework to improve the procurement system. Consider the recommendation provided under 8 (c) (a).
(d) Responsibilities are clearly defined.	The procurement proclamation mandates BoF to monitor and report on procurement performance. Within the BoF, the procurement and property administration Directorate is responsible for the implementation of the KPI system at the regional level.	Not applicable.	Criterion is not met. The BoF is tasked with a lot of responsibilities that require close management attention and follow up. The procurement regulatory function, including the responsibility for procurement data management, is delegated to the Procurement and Property Administration Directorate that have limited capacity and staffing.		Consider establishing an independent procurement regulatory function.

Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	The majority of the visited PEs carry out needs analysis and market research to understand the supplier base and price. However, the information collected through the market assessment is not used to define optimal procurement approaches. Procurement methods are selected mainly based on threshold following the provisions in the directive. Besides, the market analysis is not systematized and integrated into the procurement system. There is no guidance and template to support needs analysis and market research and ensure application of the results to inform procurement decision making. It was revealed that there is a general attitude of complying with procurement rules instead of finding and pursuing innovative solutions that evidently support better procurement outcomes.	Not applicable.	Criterion is not met. There is no mechanism and supporting tools to enable procuring entities to carry out meaningful market assessments that inform the selection of optimal procurement approaches. Selection of procurement approaches is basically made based on threshold as provided in the procurement documents, instead of on market realities and outcomes. In addition to having a lack of supporting tools, the procurement system is hampered by fear of discretion and risk-avoiding behavior. It is key to enhance confidence in the procurement decision making process that focuses on procurement outcome than mere compliance to rules.		Consider introducing requirements and provide tools/templates to support needs analysis and market research for the purpose of defining optimal procurement strategy. Empower procurement decision makers to consider innovative and optimal approach based on market information.
(b) The requirements and desired outcomes of contracts are clearly defined.	The requirements and desired outcomes of contracts are described in the procurement documents. The PEs specify the requirements in the specifications, Terms of reference, and Bill of Quantities as appropriate. Requirements in case of works contract are normally defined through cross-referencing the standard technical specification of building works developed by the former Building and transport Construction and Design Authority (BaTCoDA) and standard technical specification of road works developed by Ethiopian Roads Authority (ERA). Procuring Entities use these standards through cross-referring name of the standard and as part of the contract. However, it appears that there are problems in practice with the use of discriminatory specifications.	Not applicable.	Criterion is partially met. It appears that there are problems in practice with the use of discriminatory specifications, particularly in procurement of goods and services.		Enhance procurement audit to put emphasis on the technical specifications and follow up to ensure improvement in preparing the specifications. Expand training on the requirements for specifications that are neutral, functional where appropriate, and based on international norms when possible.

Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	The procurement arrangement supports social and economic objectives which are integrated into the procurement legal framework and SBDs. The procurement proclamation article 25 specifies a preference for locally manufactured goods and services and Micro and Small Enterprises (MSEs). The PPD (amended) requires PEs to set aside procurement market for contracts up to the maximum of Birr 10 million in case of works contract. Besides, on all other contracts, the provision requires PEs to demand for mandatory subcontracting of MSEs up to 40% of the contract amount. It appears that some PEs experienced challenges due to low performance of contracts by MSEs. Most importantly, the definition of MSEs targets only job seeker youths and excludes contractors that are similar in size but already operating in the market. The preference margin in some sectors appears too high (25% in health sector) to strike balance between social objectives and value for money in procurement.	Not applicable.	Criterion is not met. There is no legal requirement and practice to use sustainability criteria (environmental, social, and economic) to ensure value for money. The only exception is the price preference margin allowed for goods and services manufactured locally or participation of MSEs. The preference for MSEs has been changed into “set aside” of contracts up to defined thresholds excluding other groups of similar size from accessing the market. This is likely to create unintended social consequences. The decision for granting price preference (where and how) has not been supported by any analysis that shows the value addition and consistency with the national economic objectives. Thus, it is exposed to risk of misuse. The mandatory subcontracting is implemented contrary to the procurement rules and appears unbalanced.	✓ Yes	Having the history of using the preference schemes, both at the Federal and Regional level, it is recommended to study the use of the requirements and their impact. This study can be carried out jointly, as similar schemes are at both levels and the Regions are looking to the Federal government for guidance. Revise the preference schemes based on the evidence of their impact.

9(b) Selection and contracting

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	The procurement documents provide a procedure for use of a multi-stage approach. However, there was no practice of using the procedure because, except for very rare cases, procurements at the regional level are not complex. It is however noted that one complex procurement case, which is the procurement for the construction of the Oromia Media Complex was carried out through Direct Contracting of a contractor based on its previous experience on a similar contract, instead of going through a competitive multi-stage procedure.		Criterion is partially met.		Consider using multi-stage procedures in case of complex procurement, as appropriate. Prepare guidance on how to use the multi-stage procedure.
(b) Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	Public bodies use standard bidding documents (SBD) developed by the federal PPA, version 2011. The SBDs incorporate all sections that are found in typical SBDs including Instruction to Bidders, Bid Data Sheet, schedules and templates, Standard Conditions of Contract, Special Conditions of Contract etc. However, it appears that the SBDs are considered complex and disproportional for procurement in some sectors. As a result, response from potential bidders in some sector is very low.		Criterion is not met. The federal SBDs were issued in 2011 and not updated to meet the current practice and market operation. Besides, the SBDs are considered complex and disproportional in some market and not officially endorsed by the appropriate authority for mandatory use.		Discuss with the federal PPA and ensure that national SBDs are issued that accommodate the specificity in regions and are proportional to the market.
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	The procurement legal framework defines open bidding as the default procurement method which is largely followed by the public bodies. But other procurement methods are also used if the procurement meets the conditions stated in the directive, and if the procurement is within the specified threshold. It appears that there is a high tendency of complying with the threshold requirements instead of applying professional judgment in selecting an appropriate procurement method that is relevant to attain successful results in the procurement. There are cases of high value procurement carried out by instruction from higher authorities without following the procurement procedure. One example cited was the procurement for the construction of the Oromia Media Complex. There is also a practice of contracting State-Owned Enterprises directly, even if it is not supported by the procurement rules.	Not applicable.	Criterion is partially met. There is practice of procuring contrary to the rules specified in the procurement rules. In other cases, the choice of procurement methods is guided mainly by the applicable threshold as provided in the procurement legal framework. These thresholds are not always consistent with the development of markets in some sectors like construction. There is a tendency of complying with the threshold requirements instead of applying professional judgment in selecting an appropriate procurement method that is relevant to attain successful results in the procurement. The application of a one-size-fits-all approach in setting thresholds is not working well. The construction sector may need different thresholds, commensurate with the local capacity in the sector.		Consider following the procurement procedures as specified in the legal documents. Ensure accountability for decisions taken otherwise. Provide guidance/tools to guide evaluation and selection of workable procurement options. Consider updating procurement methods' thresholds to reflect the capacity of the local market.
(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for	Procedures for bid submission, receipt and opening are clearly described in the procurement documents including PP, PPD and SBDs. No evidence has been observed that shows the procedures were not fully complied by the PEs covered in the assessment. The PPD 16.18 specifies that representatives of mass media or any interested observer can attend the bid		Criterion is partially met. The IFB does not specify bid closing/opening day.	✓ Yes	Discuss and agree a mechanism with the press agency on how to specify the bid closing/opening day in the IFB.

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations								
[9(b) Selection and contracting] instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.	opening ceremony, as far as practicable and as far as it does not interfere with the bid opening process and availability of space. However, the PBs do not specify the actual bid opening date in the Invitation for Bid (IFB) due to uncertainty on the actual date of publication of the IFB in the Newspaper. Instead, they express the number of days that the IFB floats and bidders are required to calculate the bid opening days at their own risk. This has created uncertainty on the actual bid closing/opening day, leading to a risk of rejecting bids due to late submission.												
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	The PPL A 34 specifies the rule of confidentiality. It requires PEs not to disclose information related to examination, clarification, bid evaluation, and award decision until the award is publicly announced. Rules of confidentiality are also expressed in the legal documents as one of the ethical standards expected from persons engaged in public procurement. The same is reflected in the SBDs issued by the federal PPA, which require the process to be confidential and all communication with bidders to be in writing. To ensure confidentiality, some procuring entities dedicate a separate room for conducting evaluation of bids and providing access to the room to all evaluators at the same time. There is no practice of orienting evaluators on the rules of confidentiality and no detailed guidance is provided.	While a quantitative indicator is not envisaged here, the Assessment Team asked the private sector in the survey about their perception of confidentiality of the procurement process. Out of 14 respondents (37 skipped) 29% of respondents said that confidentiality is ensured throughout the bid evaluation and award process. 29% said that it is not, and 42% was not sure. <table border="1"> <caption>Confidentiality Survey Results</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>29%</td> </tr> <tr> <td>No</td> <td>29%</td> </tr> <tr> <td>Not sure</td> <td>42%</td> </tr> </tbody> </table>	Response	Percentage	Yes	29%	No	29%	Not sure	42%	Criterion is partially met. The procurement system does not provide tools to ensure and support maintaining confidentiality which might include requiring evaluators to sign a declaration to uphold confidentiality.		Consider providing tools and templates to enforce confidentiality provisions.
Response	Percentage												
Yes	29%												
No	29%												
Not sure	42%												
(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.	The procurement proclamation allows two types of evaluation: least cost and best advantageous bid, which considers quality as one aspect of evaluation. In practice, PEs are inclined to use the least cost evaluation method. The award criteria are specified in the bidding document and team has not come across cases in which it was not complied with. In most cases, award is made by selecting the least cost among bids that meets minimum requirements. However, for procurement of equipment, IT facilities etc., PEs use a merit point evaluation system with due consideration of quality aspects in the evaluation of bids, including the Water, Mines and Energy Bureau which considers environmental criteria in determining the best offer. Other techniques like Best and Final Offer (BAFO) or competitive negotiation etc., are not accommodated in the procurement legal framework and are not applied.	Percentage of 31 respondents to the private sector survey who think that the following criteria should be the most important is (Q28): <ul style="list-style-type: none"> • Combination of quality and price (64%) • High quality (52%) • Combination of price, quality, preferences for SMEs, environmental, and social (52%). 14% of 14 respondents (37 skipped) said that the bidding documents include criteria that allow achieve value for money, 64% said that their do not contain such criteria, and 21% were not sure (Q29).	Criterion is partially met. The award criteria are limited to the least cost and merit point evaluation only. Given the development in the market and the increasing complexity of procurement, other award criteria should be considered in the legal documents and applied in practice.		See the recommendation 1 (f) (b). Ensure that the training program includes how to design and apply the evaluation criteria.								
(g) Contract awards are announced as prescribed.	PPL A 36 stipulates the manner in which the contract award is notified. The PEs comply with the provision by notifying the contract award decision both to the successful and unsuccessful bidders including the reason why the unsuccessful bidders are not considered.	50% of 14 respondents to the private sector survey said that contract awards are published, 14% that they are not published, and 36% of respondents are not sure (Q35).	Criterion is met.		Consider publishing contract awards at least for procurement above specified threshold.								
(h) Contract clauses include sustainability considerations, where appropriate.	Procuring entities use the standard bid document developed and issued by PPA, version 2011, which has a provision that requires suppliers/contractors to respect environmental consideration as stipulated in the Ethiopian law. Section 6 of PPA's SBD for Works has detailed requirements that require the contractor to comply in relation to protection of the environment. Moreover, Clause 46 of the general conditions of contract includes sustainability consideration through stipulating a requirement to be met in relation to ensuring health and safety requirements on-site.	21% of 14 respondents to the private sector survey said that contract clauses include sustainability considerations, 29% that not. And 50% are not sure (Q36).	Criterion is partially met. Use of the federal SBDs is not a mandatory requirement in the region.		Consider the recommendation provided on SBDs in the matrix.								
(i) Contract clauses provide incentives for exceeding performance levels and disincentives for poor performance.	There are no provisions and practices that provides incentives for exceeding performance levels. However, there is a disincentive clause for failure to meet agreed terms, particularly on slippage from the agreed delivery time. It appears that the PEs are obliged to apply the liquidated damage clauses which is 0.1% for each day of delay. Not applying the liquidated damages is indicated as a non-compliance in audit reports.	Not applicable.	Criterion is not met. Contract clauses do not provide incentives for exceeding performance.		Standard contracts may provide for incentive for timely excellent performance (that exceed expectations								

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations								
					above the agreed terms like time, quality) (e.g., a bonus). Consider introducing the value engineering provision that allows enhancing performance, reliability, quality, safety, effectiveness, or other desired characteristics.								
<p>(j) The selection and award process is carried out effectively, efficiently and in a transparent way. *</p> <p>*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):</p> <ul style="list-style-type: none"> - average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each procurement method used) - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) <p>Source for all: Sample of procurement cases.</p>	<p>The selection and award process is not carried out effectively, efficiently and in a transparent manner. The assessment team learned that there were various instances in which the procurement processes were nullified due to delay in awarding contracts within the bid validity periods. It is also observed that the process lacks transparency. For instance, it is not a common practice to publish award information in accessible media.</p>	<p>Average time to procure per procurement method:</p> <table border="1"> <thead> <tr> <th>Method</th> <th>Av. time</th> </tr> </thead> <tbody> <tr> <td>ICB + NCB</td> <td>109</td> </tr> <tr> <td>ICB</td> <td>167</td> </tr> <tr> <td>NCB</td> <td>105</td> </tr> </tbody> </table> <p>On average, 5 responsive bids were obtained in procurements conducted using both ICB and NCB procedures. This shows that there is quite adequate competition under both ICB and NCB methods.</p>	Method	Av. time	ICB + NCB	109	ICB	167	NCB	105	<p>Criterion is not met.</p> <p>The average time to process procurement is significantly longer than the normal bid validity time and international practices. This makes the procurement process inefficient. The level of compliance with the publication requirement is also low.</p>	<p>✓ Yes</p>	<p>Regularly review by each public body the procurement processes to identify inefficiencies and bottlenecks. Based on these, define and implement measures to improve the processes. Monitoring efficiency and transparency of the processes should be incorporated as part of the monitoring and reporting function by the Regulatory Body.</p>
Method	Av. time												
ICB + NCB	109												
ICB	167												
NCB	105												

9(c) Contract management

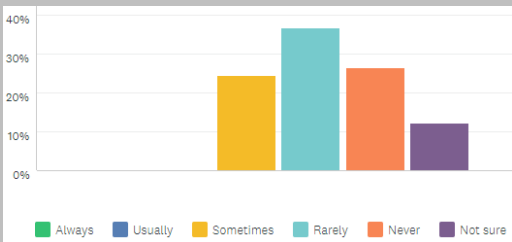
Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Contracts are implemented in a timely manner. *</p> <p>Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)</p>	<p>Contracts are not implemented timely. Time overrun in the reviewed sample of contracts was significant. The reasons vary.</p>	<p>Time overrun of contracts implementation beyond their original completion date: on average, time overrun for all contracts covered under the assessment is 140 days.</p>	<p>Criterion is not met.</p> <p>Contracts are not implemented timely. In some cases, the time overrun exceeds 2 years.</p>		<p>Public bodies should regularly analyze contract performance and outcome, identify reasons for contract time overrun and implement corrective measures. Consider preparing guidance tools and provide training to staff.</p>
<p>(b) Inspection, quality control, supervision of work and final acceptance of products is carried out. *</p>	<p>The General Conditions of Contract in the SBDs provide provisions for Inspection and Tests of items procured and delivered and works performed. The PEs responded that they carry out inspection routinely before acceptance of the Goods. But the quantitative data shows that quality control and inspection was carried out in 65% of the contracts reviewed.</p>	<p>Quality control and inspection work were carried out as per the contract agreement in 59% of the contracts covered in the assessment. However, there was huge heterogeneity in the performance of the PEs covered in the assessment. The analysis shows</p>	<p>Criterion is partially met.</p> <p>Quality control and inspection work were not routinely carried out in all contracts.</p>		<p>Public bodies should regularly monitor contract management, identify reasons for non-compliance</p>

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)	For works contracts, PBs follow established procedure and employ consultants for supervision of construction projects.	that there were PEs that carried out quality control and inspection in all the contracts sampled in the assessment, as compared to PEs that carried out quality control and inspection in none of the contracts reviewed.			and implement corrective measures.
(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).	Payments are not made on time. Payment request for construction work is examined and certified by the consultant of the project. The first and the final payments for works contract are required to be approved by the Oromia Construction Regulatory Authority, a process which is not stipulated in the contract agreement and even in the procurement rules of the region. Payment request for supply of goods is submitted to the procurement team following quality approval and handing over of the goods to the procuring entities' store head. The procurement team, after getting confirmation of the store head for receiving the goods, writes a letter for the finance directorate authorizing the payment. Payment for goods contract is usually effected in 7 days following inspection and quality approval, while payment for works contract is effected in 30 days following certification of the payment by the consultant.	On average, 57% of the invoices were paid on time. None of the visited PEs paid all invoices on time. The best performer is a PE that paid 76% of the invoices on time while the low performer paid on 19% of the invoices on time.	Criterion is partially met. Invoices are not paid on time. This is related to weak contract management capacity and follow-up mechanisms that lead to delay in contract completion as observed above and consequential costs to the government.	✓ Yes	Review the invoice verification process and payment obstacles to optimize the payment process and minimize delay due to unavoidable reasons such as prevalent shortage of forex that cannot be mitigated at the time of payment.
(d) Contract amendments are reviewed, issued and published in a timely manner.* Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)	Contract amendments are prepared and reviewed by the relevant work unit in the PBs in consultation with the procurement team. In case of works contract, the region's Urban and Construction Bureau reviews and approves the amendments before it is submitted and approved by the Head of the PBs. The decision-making procedure for contract amendment is not clear in the legal documents. It was observed that the established procurement decision approval procedures, which involves review and approval by the Bid Endorsing Committee, has not been practiced. The legal provision requires for variation orders above 30% of the contract amount to be reviewed and approved by the BoF. There is no experience of publishing contract amendments. For work contracts, issuing amendments is lengthy and involves multiple actors.	On average, 6% of the contracts covered in the assessment were amended. The average increase in contract amount due to amendment is only 2%. The maximum increase in contract amount was 10%, which was observed in one of the Pes, while there was no cost amendment in all contracts managed by the other visited PEs.	Criterion is partially met. While the contract amendments are normally issued, they are not prepared timely. The approval process established for procurement is not followed, as it may not be clear in the legal framework.	✓ Yes	Clarify the approval process for contract amendments.
(e) Procurement statistics are available, and a system is in place to measure and improve procurement practices.	There are no procurement statistics available that could be used to measure and improve procurement performance. The KPI system is designed to collect key procurement data against the KPIs with the intention of measuring performance throughout the cycle. But the system is not rolled out in all PEs in the region and the data collected through the system is not reliable. Most importantly, it is not reported to the management and used to improve the procurement performance.	Not applicable.	Criterion is not met. The KPI system is not fully functional and integrated with the procurement system in capturing procurement data, measuring, and improving procurement practices. It is also not used by all public bodies.		Please see the recommendation under 7 (c) (a).
(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.* Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.	There is no practice of involving relevant external stakeholders in public procurement and contract management.	There was no direct involvement of Civil society organization in any of the contracts covered in the assessment.	Criterion is not met. There are no opportunities for direct involvement of external stakeholders in procurement. The procurement system has not reached the level of maturity that encourages stakeholders' participation in the procurement process. Even though engagement of external stakeholders is not prohibited, they are not engaged because there are no CSOs working in the procurement area.	✓ Yes	Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(g) The records are complete and accurate, and easily accessible in a single file.*</p> <p><i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):</i></p> <p><i>- share of contracts with complete and accurate records and databases (in %) Source: Sample of procurement cases*</i></p>	<p>Records are not accessible in a single file. In most of the PEs, the records are incomplete and not kept in easily accessible manner. Except in few cases, procurement and payment documents are kept separately in different files and accessing the documents depends on the memory, availability and willingness of staff involved in the process. In all of the PEs, the payment documents are kept in the finance unit/archive and procurement records up to contract signing are kept in procurement unit. Accessing and relating the procurement document and the payment documents have been difficult. There is no reliable data retrieval system. The assessment team was forced to drop sampled procurement contracts, due to incomplete and inaccessible data.</p>	<p>Not applicable. Record management is a systemic challenge across all public bodies. Procurement records are not complete and accessible and supported by databases. Thus, the team dropped the quantitative analysis as it is not possible to make a meaningful comparison and a different result is not expected.</p>	<p>Criterion is not met.</p> <p>Procurement records are not kept in a complete and accessible manner. The assessment team dropped review of some contracts due to incomplete and inaccessible records.</p>	<p>✓Yes</p>	<p>Given how widespread a problem with record keeping appears to be, a special attention is recommended during the next year procurement review to review the record keeping arrangements held by the public bodies and follow up within let's say 3 months in case of negative findings (not awaiting the next audit). Special attention should be maintained until significant improvement.</p>

10. The public procurement market is fully functional

10(a) Dialogue and partnerships between public and private sector

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):</i></p> <p><i>- perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.</i></p>	<p>The BoF in collaboration with the Central Procurement Body (Public Procurement and Disposal Service, Oromia) and the region's chamber of commerce organizes a consultation forum semiannually. In the forum, both the private sectors and the public bodies are represented. The main focus of the forum is to discuss all relevant procurement issues that affect the procurement performance and propose possible solutions. The BoF uses the forum to introduce new/revised procurement procedures in the region. However, the assessment team has not been presented with evidence showing the proceedings of the forum.</p>	<p>Out of 49 respondents to the private sector survey, 25% responded that the private sector is sometimes consulted before changes are introduced to the procurement rules and procedures. 63% responded that such consultation is made rarely or never. 12% are not sure.</p>  <p>Out of 29 respondents who responded to the question whether opinions of the private sector are considered, (i) none of them said that yes; (ii) 38% said no; and (iii) 62% were not sure.</p>	<p>Criterion is partially met.</p> <p>The BoF carries out regular discussion with the private sector through the associations. This mainly reaches to the big suppliers/contractors that are members of the different associations. However, it may not reach sufficient coverage of the private sector. The results of the survey show that an open dialogue with the private sector and the consultative process in adopting change to the procurement framework is limited.</p>		<p>BoF should enhance the engagement by creating venues also for the involvement of small businesses as well as ensuring awareness of the Forum among all relevant associations to enable them to participate in the dialogue with the Regional Government.</p>
<p>(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.</p>	<p>The BoF does not have a formal training program for the private sector except the forum with the private sector described above.</p> <p>In the private sector survey, the following results were obtained.</p>	<p>Not applicable.</p>	<p>Criterion is not met.</p> <p>No regular capacity building program to the private sector.</p>		<p>BoF should monitor capacity and competitiveness of the private sector, and introduce a procurement training program, as necessary.</p>

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>Are you aware of capacity building programs being run by the government for private contractors?</p> <p>Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?</p>				

10(b) Private sector's organization and access to the public procurement market

Assessment criteria [10(b) Private sector's organization and access to the public procurement market]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The private sector is competitive, well-organized, willing and able to participate in the competition for public procurement contracts.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p> <ul style="list-style-type: none"> • number of registered suppliers as a share of total number of suppliers in the country (in %) • share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) • total number and value of contracts awarded to domestic/foreign firms (and in % of total) <p>Source: E-Procurement system/Supplier Database.</p>	<p>The participation and organization level of the private sector varies from sector to sector and based on procurement volume. In procurement of high-value works contract and consultancy services, the level of participation is relatively high, and the contractors are better organized as compared to small-value works procurements. Most importantly, the local markets at zonal and woreda level are limited and not responsive even for small value petty procurements conducted through RFQ. It was learnt that the PBs should travel to the center (Addis Ababa) to carry out procurement including small-value items leading to very high transaction cost and inefficiency.</p>	Not applicable.	<p>Criterion is not met. Due to the limited local market, procurement is not efficient and cost effective.</p>	✓ Yes	Consider the use of innovative procurement arrangements to mitigate the impact of the limited market at local level, including enhanced use of centralized procurement arrangement.
<p>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):</p> <ul style="list-style-type: none"> - perception of firms on the appropriateness of conditions in the public procurement market 	<p>The local market at zonal and woreda level is very limited as described under 10(b) (a). Bidders are largely located in Addis Ababa and participation in a bidding process requires travel to the Zones and woredas to purchase bidding documents, submits bids and follow up on matters of contract. The distance and leniency to use other means of communication including electronic means to deliver bidding documents and collect bids from bidders inhibits many of the potential bidders from participation. The other systemic constraint is related to shortage of foreign currency. The private sector is hesitant to participate in bids that involve import from abroad. There are some other constraints raised by the private sector such as unclear evaluation criteria, delay in procurement processing, etc.</p>	<p>Based on the private sector survey, appropriateness of conditions in the public procurement is shown in the table below.</p> <p>83 respondents responded to the question whether the below listed conditions to participate in competition for public contracts are met:</p>	<p>Criterion is not met. There are major systemic constraints inhibiting private sector access to the public procurement market. The main systemic constraint is associated with the limited local market, distance from the center and absence of an alternative arrangement and shortage of foreign currency that limits the private sector's capacity to bid and honor contractual commitments.</p>	✓ Yes	Consider an alternative procurement arrangement to minimize the impact of limited local market, distance from the market center, shortage of foreign currency and inflation on participation of the private sector. Address other constraints as reflected by the private sector including defining proportional procurement methods, simplifying rules,

Assessment criteria [10(b) Private sector's organization and access to the public procurement market]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations																																																
(in % of responses). Source: Survey.		<table border="1"> <thead> <tr> <th></th> <th>Always</th> <th>Sometimes</th> <th>Rarely</th> <th>Never</th> <th>Not sure</th> </tr> </thead> <tbody> <tr> <td>Access to financing</td> <td>8%</td> <td>19%</td> <td>25%</td> <td>36%</td> <td>11%</td> </tr> <tr> <td>Procurement methods are proportionate to the risk and value</td> <td>6%</td> <td>28%</td> <td>47%</td> <td>14%</td> <td>6%</td> </tr> <tr> <td>Procurement rules are simple and flexible</td> <td>3%</td> <td>14%</td> <td>44%</td> <td>36%</td> <td>3%</td> </tr> <tr> <td>Contracting provisions help distribute risk fairly</td> <td>9%</td> <td>18%</td> <td>38%</td> <td>32%</td> <td>3%</td> </tr> <tr> <td>Payment provisions are fair</td> <td>6%</td> <td>28%</td> <td>44%</td> <td>22%</td> <td>0%</td> </tr> <tr> <td>Effective mechanism for appeals and dispute resolution</td> <td>3%</td> <td>22%</td> <td>44%</td> <td>28%</td> <td>3%</td> </tr> <tr> <td>Conditions are conducive to win contracts in the public procurement market</td> <td>6%</td> <td>29%</td> <td>53%</td> <td>12%</td> <td>0%</td> </tr> </tbody> </table>		Always	Sometimes	Rarely	Never	Not sure	Access to financing	8%	19%	25%	36%	11%	Procurement methods are proportionate to the risk and value	6%	28%	47%	14%	6%	Procurement rules are simple and flexible	3%	14%	44%	36%	3%	Contracting provisions help distribute risk fairly	9%	18%	38%	32%	3%	Payment provisions are fair	6%	28%	44%	22%	0%	Effective mechanism for appeals and dispute resolution	3%	22%	44%	28%	3%	Conditions are conducive to win contracts in the public procurement market	6%	29%	53%	12%	0%			and streamlining payment provisions and contract conditions etc., which are included in the relevant section in the matrix.
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10(c) Key sectors and sector strategies

Assessment criteria [10(c) Key sectors and sector strategies]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Key sectors associated with the public procurement market are identified by the government.	The regional government identified five development sectors as key, specifically Agriculture, Education, Health, Road and Water sectors. The Regional government allocates close to 70% of the budget in these five development sectors implying their significance for the public procurement market.	Not applicable.	Criterion is met.		As part of the recommendation under the indicator 10 (a) (a), BoF should ensure that the key sectors are engaged in the dialogue on procurement with the government.
(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.	There is no practice of undertaking procurement risk assessment centrally or at the sector level.	Not applicable.	<p>Criterion is not met.</p> <p>There is no practice of assessing risks associated with key sectors.</p>		BoF should carry out regular assessments of risks associated with the identified key sectors to ensure collaboration of the sector markets in specific areas to support the procurement policy objectives.

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

11. Transparency and civil society engagement foster integrity in public procurement

11(a) Enabling environment for public consultation and monitoring

Assessment criteria [11(a) Enabling environment for public consultation and monitoring]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	There is no practice of consulting the public when formulating changes to the public procurement system. However, the Regional Council holds public consultation before new proclamation is enacted. All other changes to the public procurement system are carried out without transparent and adequate public consultation.	Not applicable.	<p>Criterion is partially met.</p> <p>The practice on public consultation is not adequate. The PBs do not carry out public consultation, which is limited at the legislative level.</p>		BoF should monitor that a transparent and consultative process is followed when formulating changes to the public procurement system by any public body that issues such changes.

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
[11(a) Enabling environment for public consultation and monitoring]					
(b) Programs are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.	There is no regular and comprehensive capacity building program established to build the capacity of relevant stakeholders. However, BoF conducts a biannual forum with the private sector on public procurement issues, performance, challenges etc.	Not applicable.	Criterion is not met. There is no regular and comprehensive capacity building program established to build the capacity of stakeholders.		Consider a more comprehensive capacity building program which includes private sector and CSOs to enhance their role and participation in procurement. Consider continuous engagement with the public through mass media, similar to the practice in the federal and SNNPR.
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	The participation of Civil Society in the region's public procurement is missing.		Criterion is not met.		See recommendation under 11 (c) (a).

11(b) Adequate and timely access to information by the public

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
[11(b) Adequate and timely access to information by the public]					
(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	The procurement proclamation article 6 obliges procurement directives and other procurement documents to be promptly made accessible to the public. But the provision doesn't refer about the accessibility of the primary document (PP), which might be a mistake in drafting the provision. In any case, procurement documents are not easily accessible to the public. The Directive is issued in Afan Oromiffa only, which practically limits access to those sections of the society that can read oromiffa.	Not applicable.	Criterion is not met. No adequate and timely access to procurement information by the public.		Consider a requirement to publish key procurement information in an easily accessible manner. Consider use of centralized federal PPA's website to publish procurement information. Revise the PPL to include publication requirements of the PPL and other important documents. Consider preparing key legal procurement documents in multiple languages.

11(c) Direct engagement of civil society

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
[11(c) Direct engagement of civil society]					
(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local	The procurement regulatory framework does not specifically mention and allow participation of citizens in the procurement system. The new Organization of Civil Society Proclamation No 1113/2019 opened a new era in the establishment and operation of CSOs in Ethiopia. The new law, inter alia, allowed all CSOs to engage in any lawful activities and relaxed the distribution of funds between administrative and operational costs. While there is a relatively conducive environment created for the operation of CSOs, the procurement environment has no procedure to encourage the involvement of CSOs in public procurement. The effect of this proclamation is yet to be seen.	Not applicable.	Criterion is partially met. While it does not prohibit, the legal framework does not explicitly state that participation of CSOs in the procurement process is allowed. In practice the public bodies do not prohibit their participation. However, there are no active CSOs working in public procurement in the Region and country wide. Restrictive provisions and practices in the past may have created a non-conducive environment for CSOs in Ethiopia and subsequently lack of their involvement in procurement.		Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.

Assessment criteria [11(c) Direct engagement of civil society]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
law • contract management and completion (monitoring).					
(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.	The participation of Civil Society in the region's public procurement is missing.	Not applicable.	Criterion is not met. While it does not prohibit, the legal framework does not explicitly state that participation of CSOs in the procurement process is allowed. In practice, the public bodies do not prohibit their participation. However, there are no active CSOs working in public procurement in the City Adm. Restrictive provisions and practices may have created a non-conducive environment for CSOs in Ethiopia and subsequently the lack of their involvement in procurement.		Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.

12. The country has effective control audit systems

12(a) Legal framework, organization and procedures of the control system

The system in the country provides for:

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies	<p>Proclamation 154/2010 Reestablished the office of the Auditor General of the Oromia Regional state and sets out its functions. It covers external audit.</p> <p>Its main function is to investigate that the activities of all covered public entities in Oromia are carried out effectively, economically and in accordance with the rules and regulations of finance and notify the results to the head of the audited entity for response. Where the response is unsatisfactory, the discovered failures will be recorded in its annual report. Curiously, it is also given the power to audit the accounts of private contractors relating to government contractual work involving sums in excess of Birr 500,000.</p> <p>Audits may be carried out over all entities or by spot check. The audits cover the two previous fiscal years only except that if the Auditor General suspects failures before then, he may perform audits covering earlier years. Penalties are foreseen for lack of cooperation by the entities being audited.</p> <p>Internal audit is provided for in Proclamation 156/2010 on the revised Oromia Regional State financial administration. A.7 gives the head of the Bureau the power to conduct audit of public bodies 'if it deems necessary'. It is also given power to oversee the internal audit function of those public bodies; develop appropriate standards of work and conduct to be applied by public bodies in internal audit functions; develop internal control standards and assist in building the capacities of internal audit.</p> <p>Accountability for public funds is vested in the heads of the public bodies and these must ensure, inter alia, that the internal audit systems are properly staffed and trained so that internal audits are carried out efficiently, effectively and economically; the timely preparation and dissemination of reliable financial information; and submission of a financial report to the Bureau.</p> <p>The internal audit bodies are made responsible for conducting internal audits at specific intervals and submitting audit reports to the head of the body and the Bureau and to follow-up on measures based on the audit findings; develop appropriate audit programs and procedures; develop a monitoring system which regularly reports to management on regulatory compliance; and advise management on internal practices and controls.</p>	Not applicable.	Criterion is met.		

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
	BoF also provides procurement audit function as part of the overall oversight framework.				
(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations	The procurement function and decision-making structure in PEs is organized in a manner that provides internal control and provides check & balance. Procurement decisions above a specified threshold are reviewed and approved by a bid endorsing committee established as an independent body from the procurement unit which is involved in day-to-day management of procurement activities. Besides, the Head of the PE, who has no involvement in the procurement award decision, is responsible for review and response to complaints. The decision-making arrangement provides checks and balances within the system and enhances internal control. Besides, there is internal audit function established in every procuring entity that carries out audit and report to the management. The internal audit structure is composed of two teams – Performance and procurement audit team. At the time of the assessment, the BoF assigned two experts for each of the two teams and provided training.	Not applicable.	Criterion is partially met. The threshold for BEC is too high, reducing the involvement of the BEC and hence, the control.		Check and revise the level of delegation of the BEC again in consideration of control and efficiency.
(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	The procurement decision making authority is assigned to the Bid Endorsing Committee which is authorized to approve procurement decisions above a specified threshold (high-value procurement). The Head of the PE is authorized to approve or delegate for procurement below the threshold that falls under the authority of the Bid Endorsing Committee. However, as described above 12c(a) (b) (gap) and relevant section in the matrix, the threshold for review and approval by the Bid Endorsing Committee is too high (ICB Threshold), reducing the intended control in most of the procurement activities.		Criterion is partially met. The threshold for BEC is too high, reducing the involvement of the BEC and creating imbalance between efficient decision making and adequate control.		See recommendation under 12 (a) (b).
(d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management	<p>Yes, the regional government has enacted a "Proclamation to Amend Proclamation no 90/2005, Proclamation to Reestablish the Office of Oromia National Regional State Auditor General Proclamation No. 154/2010," which provides a mandate for conducting independent external audits on public bodies' operation. The type of external audits to be conducted, as explicitly mentioned in the proclamation, includes:</p> <ul style="list-style-type: none"> • Financial Audit • Environmental Audit, • Performance Audit, • Control Audit, • Information system and • Fraud Audit <p>Explicit mention on audit or oversight of procurement function is not made in the proclamation. However, the Auditors General office has mentioned that compliance with procurement rules is assessed in conducting financial audit and effectiveness of the procurement process is also assessed in performance audits carried out by the Auditors General.</p> <p>External audit is conducted by the regional Office of auditors General (ORAG), once in a year. However, the external audit conducted in the procuring entities do not ensure appropriate oversight of the procurement function and it is not conducted based on periodic risk assessments. The focus of the external audit is the Financial audit.</p> <p>In addition, the BoF conducts procurement compliance audit and provide findings and recommendation to the PEs.</p>		Criterion is met.		.
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	<p>Proclamation no 154/2010 A 16 (5) states that the Office of General Auditor submits audit reports to the Regional Council. Detailed review and follow-up on audit findings is undertaken by the Public Accounts Affairs Standing Committee which is a committee in the council (chaffe) to supervise and follow-up on administration and control of expenditure of the government.</p> <p>The BoF - Procurement Directorate reports its procurement audit findings to the Head of BoF. There is no evidence of further actions taken on BoF procurement audit report.</p>		Criterion is partially met. There is no requirement to submit a procurement audit report to a higher organ within the City Administration that has a supervising authority on all procuring entities.	✓ Yes	Ensure enforcement of actions and addressing the audit findings by the public bodies.

Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(f) clear mechanisms to ensure that there is follow-up on the respective findings.	<p>Yes, both the internal and external audits have clear follow-up mechanisms on the audit findings:</p> <p>A) The findings on the external audit are followed up by the Office of the Auditor General which checks implementation of audit recommendations as part of the audit in the subsequent year. It is considered a finding and reported in case the PEs failed to implement the audit recommendation. Besides, the public accounts and budget standing committee monitors the implementation of the audit recommendation through close supervision and follow up on the PEs.</p> <p>B) The internal audit recommendation is monitored by the internal audit department in the PEs. As per the audit manual, management of the PEs should take action on audit recommendations within 30 days after recommendation. The internal auditors follow up on the implementation of the recommendation using the format which is used to update the status of implementation and report to BoF every quarter. The revised finance administration proclamation introduces penalty provisions on the management of PEs that fail to take action on audit recommendations. At the time of the assessment, the BoF was preparing a directive for its implementation. In case, the PE has not been able to address recommendations and the BoF Inspection Department undertakes its own follow up mechanism.</p> <p>C) Procurement audit – the follow up on matters which are significant and reporting structure after the BoF is not clear.</p>		Criterion is partially met. See 12 (a) (e).		See recommendation under 12 (a) (e).

12(b) Coordination of controls and audits of public procurement

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	The finance administration proclamation significantly covers the requirements for the internal control and audit, including the responsibility of the head of the PB and the regularity of the audit. Moreover, the internal audit manual (issued by BOF in Oromiffa language) provides, among other things, the procedures for conducting internal audit.		Criterion is met.		
(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.	The ORAG uses a Regularity Audit Working Directive developed to ensure consistency of the Audit Approach throughout the region. External audit is conducted following the international audit standards as specified in the AFROSAI-E Regularity audit manual 2013 version. The audit covers both compliance audit and performance audit and joint annual audit report is submitted to the Regional Council.		Criterion is partially met. There is no manual specific to procurement audit.		Consider preparing a procurement audit manual specific to the context in the region.
(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c): - number of specialised procurement audits carried out compared to total number of audits (in %). - share of procurement performance audits carried out	There is evidence that demonstrates that both internal and external audits are carried out. External audits are conducted once a year. Internal audit is routinely conducted and reported to BOF every month. The number of PEs on which procurement audits carried out including the specialized audit by the BoF for the year 2017/18, 2018/19 and 2019/20 were 135, 206 and 290 respectively.		Criterion is met.		

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(in % of total number of procurement audits). Source: Ministry of Finance/Supreme Audit Institution.					
(d) Clear and reliable reporting lines to relevant oversight bodies exist.	<p>Please see 12 (a) (f).</p> <p>As per the provision specified in the Region's Constitution, the report from ORAG is submitted to the Regional Council. The budget, finance and audit standing committee is responsible for closely reviewing the report and undertaking follow-up action on behalf of the Council.</p> <p>The internal audit reports are normally submitted to the head of the public body. During the time of the assessment, BoF has been working to revise the reporting line of the Internal Auditors to be directly accountable to the BoF, similar to the arrangement at federal level. Once implemented, this could help to enhance the independence of the internal auditors.</p> <p>BoF's procurement audit report is submitted to the Head of the PEs.</p>		<p>Criterion is partially met. BoF is responsible for carrying out procurement audit and the final destination of the report is not specified and clear.</p>		Consider the option of addressing procurement audit to the oversight body beyond BoF.

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

Assessment criteria [12(c) Enforcement and follow-up on findings and recommendations]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Recommendations are responded to and implemented within the time frames established in the law.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>Article 21 (3) of the proclamation no 154/2010 require audited organizations to take corrective actions within 30 days from the date the recommendations are delivered. However, it was indicated that PEs do not usually take actions on the audit recommendations. ORAG recurrently reports failure of procuring entities in implementing audit recommendation, to the Public Accounts Affairs Standing Committee. However, the committee takes no action. Lack of enforcement is the big challenge in the audit system of the region.</p>		<p>Criterion is not met. Actions on audit reports are not taken timely.</p>	✓ Yes	Enhance the enforcement mechanism.
(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.	<p>Please see 12 (a) (f).</p>		<p>Criterion is partially met. It appears that there is a system in place for audit follow-up particularly external carried out by ORAG and internal audit. But no significant change due to weak or lack of enforcement. BoF procurement audit has no clear mechanism.</p>	✓ Yes	Consider a strong accountability and enforcement mechanism. Define the enforcement mechanism to ensure that the findings of the procurement audit are addressed timely.

12(d) Qualification and training to conduct procurement audits

Assessment criteria [12(d) Qualification and training to conduct procurement audits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) There is an established program to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits. Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>The ORAG office provides regular training on financial and performance audit and not specifically on procurement.</p> <p>The Internal Auditors are provided training through the PFM institutionalized training. But the training focuses on overall auditing practices and not on procurement. The internal auditors' understanding of procurement is limited to knowledge acquired by own readings of the procurement legal documents.</p> <p>Similarly, the Procurement Auditors in PPA didn't receive training on procurement and auditing.</p>		<p>Criterion is not met. There is no regular training to auditors to equip them with knowledge and skills required to carry out procurement audit.</p>		<p>Establish effective procurement training program targeting to auditors.</p>
<p>(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>	<p>Auditors are not specifically required to have procurement knowledge to carry out procurement audits. Rather, their educational background is largely on accounting and auditing. There is no experience in supporting auditors with service from procurement specialists or consultants while undertaking procurement audit. As a result, there is growing concern among procurement staff that the audit carried out both by internal and external auditors lack the benefit of good understanding of the procurement environment and there is a tendency to overly rely on compliance.</p>	Not applicable.	<p>Criterion is not met. The selection of auditors does not require procurement knowledge. Even the auditors in RPPA who are fully engaged in auditing procurement contracts and processes are not required to have a procurement knowledge. Most of the auditors join the agency directly from University with no prior working experience. With the limited or no training, the auditors carry out procurement audit without adequate knowledge and skills on public procurement.</p>	✓ Yes	<p>Consider revising job requirements to include procurement knowledge and introduce a competitive scheme to attract qualified and experienced staff.</p>
<p>(c) Auditors are selected in a fair and transparent way and are fully independent.</p>	<p>The selection of the auditors (internal or external) follows open competitive procedure in accordance to the HR recruitment procedure. One of the proposed changes to the structure of internal audit is to assign HR management responsibility to BoF including decision on recruitment and promotion of internal auditors. Similarly, ORAG carries out the recruitment and promotion decision of its own auditors.</p>	Not applicable.	<p>Criterion is met.</p>		<p>Ensure that the proposed changes to the HR management of Internal Auditors is enacted and implemented.</p>

13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
(a) Decisions are rendered on the basis of available evidence submitted by the parties.	<p>Summary: Decisions are required by the law to be rendered on the basis of available evidence submitted by the parties, which may include an oral hearing.</p> <p>The main provisions in the legal framework on the right of appeal and appeal process are set out in PPL A.60 to A.61 and PD, A.48 to 54. PD A.51 empowers the Committee to require (i) evidence, documents, registers and explanations to be produced from the public institution or the bidder through the Bureau and (ii) make witnesses and entities having connection with procurement activities appear and give their testimony under oath.</p> <p>PD A 52 stipulates that the Committee (which is in charge of appeal) shall investigate any complaint and make a recommendation based on the Bidding Document, public procurement and Property Administration Proclamation, this Bid Assessment Report and the evidence submitted by the bidder.</p>		<p>Criterion is partially met.</p> <p>The assessment team was provided with evidence showing decisions were provided based on available evidence.</p>		Improve availability and easy access of information on appeal decisions as required.
(b) The first review of the evidence is carried out by the entity specified in the law.	<p>PPL A.61 provides that, in the first instance, candidates submit a complaint to the public body.</p> <p>The head of public body is obliged to review and decide upon the complaint in accordance with the provisions of the PPL and PPD. In practice, in some public bodies the head delegates the responsibility to procurement staff and the bid endorsing committee.</p>		Criterion is met.		Ensure that the complaint is responded to by the Head of the public body and not delegated to the unit that had carried out the process concluded with the decision complained about. The response should be provided timely.
<p>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p> <p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.</p>	<p>There is no specific statement in the PPL that the decisions of the Bureau are final and binding (enforceable). Article 57 of the public procurement directive no 2/2004 E.C stipulates that a bidder or a supplier that was not satisfied with the decision of the BoF can take the case to the competent court of law. It is, therefore, implied that the decision of the appeal body is final & enforceable if no further complain is submitted by the complainant to the court.</p>	<p>The team was not able to access data on number of appeal decisions that were enforced. The regulatory body or the appeal body do not systematically follow the enforceability of the decisions and capture records in a central data base.</p>	<p>Criterion is partially met.</p> <p>There is no specific statement in the PPL that the decisions of the Bureau are enforceable.</p>		Introduce a provision in the PPL showing that the CRB's decision is enforceable.
(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.	<p>Summary: The time frames for submission and review of challenges, appeals and issuing of decisions set out in the legal framework do not unduly delay the procurement process or make an appeal unrealistic.</p> <p>Time frame for submission of challenges and appeals: PPL A.61((2) requires the candidate to submit the complaint to the head of the public body within five working days from the date he knew, or should have known, the circumstances giving rise to the complaint.</p>		<p>Criterion is partially met.</p> <p>The BoF does not provide resolution within the stated time frame. Almost all the decisions were made after unduly delay</p> <p>Physical distance limits the capacity of bidders from zones and woredas to submit and follow up on appeal who are required to</p>		Restructure the appeal system to have better capacity and competence. Consider sharing one appeal mechanism with the federal PPA and AA city administration. It enables the region to access the service of

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>Time frame for issuance of decision by the head of the public body: PPL A.61(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons. PPD A.46.4 requires the public body to give the complainant a copy of the decision within 5 working days from the date the decision was made.</p> <p>Time frame for complaint to the Bureau: PPL A.61(4) If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Bureau. The complaint to the Bureau must be submitted within 5 five working days from the date on which the decision had been or should have been communicated to the candidate.</p> <p>Time frame for issuance of decision by the Bureau: PPL A.62(5) requires the Bureau to issue its decision within 15 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any. The Bureau is given 3 days from receipt of the Committee recommendation to issue its decision with immediate effect – this gives the Committee 12 days to reach its recommendation.</p> <p>The PPD (A.18.27(5)&(6)) provides for maximum days for signature of the contract following notification appears to recognize that there may be delay due to complaints but falls short of establishing a ‘standstill’ period.</p> <p>The procurement proclamation Article 62 (5) specifies that BOF provides its decision within 15 working days after receipt of the complaint. This includes the time taken for PEs to submit the documents and evidence from their side which is 5 days from the date after receipt of notification from BoF. However, the performance from PEs has not been consistent with the timeline, as per BoF. Overall, the appeal process in practice take more time than what is stipulated in the legal document and BoF considers the time in the legal documents inadequate.</p> <p>The appeal system is not accessible for bidders located at woreda and zonal level. Aggrieved bidders should travel to Addis Ababa to submit and follow up their appeal.</p>		submit appeal within the same time frame as bidders located in Addis Ababa, where the BoF is located.		<p>strong appeal system at lower cost.</p> <p>Establish practical and accessible appeal system for procurement at local level.</p>

13(b) Independence and capacity of the appeals body

The appeals body:

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions	<p>The BoF is also the body that makes the final decision on the complaint and, to the extent that the Bureau is implicated in the decisionmaking process, there is a direct conflict.</p> <p>As per PPD A 49, the BoF establishes a committee to review and recommend decision to the BoF. The provision specifies five members :</p> <ol style="list-style-type: none"> i. Finance and Economic Development Bureau of Oromia.....Chairman ii. Chamber of Commerce.....Member iii. Public Institutions.....Member iv. Procurement and Property Disposal Agency.....Member v. Regional Procurement Work Process.....Member and Secretary <p>However, the above composition of committee members of the appeal body has been formed but it has failed to work as a committee. Thus, BoF established another committee in which all members are staff in BoF:</p> <ul style="list-style-type: none"> • Expert from Legal Department • Expert from Public procurement administration directorate • IT expert 		<p>Criterion is not met.</p> <p>The Bureau is also the Review Body: This dual role creates the potential for conflict with other advisory, regulatory and monitoring roles of the Bureau in relation to procurement and contracts and undermines bidders’ confidence in the review mechanism.</p> <p>Appeal committee with all members from BoF (government) undermines the impartiality and independence of the appeal system.</p>		<p>Review Body: A separate Review body should be formed within the Bureau, ideally supported by its own secretariat, so that decisions may be taken independently of the Bureau and other bodies. See recommendation 13 (a) (d).</p>

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
	<ul style="list-style-type: none"> Procurement specialist 				
(b) does not charge fees that inhibit access by concerned parties	No fees are levied on complaints.		Criterion is met.		
(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available <i>// Minimum indicator // *</i> <i>Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c):</i> <i>- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).</i> <i>Source: Appeals body.</i>	The procedures for review are clearly defined in the PPL and PPD. But in practice (as described under 12 (b) (a)), appeal is not handled by the body specified in the PPD. The PPD is not publicly available.	There is no centrally maintained data showing time frames on appeal decisions.	Criterion is not met.		See recommendation under 13 (b) (a). Ensure that the procedure is publicly available. Follow the recommendation provided on accessibility of documents in the relevant section of the matrix.
(d) exercises its legal authority to suspend procurement proceedings and impose remedies	<p>Suspension: PPL A.62(1) and (2) provide that upon receipt of a complaint, the Bureau shall promptly give notice of the complaint to the public body concerned and that notification automatically suspends further action by the public body until the Bureau has settled the matter.</p> <p>Remedies: PPL A.62(3) and (7) lists the remedies which may be imposed by the Bureau. It is unclear why there should be two lists which are not the same.</p> <p>According to Article 62 (7) of the proclamation, the BoF has legal authority to suspend the procurement proceedings and impose remedies. According to this provision, unless the BoF dismisses the complaint, it has the authority to render one of the following decisions: (a) prohibit the public body from acting or deciding unlawfully; (b) order the public body to proceed in a manner conforming to the rules in the proclamation other than a decision to award or conclude a contract ; (c) annul in whole or in part, an unlawful act or decision by the public body.</p> <p>It is supported with evidence that, up on receipt of complaints, the BoF issues letter suspending the procurement proceedings and issue decisions imposing remedies.</p>		Criterion is met.		Ensure consistency between the relevant provisions in the PP.
(e) issues decisions within the time frame specified in the law/regulations*	The information received from the BoF shows that, on average, the BoF was able to provide decision within 16 days. This shows that the BoF was able to provide decision almost with the specified time frame. However, the data was not collected from the source files, nor was evidence provided.		Criteria is partially met.		
(f) issues decisions that are binding on all parties	There is no specific provision in the PPL stating that decisions are binding on all parties. Please see the assessment under 13 (a) (c) .		Criteria partially met. There should be a provision in the PPL stating that decisions are binding on all parties.		Include specific provision in PPL dealing with binding nature of decisions.
(g) is adequately resourced and staffed to fulfil its functions.	The committee (appeal body) is composed of five experts from BOF. However, the committee lacks essential resources required to fulfil its function. The committee has no office for conducting its meeting and it has no secretary to carry out writing of the decision. There is not even a supply of stationary materials. Generally, the committee does not have the required facility to fulfil its function.		Criteria not met.		

13(c) Decisions of the appeals body

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

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations												
<p>(a) based on information relevant to the case.</p>	<p>According to the procurement directive Article 52, appeal decisions shall be given based on the bidding document, evaluation reports, letter of complaints of the bidder, the procurement proclamation and procurement directives. Based on the private sector survey, the perception on challenges of the appeals system is as follows:</p> <table border="1"> <thead> <tr> <th>ANSWER CHOICES</th> <th>RESPONSES</th> </tr> </thead> <tbody> <tr> <td>▼ The system acts in accordance with rule of law and is predictable</td> <td>0.00% 0</td> </tr> <tr> <td>▼ Most actions within the system are in accordance with rule of law and are predictable</td> <td>26.09% 6</td> </tr> <tr> <td>▼ Only a very limited number of actions is in accordance with rule of law and predictable</td> <td>60.87% 14</td> </tr> <tr> <td>▼ The actions do not seem to be in accordance with rule of law and are not predictable</td> <td>17.39% 4</td> </tr> <tr> <td colspan="2">Total Respondents: 23</td> </tr> </tbody> </table>	ANSWER CHOICES	RESPONSES	▼ The system acts in accordance with rule of law and is predictable	0.00% 0	▼ Most actions within the system are in accordance with rule of law and are predictable	26.09% 6	▼ Only a very limited number of actions is in accordance with rule of law and predictable	60.87% 14	▼ The actions do not seem to be in accordance with rule of law and are not predictable	17.39% 4	Total Respondents: 23			<p>Criterion is not met.</p> <p>While the procedures governing the decision-making process of the appeals body provide that decisions are based on information relevant to the case, perception among the private sector is that the decisions are not in accordance with rule of law.</p>		<p>Improve the structure and capacity of the CRB including ensuring that the minimum required qualification and experience required from each member of the members committee is specified. Consider sharing the service of the same board with the federal government and Oromia National Regional State. Improve transparency of the appeal decisions and sensitize the private sector to establish a positive perception .</p>
ANSWER CHOICES	RESPONSES																
▼ The system acts in accordance with rule of law and is predictable	0.00% 0																
▼ Most actions within the system are in accordance with rule of law and are predictable	26.09% 6																
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Total Respondents: 23																	
<p>(b) balanced and unbiased in consideration of the relevant information.*</p> <p>Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.</p>	<p>In principle, the respondents to the private sector survey do not see the appeal system as fair and trustworthy or consistent. The results of the survey are presented in the column on the right.</p> <p>The private sector responded suggesting the following areas for improvement:</p> <ul style="list-style-type: none"> • Transparency • Timeliness • Professionalism • Accountability • Fairness • Audit 	<p>Out of 22 respondents 46% responded that their complaints were not resolved timely. About 95% of the responding economic operators said they were not satisfied with the outcome of the complaints review mechanism.</p> <p>Out of 24 respondents 54% have not appealed the decision of public body to the complaints review Board.</p> <p>Out of 18 respondents 100% said that they do not consider the appeal system as fair and trustworthy.</p> <p>Around 85% of 20 respondents said they did not appeal the decision by the appeals body (i.e. Board) because they thought the system would not be trustworthy.</p>	<p>Criterion is not met.</p> <p>The private sector does not consider the Complaint Handling system as trustworthy and fair. This is mainly due to:</p> <ol style="list-style-type: none"> 1) the BoF is considered impartial and independent with multiple conflicting roles; 2) the limited capacity in delivering its decisions within the time frame; and 3) Capacity in BoF including lack of minimum qualification and experience requirement as limiting factors in delivering responsibilities capably and independently. 		<p>See the recommendation under 13 (c) (a).</p>												
<p>(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favor of procuring entity; decision in favor of applicant) (in %).Source: Appeals body.</p>	<p>The BoF has the legal authority to suspend the procurement proceedings and impose remedies including (a) prohibiting the public body from acting or deciding unlawfully; (b) ordering the public body to proceed in a manner conforming to the rules in the proclamation other than a decision to award or conclude a contract ; (c) annulling in whole or in part, an unlawful act or decision by the public body. But the private sector does not consider the appeal system balanced and trustworthy (see survey result 13 (c) (b)).</p>		<p>Criterion is met.</p>														
<p>(d) decisions are published on the centralized government online portal within specified timelines and as stipulated in the law.*</p>	<p>There is no legal requirement to publish full decisions and currently no Bureau portal on which to do so. PD A.54.2 requires the Bureau to make the decision available to the applicant and the Government.</p>		<p>Criterion is not met. Publication of full decisions: In order to ensure transparency and an effective complaints system, all decisions should be published in full on a central online portal.</p>		<p>PP Include a provision in primary legislation requiring publication of full decisions within a specified tie period.</p>												

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralized online portal.*					Ideally this should be in a user friendly and easily searchable format.

14. The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

The legal/regulatory framework provides for the following:

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.	The PPD defines (A55.4) corrupt and fraudulent acts to include: bribery of the person making the purchase in the form of any value; presentation of false or fraudulent documents; and hindering free competition by way of price collusion with other bidders. These are not definitions consistent with obligations deriving from legally binding international anti-corruption agreements.		Criterion is partially met. There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law which define fraud & corruption in different ways, and also set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations may contradict each other like for example application of the specific law above general while the specific law does not provide for specific issues up to the professional standard. For example, the PPL is a specific law but its definition of offenses lacks a standard required for prosecution, eg., intent of the wrongdoing.	✓ Yes	In the next round of reforms, provide consistent definition in the public procurement legislation with other laws.
(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.	Legal input: Responsibility/accountability of government employees: PPL A.22(1)(e) requires personnel engaged in public procurement to observe rules of ethics which include the requirement to report to the law enforcement agencies any intended or completed action of corruption and contribute to the effort to fight corruption and malpractice. PD A.42.8 requires any employee of person in position of responsibility to notify the appropriate body of any acts of corruption, intended or perpetrated. In such a situation the individual must make sure the allegation is supported by evidence and isolate themselves from facilitation or assisting in the intended act. Penalties for government employees: PPL A.63 sets out offences and punishments for persons appointed to or employed by a public body and procurement and property administration officers. The penalties for offences under these provisions, which include fraudulent and corrupt practices as well as bribery, include fines and terms of imprisonment.		Criterion is partially met. There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law which define fraud & corruption in different ways, and set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations may contradict each other, like for example application of the specific law above general while the specific law does not provide for specific issues up to the professional standard. For example, PPL is a specific law but its definition of offenses lacks a standard required for prosecution, eg., intent of the wrongdoing. In addition, the offences set up in the PPL mix criminal and administrative wrongdoing with criminal penalties for all of them.	✓ Yes	In the next round of reforms, ensure consistency of the public procurement legislation and other laws.

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
	<p>Responsibilities of private firms: PPL A.22(2) requires that any candidate or supplier shall refrain from any act contravening the public procurement process. Candidate or supplier is prohibited, in summary, from actions intending to influence the public body, and must not make gifts or offer other forms of inducement. (PPL A.22(2)(a)). PD A.18.4(e) sets up a form of integrity in the bidding document by requiring candidates to complete and sign an undertaking form attached with the bid proposal document, certifying that they are clear from any act of corruption or embezzlement, and comply with federal and state laws.</p> <p>PD A.42.7 Ethics expected of candidates: requires candidates and suppliers to refrain from making gifts to persons with responsibility for public procurement, not to engage in collusive behavior (connivance) and to disclose to the appropriate body an intended or perpetrated act of corruption and not be complicit in such act.</p> <p>Disqualification: PPD A.11(21) provides that a public body may disqualify a bidder where it is proven that the bidder has committed an act of embezzlement, fraud or connivance with other bidders.</p> <p>Rejection of bid: PPL A.20(1)(f) provides that a public body may reject a bid in whole or in part where it is proven that the bid is not sufficiently competitive as a result of collusion (connivance) or unethical conduct.</p> <p>Fines and imprisonment: PPL A.63(5) provides that any candidate who, with the intention of deriving unlawful advantage, presents falsified documentary evidence, conceals information or colludes (connives) shall, upon conviction be punishable with a fine and imprisonment.</p> <p>Debarment: PPD A.55 provides for debarment for the offences described in Indicator 14(a)(a).</p> <p>Compensation: PPD A.55 provides that without prejudice to any action which may be taken by the Bureau, public bodies shall be entitled to seek compensation for any damage or loss they have sustained on account of the breach.</p>				
(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	<p>Responsibility/accountability of government employees: PPL A.22(1)(a) requires personnel engaged in public procurement to observe rules of ethics which includes the obligations to notify any actual or possible conflict of interest and isolate oneself from any processes involving such conflict.</p> <p>The PPD A.42.8 requires employees directly or indirectly related to procurement to notify in writing any activities that benefit himself/herself or families and isolate himself/herself from the process. The PPD further provides how the conflict of interest should be managed by the public body.</p>		Criterion is met.		

14(b) Provisions on prohibited practices in procurement documents

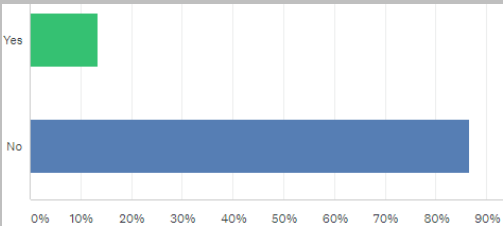
Assessment criteria [14(b) Provisions on prohibited practices in procurement documents]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.	<p>The PPL para 63 specifies prohibited practices that should be observed both by public officials and procuring entities. In addition, the Standard Bidding Documents (Federal example used is SBD for Works, National Competitive Bid (NCB)):</p> <p>The Instructions to Bidders (clause 3 in SBD Works NCB) include a section which refers to the requirement on both public bodies and bidders to observe the highest standard of ethics. It uses the definitions of corrupt, fraudulent, collusive, coercive and obstructive practices referred to in the Manual (see 14(a)(a) above). It confirms that the public body will reject a recommendation for award if it determines that the bidder has been engaged, directly or indirectly, in one of these practices. It also refers to the debarment process and list of debarred bidders held by the Agency and published on the Agency's website. It states that the public body may terminate a contract if at any time it determines that corrupt or fraudulent practices have been engaged in . Bidders are required to indicate their acceptance of the provisions on fraud and corruption through the statement in the Bid Submission Sheet (Part 1, section 4 : Bidding Forms, Form A). Bidders must permit the Agency to inspect their accounts, records and other documents.</p> <p>The PPD (para 18.4) requires the Instruction to Bidders prepared by the public bodies to include a provision that requires the bidders to respect Ethiopian law with regard to corruption and fraudulent practices and fill and sign the template provided in the bidding document pledging not to involve themselves in corrupt activities</p>		Criterion is partially met. SBDs are used in limited categories of procurement and use of federal SBDs is not mandatory.		Please refer recommendation provided under sub indicator 9 (b) (b).
(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.	The General Conditions of Contract (clause 5 in the federal example used; SBD for Works, National Competitive Bid (NCB)) includes provisions on fraud and corruption including reference to contract cancellation and debarment. The General Conditions of Contract are part of the SBD and may not be altered.		Criterion is partially met. See 14 (b) (a)		Consider recommendation given on SBDs under the relevant section in this matrix.

14(c) Effective sanctions and enforcement systems

Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.	<p>PPL A.22(1)(e) Rules of Ethics requires personnel engaged in procurement to report to law enforcement agencies any intended or committed act of corruption.</p> <p>The legal documents refer only one aspect of malpractice as "corruption" and are lenient on the other aspects of malpractices including fraud. There is also inconsistency between the proclamation and the directive regarding whom to report to, where the proclamation specifies "law enforcement authorities" while the Directive refers to "relevant authorities". Besides, there is no clear procedure to report allegations of fraud and corruption to the law enforcement authorities.</p> <p>The legal framework also requires e.g., public bodies reporting corruption to provide evidence. Given that non-professionals are not in a position to do it, many allegations may go unreported.</p> <p>Staff in PEs do not appear to understand the requirement to report cases of malpractices. For instance, the practice of rejecting bidders alleged with forged documents (fraud) from the bidding process without reporting to the law enforcement authorities.</p>		Criterion is partially met. The reporting structure on fraud and corruption and other illegal practices has to be clearly established and communicated to all parties including staff in procuring entities. The languages between the directive and the proclamation and other documents including the SBDs have to be consistent and comprehensive so that they avoid misconception or misinterpretation.	✓ Yes	Establish clear reporting structure on issues of malpractices and ensure clarity and consistency within the public procurement legal framework and with other laws. Consider providing training and guidance to staff on how to report on cases of corruption and other malpractices anonymously.

Assessment criteria	Step 1: <u>Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions (describing any substantial gaps)</u>	Red flag?	Recommendations
[14(c) Effective sanctions and enforcement systems]					
(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.	There is no clarity as to whom corruption allegations are to be reported to, as explained above. In practice, they are reported to BoF, REAC, Regional Attorney General and police commission. However, it is not clear whether all allegations are directed to the agency responsible for acting on them. Cross-check did not provide such assurance.	Not applicable.	Criterion is partially met. See 14 (c) (a).	✓ Yes	The working relationship among the relevant agencies, in particular among BoF, REAC, ORAG, Regional Attorney General and police commission, has to be worked out together with clarity and consistency of the legal framework for reporting corruption. See recommendation under 14 (c) (a).
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	The procurement proclamation Article 15 (7) mandates BoF to review and decide on the complaint from public bodies submitted on the conduct of bidders or suppliers. PPL Article 75 provides the procedure in reviewing and deciding on complaints, including a requirement on the BoF to notify and take into account information and argument presented by the parties before reaching at decision. The list of debarred companies/individuals is communicated to the federal PPA for purpose of cross-debarment and communication to all PBs at federal and Regional level. Currently, there are 108 companies debarred from participation in public procurement across the country but only 1 company debarred by Oromia BoF.		Criterion is met.		Improve coordination and information flow among the procurement regulatory bodies and law enforcement authorities to ensure malpractices are legally addressed.
(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d): - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory function/anti-corruption body. - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body. - Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). Source: Survey.	The Assessment Team was not able to obtain data on enforcement of the laws on fraud, corruption, and other prohibited practices. Information obtained from the federal AG informs only about the recent 7 cases of indictment for fraud and corruption. The Team was not able to verify whether these cases were reported to PPA and Regions, to act on debarment. The Team reviewed the Reports of FEAC which provide a lot of information including performances in Regions. In the Reports issued at the time when the investigation and prosecution functions were with FEAC, data related to fraud and corruption were aggregated and the Team was not able to establish the number related to fraud and corruption in procurement. Based on public information, it is known that from time to time, public officials are detained on suspicion of corruption and many of them are released after varied time counted in months without indictment.	In the private sector survey, out of 28 respondents 64% said that they believe that the companies are expected to give a gift to secure a contract in the public sector. 23 respondents skipped this question.	Criterion is not met. There is no access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.	✓ Yes	Ensure availability and access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.

14(d) Anti-corruption framework and integrity training

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The country has in place a comprehensive anti-corruption framework 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.*</p> <p>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a): - percentage of favorable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey.</p>	<p>The country has in place a comprehensive anti-corruption framework. The anti-corruption responsibility is divided among three entities established at federal level and in each of the regions (except Addis Ababa which shares the federal agencies). The anti-corruption commission is responsible for preventing and fighting corruption through public education and awareness. The law enforcement responsibility is placed in the Attorney General (prosecution and overseeing investigation) and Police (investigation).</p> <p>In addition, different arrangements were established and up and running, with the purpose of creating awareness and fighting corruption at national level. The anti-corruption commission formed 14 coalitions at national level with different groups and interested parties including youth, women, religious groups, teachers, students etc. They have also established a joint platform with the Federal Auditor General to plan and tackle corruption based on audit findings and recommendations. There is a plan to hire a consultant and prepare a national anti-corruption policy.</p> <p>However, the capacity of the anti-corruption commission is limited. The commission lacks the technical competence and budget to deliver its responsibility.</p> <p>FEAC undertook a survey to understand the nature of corruption in procurement. The survey was conducted in collaboration with Transparency International on the construction sector.</p>	<p>In the private sector survey, out of 30 respondents 13% said that they believe that the anti-corruption measures undertaken by the Government are effective and 87% that they are not.</p>  <p>54% of 30 respondents chose from the proposed options law enforcement as a very effective measure to reduce corruption, and 36% of 27 respondents said e-procurement is a very effective measure.</p> <p>Asked to indicate their priorities to enhance anti-corruption measures the respondents most often indicated:</p> <ul style="list-style-type: none"> • Transparency • Law enforcement • E-procurement • Competent staff • Proper compensation of staff • Audit • Watchdog • Fair bid criteria <p>73% out of 26 respondents responded positively to the question whether they think that introduction of e-procurement will lead to reduction in corruption. 0% responded negatively, and 27% were not sure.</p> <p>71% of 17 respondents said that CSO involvement in overseeing procurement contracts would be beneficial in future.</p>	<p>Criterion is partially met.</p> <p>While Ethiopia has in place a comprehensive anti-corruption framework 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, the legal framework lacks transparency in the first place. The private sector indicated some features they believe should be improved to support the existing system.</p>	<p>✓ Yes</p>	<p>Review factors that help preventing corruption and improve them both in the legal framework and practice.</p>
<p>(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.</p>	<p>There are certain mechanisms that are in place to detect and mitigate corruption risks in the public procurement cycle. The procurement organizational structure that provides segregation of roles and responsibilities with fairly adequate internal control and check & balance is one of the mechanisms to detect and mitigate corruption risks. In addition, each procuring entity has established an ethics office that is closely accessible to report corruption allegations. The Regional government identified procurement as one of the sectors vulnerable to corruption. As a result, all government officials and employees in the Region that are involved in procurement activities are required to declare and register their assets at the Regional Ethics and Anti-Corruption Commission and update these every two years. Assets that are acquired above the official income are considered as obtained through corruption and can lead to prosecution.</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		
<p>(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are</p>	<p>There is no practice of adequately compiling statistics on corruption related to legal proceedings. However, the assessment team came across reports that were annually issued by FEAC before the mandate was transferred to Federal Attorney General. FEAC compiled information from the federal and regions and issued annual reports covering</p>	<p>Not applicable.</p>	<p>Criterion is not met. Statistics on corruption-related legal proceedings and convictions are not compiled and reports not are published annually.</p>	<p>✓ Yes</p>	<p>Ensure that statistics on corruption related legal proceedings and others are compiled and published.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Assessment criteria [14(d) Anti-corruption framework and integrity training]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
compiled and reports are published annually.	the performance on training and awareness, prevention, investigation and prosecution, including information on number of allegations received, investigations done, prosecutions and convictions. It appears that the good experience in FEAC has not been continued by the Attorney General.				
(d) Special measures are in place for the detection and prevention of corruption associated with procurement.	There is no special mechanism in place for detecting and preventing corruption in procurement.	Not applicable.	Criterion is partially met. There are no special measures other than what is described under (b) above.	✓ Yes	Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system.
(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.	There is no regular integrity training program on procurement. But the corruption prevention Department provides dedicated support on integrity training. Also, REAC provides anti-corruption awareness to the public and training to public bodies when requested.	Not applicable.	Criterion is not met. There is no regular integrity training program on procurement. But corruption prevention Department provides dedicated support on integrity training.	✓ Yes	Incorporate integrity training session in the PFM training program or as a standalone program delivered on a regular basis.

14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are strong and credible civil society organizations that exercise social audit and control.	There are no strong and credible civil society organizations that exercise social audit and control.	Not applicable.	Criterion is not met. There are no strong and credible civil society organizations that exercise social audit and control.		See indicator 9 (c) (f).
(b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.	The new Organization of Civil Society Proclamation No 1113/2019 opened a new era in the establishment and operation of CSOs in Ethiopia. The new law, inter alia, allowed all CSOs to engage in any lawful activities and relaxed the distribution of funds between administrative and operational costs. While there is a relatively conducive environment for the operation of CSOs, the procurement environment has no procedure to encourage the involvement of CSOs in public procurement. As a result, there are no practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.	Not applicable.	Criterion is partially met. The new CSO law provides opportunities to enhance the role and operation of CSOs in Ethiopia. However, the procurement procedure has not identified and provided guidance on the involvement of CSOs in public procurement.		See indicator 9 (c) (f).
(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil society organizations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement. Source: Survey/interviews.	There are not many CSOs that are working on public procurement in Ethiopia. The Construction Sector Transparency Initiative (CoST Ethiopia) is the only active CSO working on the transparency aspect of procurement related to construction contracts. CoST provides for the disclosure of project information on a selection of construction projects and the procurement aspect. PPA redesigned its website for purpose of publication with support from CoST Ethiopia. The main benefit of enhancing transparency in the sector is to improve the integrity and accountability in the system. However, this is only a single CSO and its engagement is limited to construction projects. There is no evidence of its involvement at the regional level.	14 respondents out of 51 responded to the question whether civil societies are allowed to monitor bid submission, receipt, and opening, and 14% said that they are allowed. 50% said that they are not allowed, and 36% were not sure. Out of 28 respondents who responded to the question whether they are aware of any CSO providing an oversight in procurement, 4% said that they are aware, and the remaining 96% said that they are not aware. Out of 18 respondents who responded to the question whether they think that CSO involvement in overseeing procurement contracts could be beneficial 67% said yes, 0% said no, and 33% were not sure. Asked to tell about obstacles for CSO participation in public procurement, the respondents indicated lack of funding, political affiliation in procurement, and lack of motivation and commitment.	Criterion is partially met. The procurement legal framework should encourage the involvement of CSOs in public procurement as oversight and monitoring partners. PPA should establish closer working relationship with relevant CSOs to attract their interest and support their involvement on public procurement.		See indicator 9 (c) (f).

Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.</p>	There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.		<p>Criterion is not met.</p> <p>There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.</p>	✓ Yes	BoF should work with the business associations to promote adopting internal compliance measures by private firms to support integrity and ethical behavior in public procurement.

14(f) Secure mechanism for reporting prohibited practices or unethical behavior

Assessment criteria [14(f) Secure mechanism for reporting prohibited practices or unethical behavior]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.	The information regarding the suspected fraud/corruption/prohibited practice cases can be channeled to the anti-Corruption Office/Police through telephone, unidentified papers, email, or physical reporting anonymously. The reporting is kept confidential.	Not applicable.	Criterion is met.		
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	As per the amended Ethics and Anti-Corruption Commission Establishment Proclamation no., 214/2011 one of the Powers and Duties of the Commission is to provide protection to informants and witnesses.; This same responsibility is also described as one of the responsibilities of the Region's Justice Bureau. Legal provisions provide penalty on officials who directly or indirectly take any reprisal measures against a whistle-blower or witness. There is no evidence presented during the assessment of its applicability.	Not applicable.	Criterion is met.		
(c) There is a functioning system that serves to follow up on disclosures.	As per Proclamation no. 69/2010, the Regional Attorney General provides authority to investigate tough and complex criminal cases. The attorney general is working with the region's police to follow-up on disclosures once the information is channeled through the Region's Police Bureau. There is collaboration between the Regional Attorney General and police while undertaking investigation.	Not applicable.	Criterion is met.		

14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g)</p>	<p>The PPL A 24 provides Rules of required ethics from personnel engaged in public procurement and candidates or suppliers on public procurement. In addition, the procurement directive Article 42 provides relatively expanded provisions on ethics or code of conduct expected from employees or public officials and candidates engaged in public procurement. The code of conduct is mandatory and applicable in all PEs and staff involved in procurement.</p> <p>In addition, there is an Ethics Directive issued from the Region's Bureau of Finance. The code of ethics for internal auditors is available in the Inspection and Internal Audit Ethics Directive. <i>But</i> no code of conduct has been found for staff involved in Public Financial management activities.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>No Code of Conduct applicable for staff working in PFM.</p>		Consider developing Code of Ethics applicable to staff and officials working on PFM area.

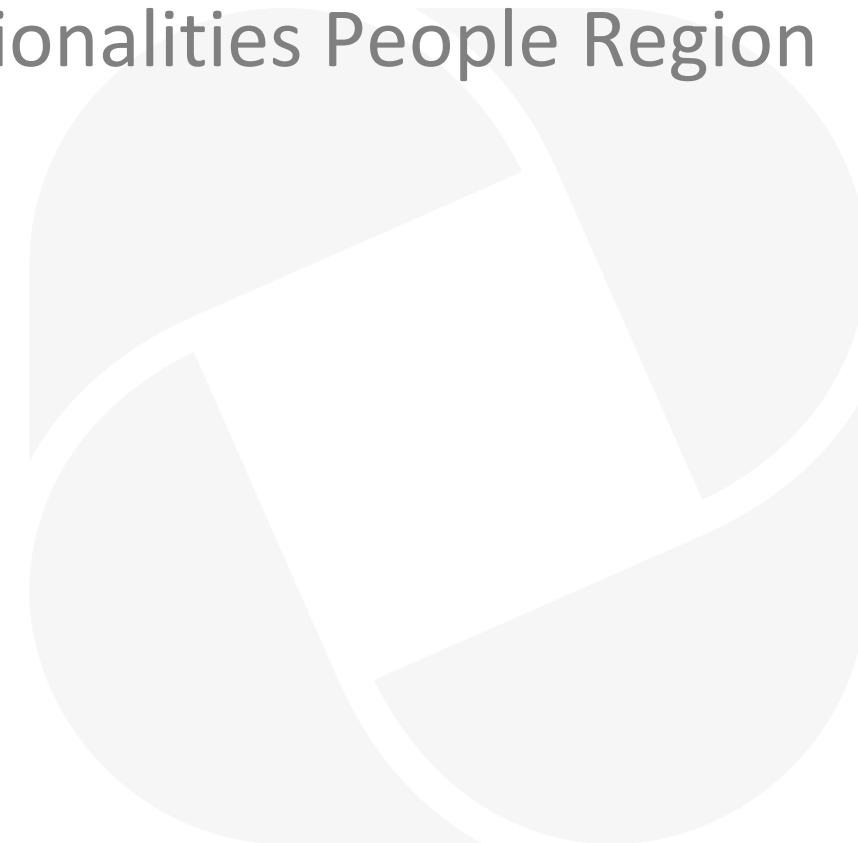
Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
Assessment criterion (a): - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.					
(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.	Accountability for decision making is clearly stipulated in the procurement Proclamation. Article 11 of the procurement proclamation states that "Procurement and property administration staff or heads of procurement and property administration units and members of the procurement endorsing committee in public bodies shall be accountable for their actions in accordance with this Proclamation and the directives to be issued by the BoF." In addition, the regional government issued a proclamation to provide Disclosure and Registration of Asset No 107/2012 that obliges public officials to disclose their assets and register at the regional ethics and anti-corruption commission. The asset registration law is enforced on all relevant staffs throughout all public bodies and is consistently applied.	Not applicable.	Criterion is partially met. Accountability provision is limited to few staff and doesn't cover employees directly or indirectly involves in procurement activities and decisions.		Consider expanding accountability provision to cover all involved in procurement activities and decisions.
(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.	The code of ethics in procurement is mandatory. It is stipulated in the procurement Proclamation and Directive that are applicable in all PEs and to all procurement staff involved in public procurement.	Not applicable.	Criterion is met.		
(d) Regular training programs are offered to ensure sustained awareness and implementation of measures.	The Regional Ethics and anti-corruption commission established a dedicated Unit that organizes and provides training. The ethics officers in each of the PEs are also responsible for coordinating with REAC and ensuring that employees receive trainings. However, there is no regular training program related to code of ethics. The Commission mentioned budget and technical constraints in providing regular trainings.	Not applicable.	Criterion is partially met. There is no regular training program.	✓ Yes	Ensure regular training on ethics. Besides delivery by REAC, it can be jointly organized either as part of the PFM training or standalone program.
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.	There is no requirement to capture information on beneficial ownership. There is also no system to systematically capture and maintain information on conflict of interest. Thus, the information on beneficial ownership, conflict of interest or asset disclosure are either not available or not systematically captured, maintained, utilized for decision making.		Criterion is not met. There is no established procedure and practice to capture information on beneficial ownership. Similarly, there is no established procedure to notify, address and capture information on conflict of interest.		Ensure that Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

The Federal Democratic Republic of Ethiopia

Assessment of the Public Procurement system 2021

Volume II.5

Indicator Matrix for the Southern Nations and Nationalities People Region



MAPS assessment in:

Name/organization: The World Bank in cooperation with the Ministry of Finance and the Public Procurement and Property Administration Agency of the Government of Ethiopia

Date: June 2021

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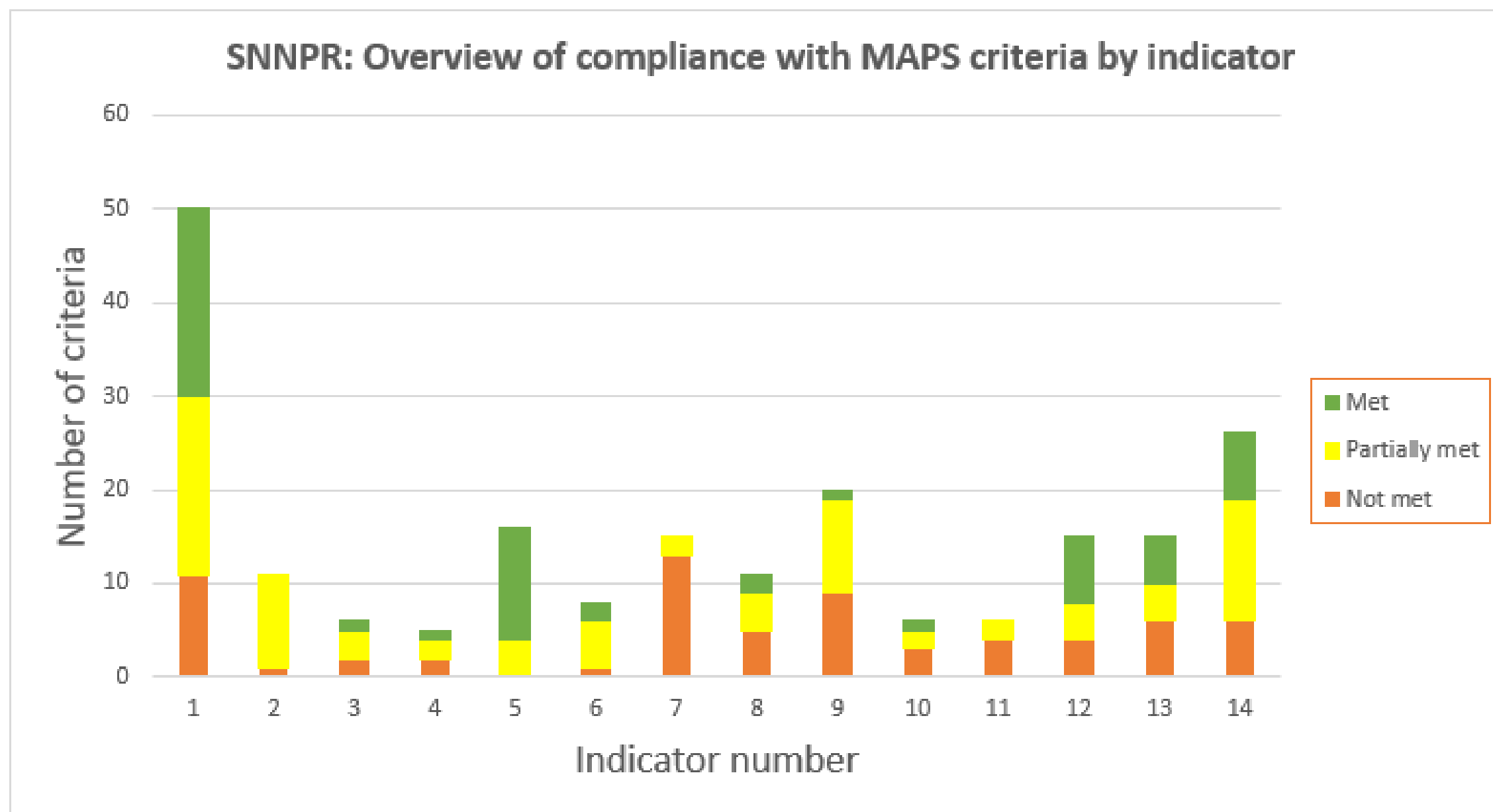
The public procurement system in SNNPR, Ethiopia: Overview of compliance with MAPS indicators

Red flags raised ✓	Non-compliance	Partial compliance	Compliance
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Indicators are assessed against several criteria. Non-compliance for an indicator is considered if at least one criterion is not met. Partial compliance is considered if at least one criterion is partially met. Compliance is considered if all criteria are met.

	Pillar I	Pillar II	Pillar III	Pillar IV			
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	✓ 1(a) Scope of application and coverage of the legal and regulatory framework	4. The public procurement system is mainstreamed and well-integrated into the public financial management system.	4(a) Procurement planning and the budget cycle	9. Public procurement practices achieve stated objectives.	✓ 9(a) Planning	11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring
	1(b) Procurement methods		✓ 4(b) Financial procedures and the procurement cycle				✓ 9(b) Selection and contracting
	✓ 1(c) Advertising rules and time limits	5. The country has an institution in charge of the normative / regulatory function.	5(a) Status and legal basis of the normative / regulatory institution function				✓ 9(c) Contract management
	1(d) Rules on participation		5(b) Responsibilities of the normative / regulatory function	10(a) Dialogue and partnerships between public and private sector	12. The country has effective control and audit systems.	✓ 12(a) Legal framework, organisation and procedures of the control system	
	1(e) Procurement documentation and technical specifications		✓ 5(c) Organisation, funding, staffing, and level of independence and authority			✓ 10(b) Private sector's organisation and access to the public procurement market	12(b) Coordination of controls and audits of public procurement
	1(f) Evaluation and award criteria		5(d) Avoiding conflict of interest	10(c) Key sectors and sector strategies	✓ 12(c) Enforcement and follow-up on findings and rec.		
	1(g) Submission, receipt, and opening of tenders		6. Procuring entities and their mandates are clearly defined.	6(a) Definition, responsibilities, and formal powers of procuring entities	10. The public procurement market is fully functional.	✓ 12(d) Qualification and training to conduct procurement audits	
	1(h) Right to challenge and appeal			6(b) Centralized procurement body		13. Procurement appeals mechanisms are effective and efficient.	13(a) Process for challenges and appeals
	1(i) Contract management		7. Public procurement is embedded in an effective information system.	7(a) Publication of public procurement information supported by information technology		14. The country has ethics and anticorruption measures in place.	13(b) Independence and capacity of the appeals body
	1(j) Electronic Procurement			7(b) Use of e-Procurement			13(c) Decisions of the appeals body
	1(k) Norms for safekeeping of records, documents, and electronic data.			7(c) Strategies to manage procurement data			14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties
	1(l) Public procurement principles in specialized legislation		8. The public procurement system has a strong capacity to develop and improve.	8(a) Training, advice, and assistance		14(b) Provisions on prohibited practices in procurement documents	
	2. Implementing regulations and tools support the legal framework.	✓ 8(b) Recognition of procurement as a profession		✓ 14(c) Effective sanctions and enforcement systems			
8(c) Monitoring performance to improve the system		✓ 14(d) Anti-corruption framework and integrity training					
3. The legal framework reflects the country's secondary policy objectives and international obligations	✓ 3(a) Sustainable Public Procurement (SPP)		✓ 14(e) Stakeholder support to strengthen integrity in procurement				
	3(b) Obligations deriving from international agreements		14(f) Secure mechanism for reporting prohibited practices or unethical behaviour				
			✓ 14(g) Codes of conduct / codes of ethics and financial disclosure rules				

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



Explanation for the Matrix:

PPL –the Southern Nations, Nationalities and People’s Regional State Procurement and Property Administration Proclamation No.146/2012 (or the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 dated 9 September 2009, if so indicated or relevant in the context); PPD – the SNNPRS Procurement Directive No. 56/2010.

Procuring entity (PE) = public body (PB).

1. In accordance with the MAPS methodology, “red flags” are factors likely to prevent appropriate action to improve the public procurement system. These are used to highlight any element that could significantly impede the main goals of public procurement and that cannot be mitigated directly or indirectly. They can be factors that lie outside the sphere of public procurement.
2. The MAPS methodology defines the minimum requirements for all criteria under its indicators. The Assessment Team assessed whether the public procurement system in Ethiopia meets the required minimum and based on the results concludes on each criterion that “Criterion is met”, “Criterion is not met” or “Criterion is partially met”. There are criteria which meet the required minimum and are indicated as “Criterion is met”. However, in some cases, the Team sees the possibility of improving the aspect of the public procurement covered by such criterion. In such cases, the Team offered a recommendation for such improvement proposed in addition to the conclusion that “Criterion is met”.

MAPS assessment in:

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Pillar I. Legal, Regulatory, and Policy Framework

1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.

1(a) Scope of application and coverage of the legal and regulatory framework

Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.</p>	<p>Summary: The legal and regulatory framework is adequately recorded and is organized hierarchically with precedence clearly established.</p> <p>Constitution: The 2001 Proclamation to revise the Constitution of the Southern Nations, Nationalities and People’s Regional State (‘the SNNPR Constitution’) is the supreme law of the State. Any law including state law, customary practice, or decision of an organ of state or a public official which contravenes the Constitution shall have no effect (Constitution A.9(1)). The SNNPR Constitution is, however, <u>without prejudice</u> to the Constitution of the 1995 Federal Democratic Republic of Ethiopia which, therefore, takes precedence.</p> <p>International agreements: The Constitution does not refer to the negotiation and conclusion of international agreements. This falls within the jurisdiction of the Federal Government under the Federal Constitution, since the power is not expressly given to the States, and all powers given to the regions and cities are subject to the powers explicitly granted to the Federal Government. In this respect, the Federal Government is given explicit powers to formulate and implement the country’s foreign investment policies, foreign policy and ratify international agreements. All international agreements ratified by Ethiopia are an integral part of the law of the land (1995 Constitution A.9(4)).</p> <p>The SNNPR Procurement Proclamation (‘the PP’) PPL confirms in A.6 that to the extent that the PPL conflicts with an obligation of the Federal Government under, or arising out of, an agreement with one or more states or with international organizations, the provisions of that agreement shall prevail. Given that only the Federal Government has the power to conclude such agreements, it must be assumed that this obligation applies to the State only in so far as the obligation is passed on to the State by the Federal Government when it provides development assistance and loans to the State under its power to administer the Federal budget. There is a general obligation on all governments (Federal, State and Regional) to observe international agreements.</p> <p>The highest legislative authority is vested in the Regional Council.</p> <p>Primary legislation - Proclamations: The Regional Council adopts primary legislation consistent with that of the Federation.</p> <p>Secondary legislation – Regulations and Directives: The PPL provides for the adoption of a Procurement Directive (‘PD’) by the regional Finance and Economic Development Bureau (‘the Bureau’).</p> <p>The key primary legislation on SNNPR public procurement is currently: Proclamation No. 146/2012 The Southern Nations, Nationalities and People’s Regional State Procurement and Property Administration Proclamation, which came into force July 28, 2012.</p> <p>This is supported by a comprehensive (amended) Procurement Directive 56/2010. The Public Procurement and Property Administration Agency (‘Agency’) published a Procurement Manual in 2015. It is also given the task of publishing Standard Bidding Documents (SBD) and other supporting documents as well as any e-GP strategy. It has issued an SBD for NCB but this is, by all accounts, not being followed. In practice, public authorities rely on the Federal SBDs for all ICB procurement and for NCB procurement of works. It appears that no SBDs are being used at NCB level for goods and services.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>International agreements PPL A.6 The provisions with regard to international agreements create some uncertainty and it is not clear exactly how they apply in a Federal context.</p> <p>1. Despite the exclusive mandate given to the Federal Government to enter into international agreement, it seems that there is an informal ‘understanding’ (which ostensibly contradicts the Federal constitution) that regional governments may enter into grant (but not credit) agreements with international organizations. This is not explicitly stated in the SNNPR constitution nor is it referred to in the PPL. This raises then the question of whether similar conditions that attach to grant agreements must also be respected in the same way as indicated in PPL A.6. This is not stated.</p> <p>2. The obligations attaching to grants and credits obtained by the Federal Government from international organizations are passed on to the regions through a ‘specific purpose grant’ which is given either by way of formal agreement, or by way of an attached letter setting out those obligations from the Ministry of Finance. Though these letters are considered legally binding (and always accepted by the regional states), the new Federal Administrative Proclamation provides that all such conditions will in future be passed on by way of formal agreement.</p> <p>Alignment between PPL and PD It is appropriate that the PPD (as secondary legislation) elaborates on the provisions of the PPL. However, in some cases the PPL lacks provisions which we would usually expect to see in primary legislation, such as candidates’/bidders’ rights to clarification and the right to judicial appeal. On other occasions, the PPD introduces a wide interpretation or additional provisions on important issues which are probably better placed in primary legislation, such as a full list of grounds for exclusion. Examples of particular note are highlighted in this assessment.</p>	✓ Yes	<p>International agreements. It would be preferable to have more explicit provisions in this respect:</p> <p>1. Making clear which, if any, international agreements may be entered into by the State (for example, grants) and setting out the application of the conditions imposed by the grantor.</p> <p>2. Explaining clearly how the obligations attaching to grants and credits obtained by the Federal Government from international organizations are passed on to the regions.</p> <p>Possibly by more explicitly regulating procurement funded through grants and loans by international financing institutions.</p> <p>Alignment between PPL and PPD Ensure that PPD and PPL do not overlap and create inconsistencies. Equally importantly, the PPD and the circulars should not introduce provisions that materially limit or inappropriately expand the provisions of the PPL.</p>

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Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>In terms of electronic procurement, the process does not yet appear to have begun.</p> <p>Application of contract law: There are provisions on administrative contracts in Proclamation No. 165/1960 (as amended), the Civil Code Proclamation, which entered into force on 5 May 1960 (“the Civil Code”). This was adopted under the old regime but has not yet been replaced. Title XIX contains General Provisions on the formation of administrative contracts, including the procedure for allocation of contracts by tender, as well as on the effects of administrative contracts. It also contains specific provisions on “concession of public service” and contracts for public works and supplies. The extent to which the provisions in Title 19 of the Civil Code are in force and/or applied in practice in public procurement and to contracts awarded under the procurement legal framework is unclear. The interplay between the Civil Code and the specialized public procurement legal framework is ambiguous. This creates legal uncertainty. Even the Federal Constitution is ambiguous. Article 55 gives to the Federal Government the power to enact civil laws deemed necessary to establish and sustain one economic community. In other respects, Regions may also adopt their own civil laws. There is another ‘understanding’ (not made legally explicit) that, since contract law is necessary for the maintenance of one economic community, the adoption of laws relating to contract are within the sole remit of the Federal Government and that Regions will not adopt their own provisions. Due to this lack of clarity on the standing of the civil code in the overall procurement framework of Ethiopia, we have not analyzed or commented in detail on the provisions of the Civil Code. See also note at indicator 1(a)(c) on the legal framework for public private partnerships.</p>		<p>Directives and similar advisory documents It is important for the transparency, clarity and legal certainty to ensure that all documents forming the legal and advisory framework for public procurement are published on a single, central and easily accessible repository. This includes all documents issued by the Agency but also those issued by any other body. It is also essential that any such documents are consistent and in line with primary legislation. They should not, as a general rule, create exceptions to the application of the public procurement legal framework, which would carry the risk of, at least, fragmentation and the possibility of undermining the operation of the public procurement system as a whole.</p> <p>Application of contract law: There is a significant lack of clarity on the applicable contract law. It appears that the 1960s civil code is still in force but its scope of application in the Regions is unclear. The Federal Government has the power to adopt any new civil laws, including any replacement of the 1960 civil code, but has not yet done so. Even though the Regions are entitled to adopt civil laws themselves, they may not do so if the scope of the civil law in question is one which is necessary for the maintenance of one economic community. Though not made legally explicit, there is an understanding that contract law would be one such law, so that the Regions could not adopt their own contract law and must instead follow that adopted by the Federal Government. One additional issue may be that the PPL is stated to override any inconsistent laws. To the extent that the civil code rules (if that applies), then the PPL would prevail.</p>		<p>Directives and similar advisory documents Require that all Directives and similar advisory documents are published on a single, central and easily accessible repository. This could be the Agency website. The repository must be kept up to date. Ideally, the repository should be in electronic form and also be easily searchable using a range of search terms so that all users can easily identify advisory and other documents of relevance to them. Ideally, the central repository should be comprehensive and thus also include sectoral specified documents, including defense and health related procurement as well as PPP legislation and guidance and links to relevant websites. Application of contract law: Given the importance of contract law to public procurement, the applicable contract law in SNNPR should be made explicit.</p>
(b) It covers goods, works and services, including consulting	The legal and regulatory framework covers the procurement of goods, works and services including consulting services, for procurement using public funds. The definitions of a “public	Not applicable.	Criterion is partially met.	✓ Yes	

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Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>services for all procurement using public funds.</p>	<p>body” and “public fund” are not sufficiently clear and create legal [and practical] uncertainty as to coverage. Defense and security procurement is generally excluded from the coverage of the PP, as are contracts between public bodies.</p> <p>PPL A.2 Definitions defines “procurement” as “obtaining goods, works, consultancy or other services through purchasing, hiring or obtaining by any other contractual means”. The terms “goods”, “works”, “services” and “consultancy services” are defined.</p> <p>“Public procurement” is defined as “procurement by a public body using public fund”. “Public fund” is quite broadly drafted to mean any monetary resource appropriated to a public body from the state revenue, as well as any subsidy from the Federal Government or aid, grants and credit put at the disposal of public bodies by foreign donors through the Federal government or internal revenue of the public body.</p> <p>PPL A.4(1) states that the PPL applies to “all procurement and property administration of the regional state”.</p> <p>Bodies subject to the PPL Public body: PPL A.2 Defines a “public body” (procuring entity) as “any public body, which is partly or wholly financed by the state budget”.</p> <p>Public enterprises, state owned enterprises and other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage of the PP, though from the definition of “public body”, the public enterprises using public funds should be subject to the PPL. However, the general perception and feedback from stakeholders in Ethiopia is that public enterprises are excluded from the scope of the PPL. This requires to be further reviewed in greater detail.</p> <p>Exemptions There is no exclusion for defense as in the Federal, but defense/security is, in any event, within the competence of the Federal Government, not the regions. Reference is made to the Federal matrix for further details.</p> <p>A.4(2) excludes from the coverage of the PPL “contracts a public body enters into with another public body for the provision of goods, works, services, consultancy or other services at cost”.</p> <p>There appears to be an inconsistency in the scope of application between the PPL and the Procurement Manual. In addition to the exclusions specified in the PP, para 1.3.1 of the Manual excludes procurement, which the Bureau decides to be carried out following other procedures in consultation with the relevant officials in the region.</p>		<p>Public funds: These are defined as covering both state funds and federal funds (provided by way of subsidy through a “block grant”). Given the definition of “public procurement”, this means that the PPL applies also to procurement using Federal funds. This appears to contradict the Federal Financial Administration Proclamation which states that all Federal funds must be spent according to Federal laws. To the extent, therefore, that Federal funds are used, it seems that the Federal PPL should be applied. There is some debate about whether, when Federal funds are used, it is the Federal PPL should be applied. There is thus a potential conflict in the SNNPR PPL and the scope of application of the PPL is thus unclear: does it apply to both State and Federally funded contracts (as the wording of the PPL suggests) or does it apply only to State funded contracts with Federally funded contracts subject to the Federal PP? The apparent anomaly may give rise to disputes over the application of the PPL, and it would be better to clarify the position.</p> <p>Bodies subject to the PPL The definition of “Public Body” appears unclear as it does not define the specific entities subject to the PPL.</p> <p>Public enterprises, state owned enterprises, other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage of the PPL. The drafting of the definition of a “public body” is not sufficiently clear on the question of whether, or when, these enterprises or organizations are subject to the PPL.</p> <p>In addition, it is not clear whether an organization not generally within the scope of the PPL but in receipt of public funds for a specific project is required to comply with the PPL for the contracts awarded using those public funds.</p> <p>There is, therefore, a general lack of transparency and clarity and significant uncertainty as to the scope of the PPL in terms of which bodies are required to comply with the PPL.</p> <p>Exemptions PPL Contracts between public bodies for the provision of goods, works, consultancy or other services at cost. PPL A.4 (2) is a broadly drafted provision which has the potential to reduce transparency and competition if over-used. The impact of this provision is unclear, particularly as there is a lack of clarity as to which bodies fall within the definition of “public body” (see notes above).</p> <p>The inconsistency between the PPL and the Manual should be remedied.</p>		<p>Public funds: The scope of application of the PPL needs to be clarified in respect of the source of public funds. Does it apply to contracts funded by both State and Federal Government or only to those funded by the State?</p> <p>Bodies subject to the PPL For legal certainty, it is desirable to list the categories of public bodies in the procurement legislation itself. Additionally, a list of designated public bodies, state enterprises and other bodies subject to PPL could be put together by the Agency and published on the Agency’s website for transparency and certainty.</p> <p>It may be advisable to consider more detailed provisions. One possibility is requiring public arrangements to be subject to the PP, save in specified circumstances. Examples of such excluded circumstances could include genuine co-operation between public bodies to deliver public services/tasks at cost; direct award of contracts between public bodies or assignment of tasks/functions where the direct award or assignment of tasks/functions and participating bodies are designated by specific laws. Similarly, it may be appropriate to consider clear provisions dealing with the</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria [1(a) Scope of application and coverage of the legal and regulatory framework]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	Pool procurement system: The procurement at zonal and woreda level is centralized in the respective finance offices which consolidates requirements of the sector offices and procure through better competitive procedure. The primary and secondary documents in the Region do not cover the centralized procurement arrangement at local level.		Pool procurement system: The centralized procurement arrangement at local is not covered in the legislation. More importantly, the arrangement (pool) contradicts the procurement arrangement and delegation stipulated in the procurement legal documents that gives delegation to PBs to establish procurement capacity and carry out procurement for their own need.		situation where an entity is wholly owned by a public body, carries out public tasks and is not active on the market. Pool procurement system: Consider revising the primary legislation to accommodate the centralized procurement arrangement (pool system) at local level.
(c) PPPs, including concessions, are regulated.	The PPL provides for separate PPP legislation by the Bureau, but no such legislation has been identified.	Not applicable.	Criterion is not met. There is no separate legislation issued for PPP as provided in the PPL.		To the extent that PPPs are being initiated in SNNPR, it is imperative that a Directive on PPPs be issued.
(d) Current laws, regulations and policies are published and easily accessible to the public at no cost	The PPL has been published in the regional Gazette but the assessment team has not been able to identify a website for the Agency that provides access to procurement legislation. The Procurement Manual (para 2.1) specifies that the PP, PD, manual and SBDs are to be made accessible to the public through printed copies and regional mass media only.		Criterion is not met. No Agency website can be found so there is no readily accessible repository of the prevailing primary and secondary legislation. Printed copies, if made available, will be subject to cost and delivery problems so that free access to a website would be preferable.		It is important to provide a readily accessible website for procurement documents. Consider publishing the procurement documents on centralized portal (at least on the Federal PPA's website as a short-term solution).

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	The PPL provides that public procurement contracts shall be awarded through Open Bidding, unless otherwise provided for in the PPL. The PPL defines situations where alternative procurement methods can be used, with grounds for justification clearly specified. General note: use of terms "candidate" and "bidder". In the English language version of the PPL both "candidate" and "bidders" are defined terms. A candidate is a person invited or who has applied to take part in public procurement. A "bidder" is a person submitting a bid. However, the use of these defined terms within the PPL is not always complete or correct. For example, PPL A.26 refers to communications between candidates and public bodies being in writing with no reference to bidders and PPL A. 30 (2) refers to informing "candidates" of reasons for rejection of bids. Open Bidding PPL A.33(2) provides that public procurement contracts shall be awarded through open bidding, except as otherwise provided for in the PPL. Open bidding is thus the presumed form of procurement method, at the top of the hierarchy of procurement methods. This is confirmed in PPD 15.2 and Manual 4.1.1.1.	Not applicable.	Criterion is met.		

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Date: June 2021

Assessment criteria [1(b) Procurement methods]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>Other competitive methods: PPL A.33(1) lists a range of other competitive methods and non-competitive award. These methods are permitted only where conditions set out in the PPL are satisfied (PPL A.33(3)). Where a public body uses a method of procurement other than open bidding, PPD A.15.4 provides that they shall record a statement of the grounds and circumstances on which it relied to justify use of that method.</p> <p>Other competitive methods laid down in the PPL are: Request for Proposals (consultancy services), Two stage Tendering, Restricted Tendering, and Request for Quotation, although the name of the RFQ procedure varies between the definition and the provisions (the title of A.55 reads “advertised procurement” in the English version although the term RFQ is used in the text). It is different from the traditional RFQ procedure.</p> <p>The conditions for use of methods other than the open bidding method are listed in the PPL.</p> <p>PPL A.55 Request for Quotations (RFQ) may be used for (1) the purchase of readily available goods or (2) for procurement of works or services for which there is an established market; so long as the estimated value of the contract does not exceed the specified threshold (the current maximum thresholds for use of RFQ are Ethiopian Birr: Works 950,000; Goods 750,000; Consultancy Services 180,000; Services 450,000.)</p> <p>Selection of suppliers to whom RFQ is issued: unlike the traditional approach, the Request for Quotation procedure in SNNPR requires the posting of an RFQ on a visible notice board (but does not appear to envisage the publication of an advertisement) and does not seem to envisage the dispatch of RFQs to potential bidders. No minimum number of invitees is, therefore, required.</p> <p>Restricted Tendering is permitted where one of three conditions is met: (1) PPL A.49(1) where the required object of the procurement is available only with limited suppliers; (2) PPL A.49(2) where the cost of the procurement is below specified thresholds (the maximum threshold for use of Restricted Tendering is Ethiopian Birr: Works 6,000,000; Goods 1,500,000; Consultancy Services 900,000; Services 1,200,000); or (3) PPL A.49(3) where a previous competitive procurement failed (PPD A.23.4 sets out further detailed conditions to be met).</p> <p>In the case of condition 1, the invitation is sent to all known suppliers. In the case of conditions 2 and 3, the invitation to bid is sent to suppliers chosen from a suppliers list. This approach has significant potential for favoritism and, may result in less-than-optimum outcomes if conditions of entry to suppliers list are not sufficiently rigorous.</p> <p>PPL A.53 Requests for Proposals may be used where a public body seeks to obtain consultancy services or contracts for which the component of consultancy services represents more than 50% of the contract.</p> <p>PPL A.57 Two-stage bidding may be used, in summary, (1) where it is not feasible for the public body to formulate detailed specifications or to identify the characteristics of the requirements in order to obtain the most satisfactory solutions; (2) for genuine research and development; (3) where there is a failure in a previous bid procedure due to failure to clearly describe the object of the procurement or absence of clear and complete specifications; (4) where technical characteristics or nature of services mean it is necessary for the public body to negotiate with suppliers. The negotiations provisions are quite problematic. Though they are permitted with the successful bidder only (PPL A.58(7)), the wording of the PPL is quite broad (A.45), allowing the public body to (1) negotiate on matters of contract performance not dealt within the bidding document; and (2) except in a single source procurement, the public body may not negotiate on the price offered by the successful bidder and on other issues related to price.</p>		<p>PPL: Use of notice to select suppliers in Request for Quotations (PPL A.56). Though designed for small value procurement, it is not clear that such a method of notification will attract sufficient competition. This will depend on the location of the notice board and on the identity of bidders likely to see it.</p> <p>Use of supplier list to select suppliers in and Restricted Tendering (PPL A.50). The use of the supplier list to select bidders, rather than using a public advertisement, has the potential to reduce competition. Whilst this can be an appropriate way to select suppliers in low-value RfQ processes, as it can reduce administration and speed up procurement, this is dependent on the way in which supplier’s list operates in practice. It can be a problem if the way in which the supplier list is operated lacks transparency or suppliers have practical problems getting on to the suppliers list. It can also be problematic if it merely creates an additional layer of bureaucracy, with suppliers required to submit information twice, once for inclusion in the Supplier’s List and another time as part of the bid.</p> <p>Current provisions of the PPL provide for a wide interpretation and significant (inappropriate) flexibility and variations to be negotiated. This raises serious concerns on the transparency of the procurement process.</p>		<p>PPL: Use of notice to select suppliers in Request for Quotations (PPL A.56). Ensure that this form of notification in fact produces reliable and sufficient competition.</p> <p>Use of supplier list to select suppliers in Restricted Tendering (PPL A.50). Ensure that operation of and admission to supplier lists is transparent and efficient.</p> <p>Ensure that the use of the Supplier’s list does not create an additional layer of bureaucracy, with suppliers required to submit information twice, once for inclusion in the Suppliers List and another time as part of the bid.</p> <p>Current provisions of the PPL and PPPD that provide for a wide interpretation and significant flexibility and variations to be negotiated may be reviewed as this raises serious concerns on the transparency of the procurement process.</p> <p>In principle, a well-drafted procurement legislation should provide for a wide and fit-for-purpose menu of procurement methods. Accordingly, the possibility for the use of non-standard procedures should be eliminated.</p>

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	<p>The PPD A. 16.22.1 refers to “Discussion with Bidders” (on minor issues and on the procurement requirement under two stage bidding) and it is not clear whether this is another term for “negotiations”. Again, another example of inconsistencies between the primary (PP) and secondary legislation (PD).</p> <p>PPL A.59 requires international competitive bidding in specified cases including where the value of the contract exceeds specified thresholds. The thresholds are Ethiopian Birr: Works 150,000,000; Goods 50,000,000; Consultancy Services 7,500,000; Services 21,000,000. Below these thresholds, the procurement shall be carried out on the basis of national competitive procurement (PPD A. 16.2).</p> <p>Non-standard procedures: PPD A.30 permits public bodies to use non-standard procedures, not laid down in the Proclamation/Directive, upon securing prior approval of the Agency. The Agency’s power to give such approval is provided for in PPL A.15(5). PPD A.30.2 lists information to be provided by the public body to the Agency.</p> <p>Non-competitive method: The non-competitive method is Direct Procurement (single source).</p> <p>PPL A.51 Direct Procurement (without competition)/single source is permitted in eight specified circumstances, listed at PPL A.51(1)(a) to (h), subject to satisfaction of conditions, including in some cases financial caps, set out in PPL A.51 and further elaborated in PPD A.25 (Single Source), which adds some circumstances: change in requirement due to change in design, materials, changes in weather, topography or soil type; maintenance of latest vehicles in the company recognized / delegated by the supplier.</p> <p>The eight specified circumstances are, in summary: absence of competition for technical reasons; additional supplies of goods which are intended as replacement or extension of existing supplies; additional necessary works required due to unforeseeable circumstances; repetition of similar works; continuation of consultancy services; emergency; special procurement needs of the public body; and purchase in advantageous conditions.</p> <p>PPL A.51(2) Direct procurement is also permitted for small-value procurement. In this context, PPD A.25 (7) permits direct award for low-value travel costs to solve problems encountered on mission (5000 Birr, subject to aggregated today limit in one fiscal years of 60,000 Birr).</p> <p>PPL A.51 does not state that Direct Procurement)/single source is to be used only exceptionally.</p> <p>No contract required in some cases: PPL A.51(3) there is no requirement to conclude a contract in writing in respect of direct procurements effective in accordance with PPA.51(1)(g) and (2) in two cases: 1. “where situations arise in which shopping becomes necessary to meet the special procurement needs of public bodies.” PPD A.25.8 elaborates on A.51(1)(g) and refers to this being used for “an item needed for study or research and which is not available from regular suppliers or open market procurement is economical. It is not clear whether this is an exhaustive description of the situations where “special procurement needs” arise. 2. A.51(2) low value procurements. PPD A.25(7) describes low value procurement for the purposes of PPL A.51(2) as one-time purchase amount up to Birr 5000 and aggregate purchase up to Birr 60,000.</p>		<p>Non-standard procedures: PPD A.31. This provision raises two questions: (1) if applications to use non-standard procedures are prevalent, does this mean that the standard procedures are not fit-for-purpose, thus pushing public bodies to resort into non-standard procedures; and (2) how transparent and competitive are the non-standard procedures which are conducted following authorization from the Agency?</p> <p>PPL A.51 does not state that Direct Procurement is to be used only exceptionally. It is recommended that the exceptional nature of direct procurement is made explicit in primary legislation.</p> <p>A.51(3) No contracts required in some cases: It is not clear whether the PPD sets out an exhaustive description of the situations where “special procurement needs” arise. Even if it is limited to this one case, it does seem unusual not to require some form of written contract for items purchases, not least for audit purposes. Whilst written contracts for low value travel costs encountered on mission may not be practical, care needs to be taken with low value contracts in general.</p>		<p>Upon review of the procurement legislation whether it provides for a wide and fit-for-purpose menu of procurement methods, reconsider eliminating or restricting the possibility for the use of non-standard procedures.</p> <p>PPL A.51 Direct Procurement (without competition) Add provision stating that Direct Procurement is to be used only exceptionally, and “emergency” is not created by the lack of planning or dilatory conduct on the part of public body.</p>
<p>(b) The procurement methods prescribed include competitive and less competitive procurement procedures and</p>	<p>The PPL sets out conditions for use of procedures other than the open bidding procedure which are generally linked to the nature, complexity or risk involved in the contract which is the subject of the procurement. The PPD sets out thresholds applying to the use of the competitive procedures with the lightest methods of procurement permitted for low value</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		

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provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.	<p>tenders. The procurement methods and processes are proportional to the value and risks of the underlying project activities. The range of options does provide, in theory, for a procurement system in which value for money, fairness, transparency, proportionality and integrity are achieved. Direct award (single-source procurement) is permitted only where specified grounds for justification are satisfied.</p> <p>“Lighter” methods of procurement are available where the benefits of “process-heavier” methods are not evident or necessary.</p> <p>It is yet to be seen, however, whether the requirement to post an RFQ on a notice board is sufficient to ensure suitable competition.</p> <p>More process-heavy methods are permitted in specified cases, in particular for more complex contracts.</p>				
(c) Fractioning of contracts to limit competition is prohibited.	<p>Fractioning of contracts to avoid open competition is prohibited when it aims at circumventing competitive rules.</p> <p>PPL A.33(4) provides that Public Bodies shall not split procurement requirements for a given quantity of goods, works or services with the intention of avoiding the preferred procurement procedure.</p> <p>In addition:</p> <p>PPD 24.13 emphasizes the prohibition of splitting procurement activities for the purpose of using procurement methods that are less competitive.</p> <p>PPD A.11(b), assigns responsibility to the Head of the public body to ensure that the procurement plan prepared by the procurement unit consolidates similar requirements for bulk procurement before the procurement plan is approved.</p> <p>The Procurement Manual (para 3.1.2) specifies that procurement packages shall not be split into small units for the purpose of procuring through less competitive methods and/or to secure approval at lower level.</p>	Not applicable.	Criterion is met.		
(d) Appropriate standards for competitive procedures are specified.	<p>The PPL requires use of Open Bidding as the default procedure but permits public bodies to use other competitive procedures subject to meeting conditions set out in the PPL as described in (a)(b)(c) above, which generally reflect the nature and complexity of the contract concerned.</p> <p>Where the procuring entity wishes to use a non-standard procedure, not provided for in the PPL or PD, prior approval from the Agency is required (see comments above).</p>	Not applicable.	Criterion is met.		

1(c) Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criteria [1(c) Advertising rules and time limits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement	<p>The legal framework requires that procurement opportunities are publicly advertised, at least, in one national newspaper and where the public body finds it necessary, on national radio, television or other mass medium having national circulation. The PPL sets out circumstances where advertisement is not necessary.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>It is unclear in the context of the Federal system whether ‘national’ means at the federal level or at the State level. It is assumed that it means country-wide, i.e., at Federal level, but this needs to be confirmed.</p>		<p>It may be inefficient and technically difficult, in absence of an e-procurement platform to publish all notices, but adoption of an e-procurement platform where</p>

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<p>opportunities is explicitly justified (refer to indicator 1(b)).</p>	<p>Publication: PPL A.35 requires advertisements for open to be advertised in at least one national newspaper of general circulation. Where necessary the public body may, in addition advertise on national radio, television.</p> <p>The PPD (para 16.2.1) requires that procurement opportunities under national competitive bidding procedure be advertised at least once in a newspaper that has national circulation.</p> <p>The PPD (para 17.4.b) allows public bodies, at their discretion, to advertise bid opportunities through the Agency's website.</p> <p>On the other hand, the procurement manual (para. 4.2.1.2) requires public bodies to advertise bid opportunities on their own website, if they have websites.</p> <p>Publication of an advertisement is not required in circumstances specified in the PP, e.g., in the case of Restricted Bidding or direct contracting.</p>		<p>Publication of notices is done primarily through newspapers, which does not provide full transparency of procurement procedures.</p>		<p>the procurement information is transparently disclosed, is absolutely critical for increasing the transparency and disclosure of procurement information.</p> <p>Until e-procurement is introduced and in use, consider use of a centralized website (federal PPA's website) for publication of procurement opportunities.</p>																																																																								
<p>(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.</p>	<p>Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of the procurement, for potential bidders to obtain documents and respond to the advertisement.</p> <p>The minimum time periods are defined in PPD Annex 3 and are extended when international competition is solicited.</p> <p>PPD A.11 requires the Public Body to fix the time table for the procurement process. In doing so, it must take into consideration matters including the nature of the market, time required for preparation of bid documents and compliance with the minimum "floating bid periods" (see below). Public bodies should allow, as far as possible, additional time for bidders to prepare bid documents in order to create a conducive environment for wide competition.</p> <p>PPD Annex 3 (extract below) sets out the "Floating Period of Bids". These are minimum bid periods and Annex 3 confirms that depending on the type of procurement and the conditions of the market public bodies may allow bidders extra time.</p> <p>The floating bid periods distinguish between works, goods, consultancy services and other services and in each case having longer time periods for submission of bid documents where the procurement is complex. Additional time is also provided for where there is international competitive bidding (ICB). Terms LIB and LNB do not appear anywhere else in the procurement legislation.</p> <table border="1"> <thead> <tr> <th rowspan="3">No</th> <th rowspan="3">Category</th> <th rowspan="3">Complexity</th> <th colspan="4">Minimum Floating time (# of days)</th> </tr> <tr> <th rowspan="2">ICB</th> <th rowspan="2">NCB</th> <th colspan="2">Restricted Tender</th> </tr> <tr> <th>LIB: Involving foreign bidder</th> <th>LNB: Only domestic bidders</th> </tr> </thead> <tbody> <tr> <td rowspan="2">1</td> <td rowspan="2">Works</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>21</td> <td>35</td> <td>21</td> </tr> <tr> <td rowspan="2">2</td> <td rowspan="2">Goods</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>15</td> <td>35</td> <td>15</td> </tr> <tr> <td rowspan="4">3</td> <td rowspan="2">Consultancy REOI</td> <td>Complex</td> <td>14</td> <td>10</td> <td></td> <td></td> </tr> <tr> <td>noncomplex</td> <td>10</td> <td>7</td> <td></td> <td></td> </tr> <tr> <td rowspan="2">Consultancy RFP</td> <td>Complex</td> <td>45</td> <td>30</td> <td>35</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>15</td> <td>21</td> <td>15</td> </tr> <tr> <td rowspan="2">4</td> <td rowspan="2">Other services</td> <td>Complex</td> <td>45</td> <td>30</td> <td>45</td> <td>30</td> </tr> <tr> <td>noncomplex</td> <td>35</td> <td>15</td> <td>30</td> <td>15</td> </tr> </tbody> </table> <p>PPD Annex 3 also requires that, for single source procurements, public bodies shall set deadlines for submission of bid documents taking into account the type, urgency and complexity of the procurement as well as the scope of participation of bidders in that procurement and other relevant considerations.</p>	No	Category	Complexity	Minimum Floating time (# of days)				ICB	NCB	Restricted Tender		LIB: Involving foreign bidder	LNB: Only domestic bidders	1	Works	Complex	45	30	45	30	noncomplex	35	21	35	21	2	Goods	Complex	45	30	45	30	noncomplex	35	15	35	15	3	Consultancy REOI	Complex	14	10			noncomplex	10	7			Consultancy RFP	Complex	45	30	35	30	noncomplex	35	15	21	15	4	Other services	Complex	45	30	45	30	noncomplex	35	15	30	15	<p>Not applicable.</p>	<p>Criterion is met.</p>		
No	Category				Complexity	Minimum Floating time (# of days)																																																																							
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3	Consultancy REOI	Complex	14	10																																																																									
		noncomplex	10	7																																																																									
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	<p>Annex 3 also makes the same statement in respect of the RFQ procedure defined in the PPL (posted on notice board) but the procurement manual (para 4.6.7) specifies that the period for submission of the quotation is 3 days from date of posting the notice.</p> <p>In the case of two stage bidding, the applicable minimum floating time for the first stage in the procurement process is the same time as specified for complex procurement either for ICB and NCB procurement, as the case may be. The minimum floating time for the second stage is the time as specified for complex procurement under LIB and LNB.</p>				
(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).	<p>Publication in national newspaper is mandated as described in (a) above. In the case of international competitive bidding, public bodies are mandated to ensure that the advertisement is published in a newspaper that may attract foreign bidders.</p> <p>Publication on Agency's website is also permitted as described above although the Agency has not yet established website.</p>	Not applicable.	<p>Criterion partially met.</p> <p>There is a physical constraint to access press agency for publication of IFBs. PBs have to appear in person in the press agency that requires travel from the work location to Addis Ababa, which is inefficient and transaction intensive.</p>		Streamline the process for advertising bids on the newspaper in collaboration with the Press Agency. Consider establishing email communication and wire transfer for payment of services charges.
(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.	PPD A.16.2.3 sets out the information to be included in the invitation to bid advertisement for national and international competitive bidding. This includes a description of the requirement, qualification criteria, availability of bidding documents, amount of bid security and bid closing time and place. In the case of international competitive bidding, the invitation to bid advertisement and bidding document must be prepared in English (PPD para 17.4).	Not applicable.	<p>Criterion is partially met.</p> <p>When placing an advertisement of procurement opportunities in the newspaper, public bodies receive no planned date of publishing given. Therefore, the published invitation does not include the exact date for submission of bids. Instead, the period for preparation of bids is included.</p>	✓ Yes	The process of placing an ad in the newspaper should allow for agreeing on the publishing date thus enabling the public bodies to calculate and include dates of submission of bids and their opening. Or else, the PBs should consider specifying the bid closing/opening date in the bidding documents.

1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criteria [1(d) Rules on participation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.	<p>The legal framework requires candidates to satisfy qualification requirements set out in the bidding documents. A non-exhaustive list of qualification criteria is set out in the PPL. The principles of non-discrimination, transparency and fairness are underlying requirements.</p> <p>Non-discrimination - General principles PPL A.5(2) refers to the principle of non-discrimination among candidates on grounds of nationality or race or any other criteria not having to do with their qualification, except in case of preference specifically provided for in the PPL. This is reinforced in para 4(b) of the PPD which, however, does not refer to 'race'.</p> <p>PPL A.5(3) refers to the principles of transparency and fairness on the basis of which decisions are given.</p> <p>Exclusion See comment at 1(d)(c).</p> <p>Qualification</p>	Not applicable.	<p>Criterion is not met.</p> <p>Overall, the currently existing procedures and requirements do not offer full fairness with respect to the participation of bidders.</p> <p>Qualification of foreign bidders: The obligations on foreign bidders in terms of qualification requirements and evidence</p>		Ensure consistency of all levels of legislation with the requirement of the PPL that public procurement will comply with the principle of non-discrimination, and remove the provisions that differentiate the qualification criteria depending on the bidder's nationality. The bidder/candidate should not be denied qualification for reasons unrelated to its capability and resources to successfully perform the contract. The qualification requirements should be defined as skills, experience,

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	<p>PPL A.24 refers to the principle of non-discrimination, providing that candidates shall not be discriminated against “on the basis of nationality, race or any other criterion not having to do with their qualifications”. This is subject to price preference provisions in PPL A.25.</p> <p>PPL A. 28 provides that, in order to participate in public procurement, candidates must meet criteria listed in PPL A.28 “and such other criteria, as the public body considers appropriate under the circumstances.”</p> <p>The criteria listed in PPL A.28(1) require candidates to have relevant professional and technical qualifications and competence, financial resources, equipment and other facilities, capability, experience, reputation and personnel. Candidates must have legal capacity to tender the contract, have a bank account and not be insolvent or bankrupt or in analogous situations. They must not be subject to a suspension from participation in public procurement and must have the relevant trade license and have paid taxes according to Ethiopian tax laws.</p> <p>However, the PPD provides a list for disqualification of the bidders, which is not contained in the PPL and includes the following grounds: when the bidder supplies goods, works or services originating from a country with which Ethiopia has a boycott/embargo; provides goods, works or services originating from a country that is in the UN Security Council list of sanctions; commits an act violating the provisions of the PPL and PD; when the bidder is debarred by Agency; bidder has offered bribe to an official or procurement staff to influence the public body’s decision; bidder has committed embezzlement, fraud or connivance (collusion) with other bidders.</p> <p>Suppliers list: They must also be registered on the suppliers list A.28(1)(d). There are some references in the PPL to the suppliers list: PPL A.15(6) Agency function: introduce an efficient system of listing of interested suppliers and receive, review, and record applications by candidates and distribute the suppliers list. PPL A.28(1)(d) Pre-qualification requirements. PPL A.50(2) Restricted tenders - selection of bidders from the suppliers list.</p> <p>PPL A.28(5) provides that the public body shall disqualify a candidate who submits a document containing false information for the purposes of qualification or if qualification information is materially inaccurate or materially incomplete.</p> <p>PPL A.28(2) A public body may require candidates to provide appropriate documentary evidence or other information so that the public body may satisfy itself that candidates meet the qualification criteria. PPL A.28(3) requires qualification requirements to be set out in the bid documents and apply equally to all candidates. Evaluation of qualification must be based on published criteria and procedures (PPL A.28(4)).</p>		<p>(other than in the case of trade licenses PPD Annex 6) including acceptance of equivalent qualifications and/or documents is not expressly provided for.</p> <p>PPL A.28 provides that public bodies may use additional qualification criteria “as they consider appropriate under the circumstances”. The general principles in PPL A.5 should apply to the setting of additional qualification criteria. PPA.28 does, however, provide a potentially wide margin of discretion to public bodies and, if not carefully monitored, it raises the possibility of inappropriate, disproportionate or discriminatory qualification criteria, which cannot be challenged anyway through the complaints review mechanism.</p> <p>The grounds for eligibility and disqualification of the bidders in the PPL and PPD are very different, creating confusion as to which list applies and/or whether all requirements should be cumulatively met.</p>		and resources necessary to perform the contract.
(b) It ensures that there are no barriers to participation in the public procurement market.	<p>Qualification criteria: PPL A.28(1)(f) Qualification requires that candidates have renewed their trade license and have fulfilled their obligations to pay taxes according to Ethiopian laws. PPD A.16(4) confirms these requirements and requires domestic bidders to present tax and registration certificates. It provides at 16(4)(2)(b) that foreign bidders may submit registration certificates or trade license issued by the country of establishment.</p> <p>Foreign bidders PPL A.28(1)(f) – qualification - requires candidates to demonstrate that they have renewed trade licenses and fulfilled their obligations to pay taxes according to Ethiopian tax laws. PPD 16.4.2(b) clarifies that in the case of foreign bidders they must submit a business organization registration certificate or trade license issued by the country of establishment.</p> <p>Price preference PPL A.25 sets out preference provisions. It allows for a price preference margin, to be determined by a Directive issued by the Bureau, for goods produced in Ethiopia, for works</p>	Not applicable.	<p>Criteria is not met. Please see the gap explained under the criterion 1 (d) (a).</p> <p>PPD A.16.20.5 is cause for concern given the manner states Micro and Small Enterprises are being incentivized as a result of the definition of MSEs thus the exclusion of ‘properly’ defined MSEs from the market below Birr 10 million.</p>		<p>The recommendation proposed under the criterion 1 (d) (a) above applies.</p> <p>Ensure consistency of rules including that obligations that change the rights of parties are incorporated in the primary legislation.</p> <p>Support the different incentives (“MSEs” and “mandatory sub-contracting”) with adequate study and ensure consistency</p>

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	<p>carried out by Ethiopian nationals and for consultancy services rendered by Ethiopian nationals.</p> <p>Any goods to which more than 35% of the “value added” occurs in Ethiopia shall be deemed to be one which is produced in Ethiopia.</p> <p>PPL A.25 also provides that where evaluation of bids results in the award of equal percentage points for bidders offering similar price and quality, preference shall be given to local goods, services, or companies.</p> <p>Preferences must be clearly stated in the bidding documents.</p> <p>In addition, a “Set Aside” may be allowed for small and micro-enterprises. Details of these set asides are included in PPD 16.20.5 for contacts with a value below Birr 10 million. The definition of MSEs is not based on capital and personnel only but rather, targets the unemployed youth (graduates from universities, TVETs etc).</p> <p>In addition, the PPD states that contractors awarded works contracts are <u>required</u> to subcontract to MSEs. A provision not included in the PPL. Further, the mandatory percentage of the required subcontracts appears inconsistent within the PD: para 6.1.1. (E) specifies 10% of the contract amount to be subcontracted whereas para 6.1.1 (F) specifies 20% including VAT. The Regulation No. 172/2019 “Market Support for Organized Micro and Small Enterprises of The Southern Nations, Nationalities and People’s Region State” specifies 40% mandatory sub-contracting to MSEs.</p>		<p>Mandatory sub-contracting: such an obligation should be placed in the PPL since new obligations which change the rights of parties should not be created in secondary legislation. Besides, it is important to assess the impact on value for money.</p>		<p>with other social and economic objectives including the achievement of value for money in procurement. It is recommended to study the use of the requirements and their impact as well as ability of both the industry and MSEs to meet the requirements. This study can be carried out jointly at the country level as similar schemes at both federal and regional levels and the Regions are looking to the Federal government for guidance.</p>
<p>(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.</p>	<p>PPL A.28 sets out requirements for bidder qualification. See indicator 1 a) above. Grounds for exclusion from qualification include debarment PPL A.28(1)(e), although there is no reference to any debarment procedure or requirement for due process in the PPL.</p> <p>Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for: participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings, or the equivalent of those offences.</p> <p>PPD A.16.21 Disqualification of bidders: lists additional grounds for disqualification of bidders (not candidates): see (a) above.</p> <p>PPL A.30 Rejection of bids, proposals and quotations: The grounds for rejection of bids, proposals and quotations are numerous and broadly drafted providing ample opportunity for public bodies to reject bids but also abandon procurement processes in both appropriate and inappropriate circumstances. Public bodies are required to disclose, but not justify, the reasons for rejection and this lacks transparency. Public bodies shall incur no liability for rejection in accordance with PPL A.30(1).</p> <p>PPL A.30.1(f) provides that public bodies may reject bids, proposals or quotations where there is proof of concerted practices, collusion [connivance] and the bidding is not sufficiently competitive as a result.</p> <p>Suspension (otherwise known in other jurisdictions as “Debarment”)</p> <p>PPL A.75(5) Review by the Agency: establishes a process which may lead to a decision by the Agency to suspend a supplier from participation in public procurement for a definite or indefinite period (debarment).</p>	<p>Not applicable.</p>	<p>Criterion is partially met.</p> <p>Exclusion for criminal and corrupt activities: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for specified offences.</p> <p>PPL and PPD Alignment It appears that PPL and PPD are not fully aligned in terms of eligibility criteria (PPL A.28) and grounds for disqualification of bidders (PPD A.16.21). More importantly, all grounds for eligibility and qualifications of the bidders should be set out in detail in primary legislation, the PPL.</p> <p>Suspension (debarment) PPL A.75 Use in the English language version of the PPL of the term “complaint” in the context of suspension/debarment is potentially misleading as the term is commonly understood to refer to procurement review and remedies.</p>		<p>Include specific exclusion provisions in PPL for criminal and corrupt activities.</p> <p>All grounds for the eligibility and qualifications of the bidders should be set out in detail in the primary legislation, the PPL.</p> <p>Suspension (debarment) Consider use of alternative term to “complaint” in the context of suspension/debarment.</p>

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	<p>The process is triggered when the Agency receives a notification from a public body of alleged misconduct by bidders or suppliers. The circumstances of misconduct include violation of the procurement law, refusal to sign a contract, fraud, falsifying documents, collusion [connivance], corruption and damage due to failure in contract delivery.</p> <p>The Agency must send a written notice of the complaint to the supplier, and it may require the person concerned to appear in person and give evidence or to seek professional assistance. The Agency is required to review and make a decision within 15 working days of receipt of such complaint. The complaint may result in debarment, but also a written warning.</p> <p>PPD A.49 sets out a right of appeal against a debarment decision to the competent court.</p> <p>PPD para. 47 to sets out in more detail the grounds for debarment, and process for review. It also details the penalties, including periods of debarment which range from 6 months to 2 years, depending on the nature and gravity of the default/offence committed. There is the potential in some cases, including fraud, corruption, collusion [connivance], for permanent debarment. The PPD further requires notice of debarment to be posted on the Agency's website, but the agency has no website even during the time of assessment.</p> <p>The Manual (para 2.7) provides detailed procedures for the review of reports of misconduct submitted by public bodies against bidders or suppliers/contractors to the Agency. The procedure requires the Agency to secure responses and evidence from the alleged bidder/contractor/supplier and to weigh the evidence as per the public procurement rules. The decision should be in writing and show the nature of the misconduct, reasons for and the penalty. In the case of bidders involved in corrupt activities, the administrative penalty ranges between not less than 2 years and indefinite debarment.</p>		<p>Suspension (debarment) Right of referral to Agency: it appears from the PPL that the trigger for investigation leading to possible suspension/debarment is limited to where a public body notifies the Agency, and that other stakeholders are not afforded the right of referral. Whilst procuring entities are generally best placed to identify problems, the right to referral should be widened in the PPL to cover other stakeholders such as auditors, regulatory authorities, private sector and civil society.</p> <p>There is no clarity on what resources and skills the Agency has for investigating and proving corruption, bribery, fraud, collusion or coercion. With respect to debarment for nonperformance or poor performance, it is not clear whether one case is sufficient to debar a firm. Additionally, it is not clear whether debarment extends to affiliates and parents of debarred entities.</p> <p>Reference to a right of appeal against a debarment decision and venue for appeal should be included in the PPL (primary legislation).</p>		<p>Right of referral to Agency: widen right of referral to cover other stakeholders such as auditors, regulatory authorities, anti-corruption commission, private sector and civil society.</p> <p>Include reference to a right of appeal against a debarment decision and venue for appeal in the PPL (primary legislation, currently such right is provided for under PPD A.50).</p>
(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.	The legal framework does not establish rules for participation of state-owned enterprises in public procurement.	Not applicable.	<p>Criterion is not met.</p> <p>PPL does not establish rules for participation of state-owned enterprises in public procurement.</p>		Amend PPL to include provisions on rules for participation of state-owned enterprises as bidder to promote fair competition.
(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.	<p>The legal framework details procedures used to determine eligibility and ability to perform a specific contract. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. Multi-stage procedures are permitted for specified types of contracts and circumstances for use are defined.</p> <p>In general, bidders are required to submit qualification information with their bids. The Federal Standard Bidding Documents (SBD), which is used in the Region (ICB and works contract) provide a section for bidders to demonstrate their qualification against the requirement specified in the bidding document. The PPD (Annex 7) provides a detailed description of the qualification requirements on works procurement regarding experience, finance, and turnover, which are differently applied between local and foreign bidders. For example, in terms of relevant experience, a local contractor must demonstrate completion of one contract of a similar size as main contractor or as subcontractor in the last 10 years which is 70% or more completed, whereas a foreign contractor must do the same for at least two contracts of similar size as main contractor or sub-contractor in the last 10 years which are 80% or more completed.</p> <p>For more complex procurements, Prequalification proceedings may be used, with an initial evaluation stage focused on evaluation of a bidder's suitability to ability to perform a specific contract (PPD A.20). In this case, only prequalified bidders are invited to submit a tender. PPD A.20(2) provides that prequalification proceedings may be used for procurement of high value or complex works, turnkey contract for works, acquisition of machinery or information technology; supply and installation of goods or equipment of considerable importance and</p>	Not applicable.	<p>Criterion is partially met.</p> <p>Ensuring qualification of bidders to deliver the contract is an important consideration in procurement award decisions. This should be a requirement on PBs and not discretion.</p>		Consider revising the responsibility on PBs to ensure contractors/Suppliers qualification or capability to perform the subject contract is mandatory.

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	<p>where the cost of drawing up bidding documents is so high that only pre-qualified bidders should participate in the bid.</p> <p>The legal framework also allows for post-qualification verification. The PPD (para 16.8.4) specifies that the public bodies should specify the post qualification criteria in the bidding document if they believe that the qualification of the successful bidder should be ascertained by post qualification evaluation. Post qualification is at the discretion of the public bodies.</p> <p>The Procurement Manual (para 2.5) is a detailed description of qualification of bidders. But there is lack of clarity between eligibility and qualification criteria. For instance, criteria like the business license and tax certificate are included as qualification criteria.</p>				

1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.	<p>The legal framework establishes the minimum content of the procurement documents and requires that the procurement documents must contain sufficient and relevant information to permit suppliers to respond to the requirement.</p> <p>PPL A.36 lists information which must be included in the Invitation to Bid. It requires public bodies to prepare bidding documents using the standard bidding documents (SBD) developed by the Agency. This is confirmed by PPD para 16.3.</p> <p>PPL A.37 requires that bidding documents shall contain sufficient information to enable competition among bidder on the basis of complete, neutral and objective terms. PPL A.37 goes on to list required minimum content of the bidding documents.</p> <p>PPD A.16.2 to 16.8 sets out further detail on the Invitation to Bid and bidding documents. The Manual, section 4.2 further elaborates on these requirements, including emphasizing the need for close collaboration with the beneficiary and end user when preparing bidding documents and noting that the detail and complexity of the documents may vary according to the subject matter of the procurement (4.2.5.2). The manual explains that the bidding documents should be worded so that they permit and encourage open competition and set out clearly and precisely a number of elements including, for example, the work, location, place of delivery, minimum performance requirements, warranty and maintenance and other relevant terms and conditions (4.2.5.8).</p>	Not applicable.	Criterion is met.		
(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.	<p>The legal framework requires the use of neutral specifications, cites international norms and provides for the use of functional (performance) specifications as far as possible.</p> <p>PPL A.29(3)(c) requires technical specifications to invite open competition and be devoid of any statement having the effect of restricting competition.</p> <p>PPL A.29(3)(b) requires technical specifications to be based on national standards where such exist or otherwise on internationally recognized standards or building codes. National standards are issued by the Ethiopian Standard Authority and are applicable in all States.</p> <p>PPD A.16.5(g) refers to use of standards set by the Ethiopian Quality and Standard Authority (now the Ethiopian Standards Agency) (which is an ISO member) or by other similar institutions.</p> <p>The Manual sets out the precedence of standards in a different order. It specifies that, as far as practicable, the specification shall be prepared based on international or national standards mainly standards from International Standard Organization (ISO), American Society of Testing Materials (ASTM), national standards like Ethiopian standards.</p>	Not applicable.	Criterion is met.		

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Assessment criteria [1(e) Procurement documentation and specifications]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>PPL A.29(3) (a) provides that technical specifications shall, as far as possible, be in terms of performance rather than design or descriptive characteristics.</p> <p>These provisions are expanded upon in PPD A.16.5 and Manual section 2.8.3.</p>				
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	<p>PPL A.29(4) provides that there shall be no requirement or reference in technical specifications to a particular trademark, name, patent, design or type or a specific producer/provider. Where this is not possible, the words “or equivalent” must be included in the specification.</p> <p>These provisions are expanded upon in PPD A.16.5.</p>	Not applicable.	Criterion is met.		
(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)	<p>The PPL does not include a specific provision confirming potential bidders that they are entitled to request clarification. The PD, on the other hand, does require public bodies to inform bidders of their right to seek clarification of the procurement documents. It sets out details of how and where such clarification may be made, the timescales for providing responses and a requirement to inform all participating bidders in writing.</p> <p>PPD A.16.4.2 requires a public body to provide clarifications on requests coming from potential bidders. Clarifications must be provided in writing and shared with all potential bidders at the same time.</p> <p>PPL A.39 provides that the public body may modify the bidding documents in response to an inquiry from a candidate by issuing an addendum which must be communicated at the same time to all candidates who purchased the bidding documents. The time limit for submission of bids may be extended where there is not enough time for bidders to take account of the amendments in their bid.</p> <p>PPD A.16(12) provides more detail on clarification and modification. It confirms that a public body must consider requests for clarification or modification of bidding documents from candidates and specifies relevant timescales. It also allows for the possibility of the public body convening a meeting of bidders concerning clarification, discussion or modification of bidding documents.</p> <p>There are also specific provisions on the clarification of pre-qualification documents where a pre-qualification stage is used (Manual 4.2.3.3) and in the context of RQP (Manual 5.5.12).</p>		<p>Criterion is partially met.</p> <p>The right of potential candidates/bidders to seek clarification is not set out in the PPL. This is an important right for bidders and so it is advisable to include at least the principle of the right to seek clarification in clear terms in primary legislation.</p>		<p>Include clear provisions in the PPL confirming that potential candidates/bidders have the right to seek clarification and how those clarifications shall be answered.</p>

1(f) Evaluation and award criteria

The legal framework mandates that:

Assessment criteria [1(f) Evaluation and award criteria]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.	<p>The legal framework requires the evaluation to be objective and relevant. There are clear provisions requiring that criteria, and also methodologies and weightings, where used, are disclosed in advance in bidding documents. The award decision must be made only on the basis of pre-disclosed criteria.</p> <p>PPD A.7 provides that it is the duty of the public body’s Procurement Endorsing Committee to ensure that the evaluation criteria are non-discriminatory, transparent and achievable.</p> <p>PPD A.16(8) covers the Setting of Criteria for Bid Evaluation, including requirements for advance disclosure, the objective nature of the criteria, and achieving maximum value for money.</p> <p>PPL A.37(i) requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents. PPD para 17.8 requires public bodies to precisely specify the evaluation and qualification criteria in the bidding documents.</p>	Not applicable.	Criterion is met.		

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria [1(f) Evaluation and award criteria]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>The evaluation criteria should allow achievement of value for money and should be based on objective factors and should be as far as practicable translated into monetary values.</p> <p>PPL A.43(6) provides that, in selecting the successful bidder, the public body shall only consider substantially responsive bid and shall evaluate on the basis of the criteria set out in the bidding documents. No criterion shall be used that is not set out in the bidding documents. This is covered further in PPD A.16.9.2.</p> <p>There are additional provisions specifically addressing the procurement of consultancy services (PPD A.21).</p>				
(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.	<p>Summary: Objectivity is an underlying principle. The use of price and non-price attributes are permitted and value for money is a consideration in the award of contracts.</p> <p>PPD A.16(8) covers the Setting of Criteria for Bid Evaluation including requirements for advance disclosure, the objective nature of the criteria, and achieving maximum value for money. In the case of procurement of consultancy services, the relative weighting ascribed to price is 80% and for price 20% of the total merit points.</p> <p>PPL A.43(8)/PPD 16(8)(2): There are two bases for award of contract: (1) lowest evaluated bid from among bidders meeting technical requirements; and (2) highest scoring bid against ascribed criteria which may include both quality and cost/price.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>While there is the possibility of using price/non-price attributes, life cycle costing is focused on property/assets management.</p> <p>In practice, setting a standard minimum weighting for price criteria may not deliver the best value for money outcome. It is also understood that procuring entities are unclear whether the same minimum weighting should be applied to goods and works procurement. This indicates a need for further clarity and also emphasizes that the use of quality criteria, weightings and methodologies including life-cycle costing requires substantive practical guidance and training for public bodies conducting evaluation.</p>		Consider introducing a life cycle costing approach for procurement of Goods, Works and services including substantive practical guidance. Provide practical training for public bodies conducting evaluation using quality and other criteria.
(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.	<p>Quality is a major consideration in evaluating Requests for proposals for consulting services and clear procedures and methodologies are defined.</p> <p>PPL A.53 & A.54 concerns the use of the Request for Proposals Method. The selection of consultants can be made in a number of ways but, with the exception of contracts for standard, simple requirements, the focus of evaluation is on qualitative factors.</p> <p>The PPD (para 21) specifies the factors that should be considered in determining the quality of proposals, which are relative experience of the firm, proposed methodology, transfer of knowledge, key staff and participation of locals. It provides a minimum 70% technical threshold to consider proposals for further evaluation. The PDs determined the relative weight as 80% for technical evaluation and 20% for price.</p> <p>The Manual at 5.6.1 states “the most important consideration in selection of a successful Consultant in the procurement of intellectual and professional services shall be given to the quality of the ..technical proposal.”</p> <p>There are clear and detailed procedures as well as methodologies for assessment of technical capacities in the PPD A.21 and the Manual in section 5.</p>	Not applicable.	Criterion is met.		See comment at 1(f)(b) on need for substantive practical guidance and training for public bodies using quality criteria in evaluation.
(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.	<p>PPL A.37(i) requires the criteria and the points given to each criterion for evaluation of bids and award of contract to be set out in the Bidding documents.</p> <p>PPD A.21.10.2 (i) and PPD A.16(8) expands on these requirements and includes reference to disclosure of methodology and weightings.</p> <p>Federal SBD include a separate section on Evaluation Criteria and Methodology.</p>	Not applicable.	Criterion is met.		
(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.	<p>The legal framework provides that information on examination, clarification and evaluation of bids is not disclosed to participants during the evaluation period.</p> <p>PPL A.44 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process, until the award of the contract is announced.</p>	Not applicable.	Criterion is met.		

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1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	<p>Opening of tenders, immediately following the closing date for bid submission, is a proceeding defined and regulated by the legal framework. Information on time limits and the process must be included in the bidding documents.</p> <p>PPA.36 and A.37 require the Invitation to Bid/Bidding documents to include information on the place and time for opening of bids, along with an announcement that bidders or their representatives may be present.</p> <p>PPL A.42 requires that at the time stipulated in the bidding document the public body shall open all bids received before the deadline and specifies the information to be read out at the bid opening.</p> <p>PPD A.16(18) provides further detail on the process of bid opening, including number of representatives from the procurement unit, the presence so far as possible of a representative of internal audit, plus media representatives and others.</p> <p>There are special provisions concerning two stage tendering and requests for proposals.</p> <p>The manual (para 4.2.10.1) specifies that the bid opening shall take place on the same date on which the bid is closed.</p>	Not applicable.	Criterion is met.		Consider specifying the need to open the bid immediately after closing.
(b) Records of proceedings for bid openings are retained and available for review.	<p>Summary: The legal framework details the process for bid opening and requires records of the process to be maintained, with copies of those records to be made available to any bidder on request.</p> <p>PPL A.9(c) lists the responsibilities of the procurement unit as including maintaining complete records for each procurement. PPL A.23 sets out a non-exhaustive list of the records required to be kept.</p> <p>PPD A.15(17)(4) specifies information to be included in the bid opening minutes, being the names of bidders, their bid price and any other salient points. A signed attendance sheet is also required. There are standard form Minutes of public opening of bids, a checklist on the procedure for opening bids and Bid Opening Attendance Sheet (SSNBPR Manual)</p> <p>PPL A.42 (2) requires that a copy of the record of the bid opening is made available to any bidder on request.</p> <p>The manual (para 4.2.10.7) specifies that a copy of the record on bid opening procedure shall be shared with the head of the public body, head of the project coordinator and to any bidder that requests for the record.</p>	Not applicable.	Criterion is met.		Introduce a provision in the PPL/PPD requiring public bodies to send the minutes of bid opening to all bidders who submitted bids, as opposed to sharing upon request.
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	<p>Security and confidentiality of bids until after award of contracts is maintained.</p> <p>PPL A.44 provides that the information relating to the examination, clarification and evaluation of bids and recommendations for award must not be disclosed to bidders or other persons not officially concerned with the procurement process until the award of the contract is announced. (see also PPD A.34(6)(c) and Manual 4.2.12).</p> <p>PD (para. 16:17) requires public bodies to prepare and receive bids through a secured 'tender box'. In case the bids are too large to fit in to tender box, the public body must assign a dedicated person who receives bids against receipts. The PPD further elaborates on the safekeeping of the tender box, which should be the responsibility of the procurement team until the bid is opened.</p> <p>The Manual provides that submitted bids shall always be kept under lock outside working hours and shall not be removed from the office of the public body.</p>	Not applicable.	Criterion is met.		

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Assessment criteria [1(g) Submission, receipt, and opening of tenders]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	<p>PPL A.23(2)(a) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would “prejudice legitimate commercial interest of the parties or would inhibit fair competition”. Legitimate commercial interest is not defined in the PP, and it is not clear how it is applied in practice.</p> <p>PPL A.23(2) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body - (See also Manual 2.2.4). See 1(k)(a) for comment on impact of this provision on overall transparency of the procurement system. The PPD (para 33.6) prohibits employees or officials from disclosing bidders’ confidential information specifically: - Information that limits competition, allow unfair advantage, harm the PE unless exceptional authorized by the officials - Information relevant to contract implementation - Information related to bids, evaluation results before award is notified.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>Legitimate commercial interest is not defined in the PPL, and it is not clear how it is applied in practice</p>		Define the commercial interest for the purpose of non-disclosure of information which would “prejudice legitimate commercial interest of the parties or would inhibit fair competition
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	<p>PPL A.41 sets out basic provisions concerning the submission and receipt of bid proposals. The PPD and PP Manual include provisions on submission of bids, including rejection of bids submitted late. The Federal SBDs contain detailed instructions and clear rules on bid submission. For example, SBD for procurement of Information Systems under NCB, Section D Submission and Opening of Bids.</p>	Not applicable.	Criterion is met.		

1(h) Right to challenge and appeal

The legal framework provides for the following:

Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	<p>Participants in procurement have the right to challenge decisions or actions taken by the procuring entity in the conduct of public procurement, subject to specified exclusions. In the English language version of the PP, the right to challenge is given to “candidates.”</p> <p>The Compliant Handling Directive refers to “candidates” and “bidders.” There is no linked requirement for a complainant to demonstrate that they suffered or risk suffering loss or injury because of the alleged breach, which would open the complaints mechanism up for complaints by anyone.</p> <p>Standing to make a complaint PPL A.73(2) provides that a “candidate” shall be entitled to submit a complaint to the head of the public body or the complaints review Board “against an act or omission of the public body in regard to public procurement...where he believes that such act or omission violates this Proclamation or the directives.” PPD A.11 and A.43 refers to this right being available to “a candidate or bidder.”</p> <p>As noted earlier, the terms candidates and bidders are not always used consistently. There is no requirement for a complainant to have suffered or risk suffering loss or injury because of the alleged breach. This is a common requirement included, for example, in the UNCITRAL model law on public procurement (A.64). The threshold for standing is therefore relatively low and increases the risk of complaints and thus disruptions in the procurement process.</p>	Not applicable.	<p>Criteria is partially met.</p> <p>PPL Standing to make a complaint: PPL A.73(2) refers to “candidates” having standing to make a complaint. Standing to make a complaint should also be expressed to be available to “bidders.”</p> <p>There is inconsistency between the PPL and the Manual, the latter seems to extend the right to make a complaint to prospective bidders too, beyond the intention of the PPL. This is unsatisfactory and creates legal uncertainty.</p>		<p>PP Standing to make a complaint: Amend PPL to provide clarity and certainty on who has standing to make a complaint. Amend the compliant handling directive to align with the PP.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.	<p>The legal framework allows for challenges to be brought before the Board for Reviewing Complaints on Public Procurement and Property Administration (“the Board”), which is a body independent of the procuring entity.</p> <p>The Board has authority to suspend the award decision and grant a range of remedies. There is a right of judicial review.</p> <p>Venue for complaint: The complaint must, in the first instance, be submitted the head of the public body (the procuring entity). There is a right to file a complaint with the Board where the head of the public body does not issue the decision within the specified time period or if the complainant is not satisfied with the decision.</p> <p>Board independent of the procuring entity: The Board is established pursuant to PPL A.70 and is a body which is independent of the procuring entity. It is composed of individuals representing private sector, relevant public bodies and public enterprises.</p> <p>In addition, the PPD (para. 13(b)(a)) appears to confuse the issue of Board membership. Contrary to PPL A.70, it states that the Board members are:</p> <ul style="list-style-type: none"> • Bureau of Finance and Economic Development - Chair • Chamber of Commerce - Member • Procuring Entities - member • State Owned Enterprise - Member • Procurement and Property Administration Agency - Member • One additional non-voting member is from the Agency who shall service as secretary and expert advisor <p>Remedies: PPL A.74 provides for a range of remedies. The Board may: a) prohibit the public body from acting or deciding unlawfully; b) order the public body to proceed in a manner conforming to the PPL (other than a decision to award or conclude a contract); or c) annul in whole or in part, an unlawful act or decision by the public body. (See also PPD A.40 and Complaints Manual para 4.).</p> <p>Right to appeal against decision of the Board: PPD A.49 refers to a right of appeal to the competent court, though it does not specify which court it is.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>PP Right of judicial review is set out in the PPD. This is a fundamental right which should be specified in the primary legislation.</p> <p>Composition of the Board raises at the minimum a lot of questions in terms of independence and impartiality of the parties representing the various stakeholders. Their appointment by the Bureau Head lacks transparency and independence. The composition established in the PPD provides 50% of members from either the Bureau or the Agency both of whom are otherwise implicated in procurement regulation thus creating both a conflict of interest and at least a perception of a lack of independence from government (but not the procuring entity).</p> <p>The criteria and qualifications of the board members are missing from the PPL or PPD.</p>		<p>PP Right of judicial review: Amend PPL to refer to right of judicial review and venue for judicial review.</p> <p>Composition, qualifications requirements, procedures for appointment/dismissal of the Board members, should be reconsidered (i) to enhance independence of the Board; (ii) to avoid conflict of interests created by the participation of the Agency’s representatives, but also of other representatives such as: public enterprises, public bodies, private sector, etc.</p>
(c) Rules establish the matters that are subject to review.	<p>The PPL establishes the matters that are subject to review. The bidder’s right of review is not available in respect of <u>all</u> acts or omissions of the public body in regard to public procurement and the exclusions from coverage are significant, severely impairing the effectiveness of the review system.</p> <p>Decisions or actions which are the subject matter of review – and exclusions PPL A.72(1) provides for a right to submit a complaint “against an act or omission of the public body in regard to public procurement...”</p> <p>The Complaints Directive makes it clear that the right of complaint relates to both actions and inaction of the public body (Para.3.3) and requires that the subject of the complaint procedure “should be understood as broadly as possible in order to prevent any possible violation of rights of interested parties and violation of basic principles of public procurement.”</p> <p>The right of review is not available in respect of <u>all</u> acts or omissions of the public body in regard to public procurement. PPL A.72(2) provides that the right of review is not available in respect of four matters, the most relevant of which for public procurement are: a) the selection of procurement method, and b) rejection of bids, proposals or quotations pursuant to PPL A.30.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>PPL A.72 Acts or omissions not subject to the right to review: The exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p>		<p>Acts or omissions not subject to the right to review: Reconsider the exclusions from the right to review, in particular with regard to selection of procurement method and selection of bidders and evaluation criteria which mean that significant decisions and issues in the very operation of the overall regime are not actionable by bidders or candidates.</p>

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	<p>PPL A.72(3) & (4) provide that complaints may not be brought after a contract has been signed with the successful bidder, subject to specified conditions being satisfied.</p> <p>PPD A.35 elaborates on and adds to these exclusions from the right to review to cover: the selection of bidders for procurement in restricted tendering or RFQ or the evaluation criteria in the bidding document; domestic preference; and complaints submitted late.</p>		<p>Alignment between the PPL and PD</p> <p>PPD expands on exclusions from the right to review.</p>		<p>Alignment between the PPL and PPD</p> <p>PPD expands on exclusions from the right to review. All exclusions from right to review should be set out in primary legislation and the PPL and PPD should be aligned.</p>
<p>(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.</p>	<p>There are rules establishing time frames for the submission of challenges and appeals. There are also rules for issuance of decisions at the initial review stage, by the head of the public body and for issuance of decisions by the Board, the independent appeals body.</p> <p>Time frame for submission of challenges and appeals: PPL A.73(2) requires the candidate to submit the complaint to the head of the public body within five (5) working days from the date he knew, or should have known, the circumstances giving rise to the complaint.</p> <p>Time frame for issuance of decision by the head of the public body: PPL A.73(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons. PPD A.45.1(d) requires the public body to give the complainant a copy of the decision within five (5) working days from the date the decision was made.</p> <p>Time frame for complaint to the Board: PPL A.73(4) If the head of the public body does not issue the decision within that time limit, or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Board. The complaint to the Board must be submitted within 5 (five) working days from the date on which the decision had been or should have been communicated to the candidate.</p> <p>Time frame for issuance of decision by the Board: PPL A.74(4) requires the Board to issue its decision within 15 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any.</p> <p>Under PPD (para 44), the timeline for submitting and resolving complaints is established as follows:</p> <ul style="list-style-type: none"> - First tier complaint to the head of the public body within 5 days calculated from the date it officially knew or it would have known the public body's award decision. - The head of the public body should provide first tier decision within 10 working days. - The Head shall communicate its decision to the aggrieved bidder within 5 working days after decision on the complaint. - If the public body does not give its decision within 10 days after complaint is lodged or if the aggrieved bidder is not satisfied by the decision of the public body, the aggrieved bidder can submit its appeal to the board within 5 working days counted from the date it has known the decision of the public body or from the last date the public body is expected to give its decision. <p>In addition, PPD (para 44) mandates a 'standstill' period of 7 days after the notification of award within which contract shall not be signed with the winning bidder.</p>	<p>Not applicable.</p>	<p>Criterion is partially met.</p> <p>PP: Time frames for issuance of decisions of the Board are expressed inconsistently. The PPL and PPD should be aligned.</p> <p>It is not clear if the suspension of the procurement process is notified to all bidders and if so, when.</p> <p>In addition, it is not clear what happens to the suspended procurement process when the head of public body does not respond to the complaint within 5 working days as contemplated in the PPL. Is the suspension automatically lifted or should the public body inform all bidders of the lifting?</p>		<p>PP: Time frames for issuance of decisions of the Board: Align time frames in PPL and PPD.</p> <p>PPL should make clear that the suspension of the procurement process should be notified immediately to all bidders who submitted bids.</p> <p>Additionally, the PPL should clarify what happens to the suspended procurement process when the Head of public body does not respond to the complaint within 5 working days as required by PPL A.74(4).</p>

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Assessment criteria [1(h) Right to challenge and appeal]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.	<p>Applications for appeal and full decisions are not published in easily accessible places. There is no timeframe for publication in the legal framework.</p> <p>Publication of appeal decisions is not mandatory in the PPD. PPD (para 41.G) requires the board to make sure that its decision is communicated to the relevant bodies in writing. The manual (para 3) states that the Board's decision shall be communicated to the complainant and the public body.</p>	Not applicable.	<p>Criterion is not met.</p> <p>PPL A.5(3) sets out general principles requiring transparency, fairness and accountability for decisions made in procurement. Failure to publish sufficient information on complaints and decisions is in breach of these principles.</p> <p>Publication of applications and decisions: In the interests of transparency, the legal framework (ideally primary legislation) should require applications for appeal and full decisions to be published in easily accessible places. Presumption should be in favor of full transparency, and access to full text of decisions should not be limited to provision to interested parties on request. The legal framework should specify a timeframe for publication.</p> <p>Notification of decisions to parties: In the interests of efficient operation of the system, the legal framework (ideally primary legislation) should require prompt notification of decisions to parties within specified timescales.</p>		<p>Publication of applications and decisions: Include provision requiring applications for appeal and full decisions to be published in easily accessible places and within a specified time period.</p> <p>Notification of decisions to parties: Include provision requiring prompt notification of decisions to parties within specified timescales.</p>
(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).	<p>Judicial review/right of appeal: PPD para 49 specifies the right of the aggrieved bidder to appeal to a judicial body if it is not satisfied with the decision of the public body and the Bureau or board or Agency (for debarment), as appropriate.</p> <p>First, the clause itself as drafted as problematic as it leapfrogs from a Public Body to the Court - while the highest administrative body is the Board. Second, it does not specify competent court who reviews the Board's decision.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>PPL: Judicial review/right of appeal: It is advisable to include a provision confirming the right of appeal, venue for appeal and time limits in primary legislation.</p> <p>If PPD at para 49 is intended as is drafted, i.e. to allow filing of appeals of decisions of a public body to court - without going through the Board, it creates inconsistency with the PP, which establishes a two-tier system of complaints with Head of Public Body as first tier and Board as the second. Leapfrogging from Public Body to the Court seems to leave out the role of the Board as second-tier reviewer. Some countries have adopted this model, but it is not clear if this is the intention.</p>		<p>PPL: Judicial review/right of appeal: Include provision confirming right of appeal, venue for appeal and time limits.</p>

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1(i) Contract management

The legal framework provides for the following:

Assessment criteria [1(i) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned.	<p>PPL A.46(4) states that the procedure for administering contract shall be prescribed by the bureau.</p> <p>PPD para 28 defines the functions for undertaking contract management which includes ensuring fulfilment of responsibilities, ensuring that supplier/contractor or consultant is fulfilling its responsibility and providing support to supplier/contractor/consultant to fulfil its contractual responsibilities. The PPD further requires the public bodies to assign a dedicated body to administer contracts or, in the event that the contract is to be administered by different parties, the public body should ensure that each party clearly understands its role and responsibility. The PPD para 6.2 assigns the responsibility for contract management to the procurement unit formed within each of the public bodies.</p> <p>The manual (paras 8.15 to 8.20) provides detailed procedures for contract management and specifies roles and responsibilities for contract management depending on the nature of the contract. Large works contracts are the responsibility of the relevant project office and the supervising engineer while standard procurement of goods or services are the responsibility of the procurement unit.</p>	Not applicable.	Criterion is met.		
(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.	<p>PPD A.28.4 provides that a contract may be amended in the course of its performance “it being understood that such an amendment shall not be detrimental to the interest of the Public Body and not favor one supplier or certain suppliers...”</p> <p>PPD A.16(14) requires a public body to include in the bidding documents information on whether it is possible to make a price adjustment to the contract and the condition applying if it is allowed (A.16(14)(2)), an indication that the public body as a right to decrease or increase the quantity of goods of services by up to 20% without changing the unit price offered by the bidder (A.16(4)(r));</p> <p>There are also price adjustment provisions for consultancy service contracts (16(14)(5)).</p>	Not applicable.	<p>Criterion is met.</p> <p>The provision on contract amendments and price adjustment are broadly drafted and have the potential to be interpreted widely, to the detriment of competition.</p>		Amend the provisions on contract amendments and price adjustment for more precision and avoidance of unjustified discretion in their application.
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	<p>PPD A.16(27)(3) requires that the signed contract provide for the procedure for resolution of disputes that may arise in the performance of the contract.</p> <p>Manual section 8.28.1 Resolution of Disputes states that “most minor disputes may be resolved by sensible discussion and agreement between the responsible office and the supplier.” There is a requirement on the public body to fully investigate any formal written complaint and actions required.</p> <p>Manual 8.28.3(d) refers to the use of arbitration as specified in a contract, only for those public bodies which are allowed by law to use arbitration. All other bodies are allowed to use conciliated processes as specified in the contract. Parties may also, or in the alternative, seek redress in the courts if no initial agreement is reached and negotiation fails.</p> <p>The Civil Procedure Code A.315(2) provides that “No arbitration may take place in relation to administrative contracts of the Civil Code”, i.e. public bodies are not subject to arbitration.</p> <p>PPD A.26(1) concerning framework agreements confirms that the authorized body has responsibility to facilitate amicable settlement of disputes in connection with performance of the contract. It is not clear whether parties can go to court for resolution of disputes.</p> <p>PP Manual 8.27 confirms that the right to arbitration is limited to those public bodies who are entitled by law to use arbitration.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>As noted earlier under Indicator 1 (a), it appears there is a lack of certainty for public bodies and suppliers as to the correct classification of contracts awarded under the PPL and the impact of this on the availability of arbitration. Arbitration is not appropriate in all cases but for contracts where it is appropriate the legality of its use should be clear. We understand that there is a current review of certain aspects of the Civil Code and it is possible that this is already being addressed.</p>		<p>The PPL or PPD should clarify when the arbitration shall be used as a forum.</p> <p>Arbitration would enable parties to settle their disputes using professional arbitrators, who are conversant on the matter instead of ordinary judges who have no specialization in the area of the contract subject matter.</p>
(d) The final outcome of a dispute resolution process is enforceable.	<p>The General Conditions of Contract in the Federal SBD, which is used by PBs in the region, include dispute provision and provide that in the event of a failure to resolve a dispute, it may be referred for resolution through the Courts. There is no specific provision concerning enforceability of the outcome of a dispute resolution process.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>There is no specific provision concerning enforceability of the outcome of a dispute resolution process.</p>		Include a provision concerning enforceability of the outcome of a dispute resolution process.

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1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria [Electronic Procurement (e-Procurement)]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.	<p>The legal framework allows for e-Procurement solutions at a general level, but the implementation of e-GP will require substantial amendments and additions to the legal framework.</p> <p>PPL A.26(1) allows for the Bureau to issue a Directive to determine the extent to which communication by electronic means may be used in addition to, or instead of, writing.</p> <p>PPL A.31 confirms that the Bureau may authorize the use of electronic means as a method of procurement. In order to implement this, the PPL provides for the Agency to conduct a study and submit proposals, ensure that public bodies, suppliers and supervising entities have capacity to implement, and to authorize the implementation of an electronic system in all or certain procurements.</p> <p>PPD A24.10 provides that public bodies may employ electronic exchange of information while processing procurement by means of the RFQ method (as defined in the PP), provided that:</p> <ul style="list-style-type: none"> - the electronic information exchange system has security and protection from unauthorized access; - all potential participants have the knowledge and readiness to use the system; - bidders who are not capable of submitting a quotation through the electronic system are provided with an alternative mechanism to submit quotations. <p>Manual 2.4 requires communication by e-mail to be confirmed in writing and states that communication made by e-mail shall not be considered as communication in writing. Manual 4.2.9.1 provides that bids may not be submitted by telex, fax or electronic mail. Bids can only be delivered by hand or mail.</p> <p>It is early days in the introduction of e-GP and much work remains. It has not yet begun in SNNPR.</p>	Not applicable.	<p>Criterion is not met.</p> <p>The PPL provides general permissive provisions for the development of an electronic procurement system. However, it stops there and does not contain any further specific provisions, covering areas needed to operationalize an e-procurement system. In reality, no steps have yet been taken to introduce e-procurement. Currently, the PPL includes provisions throughout the procurement cycle that are relevant for manual system only.</p>		Initial steps need to be taken to establish e-procurement. Once it begins, there will be a need for reviewing and updating PPL and corresponding implementing rules that guide the manual procurement process, to reflect the new practices to be followed when conducting procurement electronically.
(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.	See 1 (j) (a).	Not applicable.	<p>Criterion is not met.</p> <p>See 1 (j) (a).</p>		See 1 (j) (a).
(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.	See (a) above in respect of PPD A24.10.		<p>Criterion is partially met.</p> <p>See 1 (j) (a).</p>		See 1 (j) (a).

1(k) Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the	<p>The legal framework includes a list of procurement records and documents related to transactions, including certain aspects of contract management. Procurement records and documents are prepared and maintained at an operational level by the public body's procurement unit. Procurement records and documents are not available for public inspection.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>PPL A.23 Records of procurement The drafting of PPL A.23 is confusing, particularly the interaction between A.23(2)(a) and A.23(2)(b) and what is or is not available for public inspection.</p>		There is a need for separate guidance on the identification and managing of information of commercial

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Assessment criteria [1(k) Norms for safekeeping of records, documents and electronic data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
operational level. It should outline what is available for public inspection including conditions for access.	<p>PPL A.9(c) requires the procurement department in a public body to maintain a complete record for each procurement in accordance with PPL A.23.</p> <p>PPL A.23 Records of Procurement requires the public body to maintain records and documents. It sets out a non-exhaustive list of information to be maintained. The list in the PPL does not specifically refer to contract management information. The list is supplemented in PPD para. 31. However, the Manual, at 2.2 and Appendix 2, expands on that list and requires public bodies to retain copies of the contract/purchase order as well as include information on contract management, such as delivery/acceptance reports and payment documentation.</p> <p>PPL A.23(2)(a)) requires public bodies to maintain and make available records of procurement but includes a provision requiring public bodies not to disclose information which would “prejudice legitimate commercial interest of the parties or would inhibit fair competition.”</p> <p>PPL A. A.23(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body.</p> <p>This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.</p> <p>The Manual provides, at 2.2.5, that public bodies should disseminate to the general public information about contract award by posting it on the Agency’s website within 5 days of signing the contract.</p> <p>PPL A.42 on Opening of Bids requires the recording of the announcement of names of bidders, total amount of bids, discounts, etc., and that a copy of the record shall be made available on request to bidders.</p>		PPA.23(2)(b) provides that information relating to the examination of bids, proposals or quotations and the actual content of bids, proposals or quotations, shall not be disclosed except when ordered to do so by a competent court or other authorized body. This provision, whilst protecting sensitive information, also appears to significantly limit the extent to which general information about the procurement process is publicly available, reducing transparency and accountability.		sensitivity/confidentiality during bid evaluation process and after contract award.
(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.	<p>PPL A.23 Records of Procurement requires the public body to maintain records and documents regarding public procurement for a period of time determined by Ministerial Directive. PPD A.31(2) provides that the procurement records shall be kept for the period specified in the Finance administration proclamation and associated regulation and directives. In the case of the procurement of works, the PPD specifies that the public bodies are responsible for keeping the full procurement records despite the involvement of the regional construction bureau in the procurement process.</p> <p>Appendix 2 of the Manual is a Guidance Note on Communications and Records Management. This confirms that public bodies must keep all documents regarding a particular procurement for a period of 10 years and provides a recommended structure and content for the procurement dossier. This includes contract management and finance information.</p>	Not applicable.	Criterion is met.		
(c) There are established security protocols to protect records (physical and/or electronic).	Unable to find established security protocols to protect records.	Not applicable.	Criterion is not met. Unable to find established security protocols to protect records.		Consider establishing security protocol to protect records.

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1(l) Public procurement principles in specialized legislation

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

Assessment criteria [1(l) Public procurement principles in specialized legislation]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.	There is no specialized legislation that governs procurement by entities operating in specific sectors, and the legal framework applies to procurement carried out by all public bodies.	Not applicable.	Criterion is met.		
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	No such provisions exist at the level of the Region.	Not applicable.	Criterion is not met. PPP not yet considered in the Region.		To the extent that PPPs are being initiated in SNNPR, it is imperative that a Directive on PPPs be issued.
(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	No such provisions exist at the level of the Region.	Not applicable.	Criterion is not met. PPP not yet considered in the Region.		Consider introducing a responsible body for developing and implementing PPP in the next round of revision to the PPL.

2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria [2(a) Implementing regulations to define processes and procedures]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	There is a comprehensive (amended) Procurement Directive adopted in 2010: Procurement Directive 56/2010. The PPD provides details on the issues covered in the PPL. In some cases, however, there are observed contradictions with the PPL. Some of these include: - Issues exempted from complaint differs between the proclamations and PPDs; - Abnormally high bids which is not specified in the proclamation but included in the amended directive; - Qualification of bidders different between foreign and local bidders included in the PPD but not in the PP; - Set aside and mandatory subcontracting to MSEs included in the PPD but not in the PP; - The PPD is a document but is not accessible electronically.	Not applicable.	Criterion is partially met. The PPD on occasions, appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD (see specific comments elsewhere in this assessment).		Alignment between PPL and PD Ensure that PPD and PPL does not overlap and create inconsistencies. Equally importantly, the PPD should not introduce provisions that materially limit or inappropriately expand the provisions of the PPL.
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	The PPD is a document in two parts, with the main section and annexes found in separate documents. The annexes provide different templates including reporting templates, bid security etc. It also provides table on bid floating times, a list of common user items etc.	Not applicable.	Criterion is partially met The Procurement documents including the PPD are not accessible electronically.		Consider using federal PPA's website for the short term and upload procurement information including the legal documents for public accessibility. Consider establishing own website for the long term.

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Assessment criteria [2(a) Implementing regulations to define processes and procedures]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	PPL A.77(1) provides that the Executive Council of the Region may, where necessary, issue regulations for the implementation of the PPL. PPL A.77(2) provides that the Bureau may issue directives implementing the provisions of the PPL.	Not applicable.	Criterion is partially met. The responsibility for maintenance of the secondary legislation is clearly established. The secondary legislation is updated from time to time. However, as discussed above, the PPD on occasions, appears to elaborate on the provisions of the PPL to an extent perhaps not envisaged by the provisions of the PPL. There is not always full alignment between the PPL and the PPD.		Please refer recommendation under 2 (a) (a).

2(b) Model procurement documents for goods, works, and services

Assessment criteria [2(b) Model procurement documents for goods, works, and services]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.	There are model procurement documents for goods, works and services for NCB procure prepared by the Agency. The federal SBDs are used for procurement through International Competitive Bidding. Standard Bidding Documents: The PPL A 77 provides mandate to the Agency to issue SBDs. However, it is the Federal model Standard Bidding Documents (SBD) which are used for ICB and works procurement. But there is no official instruction issued by the Agency mandating PBs to use the Federal SBD. The Agency issued SBDs for procurement of Goods, Works and Services using National Competitive Bidding procedure. However, the PBs do not use the SBDs issued by the region. Thus, procurement of Goods and Services using national competitive bidding procedure are carried out without using SBDs. The SBDs include Instructions to Bidders with information on the bidding process including evaluation and award, Statement of Requirements, General and Special Conditions of Contract and Bidding/Contract Forms, including the bid submission sheet. The Manual contains specific guidance on the scoping and conduct of specialized procurements, including guidance on criteria, scoring methodologies and evaluation for Textbooks and Manuscripts (Appendix 8.1), Information Systems (Appendix 8.2), Pharmaceuticals and Vaccines (Appendix 8.3), and Vehicles and Spare Parts (Appendix 7.4) Standard forms for bid opening and evaluation: In addition, there are standard templates covering invitation to bid, bid opening and evaluation; including a bid opening checklist, minutes of bid opening, report on bid submissions and bid evaluation report. There is also a sample letter of notification of award. These are included in the Manual at Appendix 8. INCOTERMS and Insurance: The Manual also includes a copy of INCOTERMS and related guidance as well as guidance on insurance (Appendix 10).	Not applicable.	Criterion is partially met. There are no SBDs for all categories of procurement and SBDs issued by the region are not used. Use of the federal SBDs is not mandatory.		Consider use of national SBDs in consultation with the federal PPA and other regions to ensure consistency. Provide adequate guidance and official instruction mandating the use of SBDs by all PEs.
(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.	PPL A.37 sets out the mandatory content of the Bidding Documents. PPD A.16.2 provides that public bodies must use the standard bidding documents prepared by the Agency without making any changes in the Instruction to Bidders and General Condition of Contract section of the SBDs. The assessment was not provided with any official authorization issued by the Agency mandating the use the federal SBDs for ICB and works procurement.	Not applicable.	Criterion is partially met. Please see gap under 2 (b) (a) above.		Please see recommendation under 2 (b) (a) above.
(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	PPL A.15(4) Functions of the Agency: provides that the Agency is responsible for preparing, updating and issuing authorized versions of the Standard Bidding Documents, procedural forms and other attendant documents.	Not applicable.	Criterion is not met. Please see gap under 2 (b) (a) above.		Please see recommendation under 2 (b) (a) above.

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2 (c) Standard contract conditions

Assessment criteria [2 (c) Standard contract conditions]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	As described under 2 (b) (a), the SBDs (federal and Regional) include standard contract conditions for works, goods, consultancy services and non-consultancy services contracts. There are both general conditions of contract and special conditions of contract. PPL A.37 Bidding Documents requires the bidding documents used by public bodies to include the general and specific conditions of contract. PPD 16.3.2 provides that public bodies must include the general conditions of contract [prepared by the Agency] in bidding documents without making any changes. Use of SBDs issued by the Agency is not enforced and the PBs use the federal SBDs for selected procurement categories and not for all.		Criterion is partially met. Please see gap under 2 (b) (a) above.		Please see recommendation under 2 (b) (a) above.
(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	The standard general contract conditions contain provisions which are consistent with internationally accepted practice, including defining the parties to the contract, their respective obligations, assignment and sub-contracting, contract changes, payment provisions, liability, dispute and termination. PPD A.29.4 Contract amendments: The drafting in the procurement Directive is too wide. It has the potential to be interpreted widely to the detriment of competition). The legal documents do not specify the review and approval process for contract amendment.		Criterion is partially met. Please see gap under 2 (b) (a) above.		Please see recommendation under 2 (b) (a) above. Specify the procedure and approval authority on contract amendment in the legal documents.
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	The standard contract conditions are an integral part of the SBDs (PPL A.37, PPD A.16.3.2) which are included in the Bidding Documents issued to candidates. Charge for bidding documents: Public bodies may charge candidates for bidding documents at a price not exceeding the cost of reproduction and delivery of those documents to the candidate (PPL A.38(1) and PPD para. 16.10).		Criterion is partially met. Procurement of Goods and Services using the National Competitive Bidding do not follow standard contract conditions. Use of the federal SBDs which includes standard conditions of contract is not mandatory and applied in selected categories of procurement.		See 2 (b) (b).

2 (d) User's guide or manual for procuring entities

Assessment criteria [2 (d) User's guide or manual for procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.	SNNPR published a procurement manual (2015), procurement complaint manual and procurement audit manual, all of which are comprehensive.	Not applicable.	Criterion is partially met. The Manual elaborates on the procurement procedures process but in some cases, it expands upon provisions in the PPL or PPD, or introduces provisions which are properly placed in primary or secondary legislation. Specific examples are identified through this assessment.		The Manual should be aligned with the PPL and the PPD.
(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	PPL A.78(3) assigns responsibility to issue manuals to the Agency.	Not applicable.	Criterion is partially met. The responsibility for maintenance of the Manual is clearly established. The Manual has not been updated. The Manual appears to elaborate on the provisions to expand on the PPL and PPD. There is not always full alignment between the Manual, and the PPL and the PPD.		The Manual should be aligned with the PPL and the PPD and should be updated.

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3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

3(a) Sustainable Public Procurement (SPP)

Assessment criteria [3(a) Sustainable Public Procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	No evidence of a policy/strategy in place to implement SPP in support of broader national policy objectives. There is, however, in place an incentive scheme for the benefit of MSEs.	Not applicable.	Criterion is partially met. There is no SPP strategy for promotion of broader national and regional objectives. The MSEs scheme does not include all MSEs that fall under the category. The detail description is available under sub indicator 9 (a) (c).	✓ Yes	Develop a policy for promotion of sustainable procurement in accordance with the Transformation and Growth Agenda in the region.
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.	No evidence of SPP implementation plan.	Not applicable.	Criterion is not met. See gaps under 3 (a) (a)	✓ Yes	See 3 (a) (a)
(c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.	the legal provisions address “lifetime approach” and environmentally friendly procurement only at a high level – see 3(a)(d) below. There is also an incentive to locally manufactured goods/ local contractors etc. and the MSEs, which is intended to provide jobs to young graduates – see 1(d)(b) above.	Not applicable.	Criterion is partially met. Sustainability provisions don’t cover all aspects of sustainable procurement and all stages of the procurement cycle.	✓ Yes	See 3 (a) (a). Consider introducing sustainability provisions based on adequate study.
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	The legal provisions address “life-time approach” and environmentally friendly procurement only at a high level and do not address the issue of well-balanced application of sustainability criteria to ensure value for money. PPL A.5 provides that one of the principles of procurement is to ensure value for money in the use of public funds. PPL A.65 requires heads of public bodies to adopt a “life-time approach” to the management of public property. This means a system which takes into account all associated activities and costs including acquisition, maintenance, consumption and disposal. Similar general provisions are not included in the PPL in the context of public procurement. PPD A.9(1)(f) requires a public body, when identifying its procurement needs, to take into account that “...the procurement need is environmentally friendly.” (See also Manual at 3.1.3(f)). The Manual contains a little more commentary and guidance on the issue of value for money and using a lifetime approach. For example, in the Preface it notes, in the paragraph on “Economy” that the lowest initial price may not equate to the lowest cost over the operating life of the item procured. At 2.8.1 on technical specifications there is reference to characteristics including environmental performance.	Not applicable.	Criterion not met. The MSE incentive does not appear well balanced to ensure value for money.	✓ Yes	Assess the economic and social impact of SMEs scheme and ensure that it is balanced with value for money consideration. Consider a life cycle costing approach in the procurement and provide adequate guidance.

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3(b) Obligations deriving from international agreements

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

Assessment criteria [3(b) Obligations deriving from international agreements]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) clearly established	<p>As explained under Indicator 1(a)(a), the PPL confirms in A.6 that to the extent that the PPL conflicts with an obligation of the Federal Government under or arising out of an agreement with one or more states or with international organizations, the provisions of that agreement shall prevail, but the application of this provision is unclear given that the obligations are entered into by the Federal government and passed on to the Region.</p> <p>The Manual (para 1.4) also specifies that where Regional procurement rules contradict the rules stated in the agreement between the Federal government and international organizations, the rules stated in the agreement federal government and the international organization shall govern.</p>	Not applicable.	Criterion is met.		
(b) consistently adopted in laws and regulations and reflected in procurement policies.	<p>Procurement framework does not make mention to any international agreement or obligations arising from such agreements. Similarly, the thresholds for international competitive bidding are not clear from where they are coming.</p> <p>Ethiopia is a member to the Agreement Establishing the African Continental Free Trade Area (AfCFTA). Member States of AfCFTA are working on harmonization of public procurement policies. Accordingly, a continental procurement policy is planned to be developed to ensure that procurement policies are in harmony. AfCFTA will develop a model law that can be adopted by member states.</p> <p>Ethiopia signed the United Nation Convention against Corruption (UNCAC) on 10 December 2003 and through Proclamation no 544/2007 on 26 November 2007. UNCAC calls for:</p> <ul style="list-style-type: none"> Article 9 (1) (a) of UNCAC, calls for the “public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders.” Article 9 (1) (b) of UNCAC, calls for the “establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication.” <p>The African Union Convention on Preventing and Combating Corruption is another international agreement with impact on procurement. Member states of this Convention undertake to adopt legislative measures to create, maintain and strengthen their procurement system and management of public goods and services. The UN Convention for Anti-Corruption provides that parties undertake to establish appropriate systems of procurement based on transparency, competition, and objective criteria to prevent corruption.</p> <p>In addition, Ethiopia is also a member state of the African Union whose headquarters are hosted by Ethiopia in Addis Ababa. As its member. Ethiopia can benefit from the AU’s work, for example of the New Partnership for Africa’s Development (NEPAD) Agency, which is the implementing arm for the AU’s Agenda 2063 development strategy. NEPAD’s structure includes several committees that are complemented by various panels such as procurement and recruitment as well as directorate and division level quality assurance task teams.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>The international agreements are adopted into laws through proclamation ratifying the agreements. However, the procurement policies are not updated for consistency.</p> <p>While UNCAC calls for a defined level of transparency, obligations stemming from these laws are not fully reflected in the specific laws and implemented in practice. The procurement legislation requires disclosure of procurement notices and contract award above a specified threshold, however, the procurement framework does not mandate adequate publication and disclosure of procurement related documents, information, and decisions.</p> <p>UNODC carried out a review of the implementation by Ethiopia of the UNCAC Convention. The government is currently preparing a response to the Country Review Report of Ethiopia by UNODC.</p>		Amend the legislation to introduce the level of transparency at a minimum as recommended for different indicators of this assessment and for compliance with UNCAC, also in practice.

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Pillar II. Institutional Framework and Management Capacity

4. The public procurement system is mainstreamed and well-integrated into the public financial management system

4(a) Procurement planning and the budget cycle

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

Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	<p>PPL A.22 requires public bodies to prepare an annual procurement plan that must be approved and shared with the Agency by a specified date.</p> <p>The PPD provides a dedicated section (Section 3) about the preparation of procurement plans, identifying, collecting and arranging needs, selection of procurement methods, scheduling, content of the plan, approval and update of the plan, and its publication. Accordingly, the annual plan must be approved and shared with the relevant work units including the Bureau/Agency.</p> <p>PPD Annex 1 provides the procurement plan template that includes description, budget source, estimated cost, procurement method, plan vs. actual on milestone procurement activities.</p> <p>The manual (para. 3.1.1) requires public bodies to prepare a procurement plan that is consistent with the resource flow.</p> <p>In practice, the budget preparation process is informed by the Medium-Term Expenditure and Fiscal Framework (MTEFF) prepared in the BoF and approved by the council for 3 years on a rolling basis and updated each year to accommodate changes. Based on the MTEFF, the BoF allocates a budget ceiling to PBs which marks the beginning of the actual budget preparation process. The PBs come up with their priority projects and required budget. The budget estimation depends on historical price data and does not benefit from credible feasibility study and updated information acquired through market research. After the budget is approved, PBs prepare Procurement plans and share them with the regional PPA which shows that there is no link between procurement plan and budget preparation process.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>There is no requirement and practice of preparing a typical procurement plan (annual or multiyear) to inform the budget preparation process. To a certain extent, information of a procurement planning nature (e.g., cost estimate, market analysis, scheduling) including project feasibility studies, is considered in the budget preparation process.</p> <p>There is no legal requirement to submit a feasibility study and its independent verification for quality and realism.</p> <p>The annual procurement plan as required by the PPL and prepared by the Procuring Entities is shared with the Regional regulatory agency after the budget has been approved and has no influence on the budget decision.</p>		<p>More explicit provisions that demand the integration of budgeting with procurement plans should be considered.</p> <p>Enacting and implementing the Public Project Administration and Management System Proclamation would help to integrate the budgeting and PP process at least for major projects.</p>
(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).	<p>The Budget Administration Directive requires public bodies to consider financial requirements for ongoing and new programs while preparing their annual budget requirement. In general, the provisions in the Directive are followed by the public bodies.</p> <p>During budget implementation, the PBs submit three months' cash flow requirements, which are updated monthly in a rolling basis. The PBs are also required to submit copies of payment documents including invoices and certificates to support payments of ETB 1,000,000 and above. This hampers public bodies' ability to effect payment timely. According to the PEFA (2018) report, actual disbursements of subsidy for capital expenditure from the federal government to the region in the last three years has been delayed until the month of Meskerem. This protracts the payment for capital projects which are due in the first quarter of the year. Besides, the subsidy transfer has been made evenly over 10 months period without consideration of required resources.</p>	Not applicable.	<p>Criterion partially met.</p> <p>The delayed budget transfer for capital projects delays in the first quarter of the year and the transfer schedule does not consider need requirements for funds.</p>		Streamline the budget transfer process from the federal level to the regions.
(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.	<p>The revised regional Budget Administration Directive number 25/2008 E.C, Article 11 requires the public bodies to submit quarterly and annual physical and financial execution reports. All of the visited public bodies consistently follow the directive and submit monthly budget utilization reports against each of the expenditure items. The PBs prepare monthly budget utilization reports and submit to the BoF up to the 10th day of the following month which is a precondition for BoF to release budgets of the coming month. Moreover, annual budget utilization reports are submitted to BOF by the public bodies. The online IBEX systems implemented by the public bodies provide the BoF access to the budget utilization of the public bodies.</p>	Not applicable.	Criterion is met.		

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Assessment criteria [4(a) Procurement planning and the budget cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	After the closing of the financial year, the BoF submits reports on the budget execution to the executive council and the state council before the end of the next fiscal year against all budget lines.				

4(b) Financial procedures and the procurement cycle

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

Assessment criteria [4(b) Financial procedures and the procurement cycle]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	There is a requirement only to abstain from contract signing, not from solicitation before funds are available. The revised Finance administration proclamation 128/2009 A.33 Commitments, provides that no contract or other arrangement shall be entered into by any public body unless there is sufficient unencumbered balance from the budget to discharge any debt incurred during the fiscal year in which the contract or other arrangement is made. It goes on to provide that for long-term contracting lasting more than one fiscal year, the ascertainment of budget appropriated for the first fiscal year of the project shall be sufficient.	Not applicable.	Criterion is not met. The Proclamation provides that no contract shall be signed before certification of availability of budget and not before solicitation of tenders. The legal requirement should look into and address the reputational risk and transaction cost associated with unsuccessful procurement in case of lack of funds at the time of contract signing.	✓ Yes	Consider introducing an explicit provision and practice that provides confirmation of availability of budget before soliciting tenders.
(b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*	PPD (para 27.5) sets out the procedure to be followed in processing payment, in particular for works contracts. It specifies that the Engineer shall complete the inspection work within 7 working days after receipt of the payment request from the contractor. And the public body must effect payment within 14 working days after the payment is certified and submitted to it. The public body is responsible for payment that is delayed without adequate reason. The Manual at 8.24 Prompt, provides that the public body has responsibility to make payments promptly with periods for payment and penalties for delayed payments specified in the contract.	Not applicable.	Criterion is not met. During the budget administration process, the BoF requires public bodies to submit payment requests as a condition to release funds. This process requires submission of invoices for payments above Birr 1,000,000 only once monthly. This occasionally hampers public bodies' ability to effect payment timely and is not consistent with the payment procedure specified in the PD. The payment procedure for processing of invoices and authorization of payments is not publicly available and clear to potential bidders.	✓ Yes	Streamline the payment process to improve the timely payment of invoices. Ensure consistency between finance and procurement documents. Consider publishing payment procedures on websites for easy access to the bidding community and the public.
// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.		On average, out of 98 contracts reviewed, 57% of the invoices were paid on time.			

5. The country has an institution in charge of the normative/regulatory function

5(a) Status and legal basis of the normative/regulatory institution function

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

Assessment criteria the normative/regulatory institution function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to	Summary: Proclamation 161/2015 defines Powers and Duties of the Executive Organs of the Regional Government. PPL A.12 establishes the Public Procurement and Property Administration Agency ("the Agency") as an autonomous government organ having its own juridical personality.	Not applicable.	Criterion is met.		

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria the normative/regulatory institution function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	<p>PPL A.14 sets out the objectives of the Agency. These include to ensure application of fair, competitive, non-discriminatory and value for money procurement, a compliance role, capacity building, working to ensure uniformity and consistency in the public procurement system, and harmonization of the system with internationally recognized standards.</p> <p>PPL A.15 sets out the functions of the Agency. (see 5(b) below).</p> <p>PPL A.16 sets out the powers of the Agency.</p> <p>PPL A.20 provides that the budget of the Authority shall be allocated by the Regional State.</p>				

5(b) Responsibilities of the normative/regulatory function

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

Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) providing advice to procuring entities	PPL A.15(1) Agency function: to advise the Regional State on public procurement policies, principles and implementation, and provide technical assistance to the sector bureaus, zones, special woredas and city administrations.	Not applicable.	Criterion is met.		
(b) drafting procurement policies	PPL A.15(1) Agency function: to advise the Regional State on public procurement policies, principles and implementation.	Not applicable.	Criterion is met.		
(c) proposing changes/drafting amendments to the legal and regulatory framework	PPL A.15(2) Agency function: monitor and report to the Bureau, initiate amendment on law and implementation of system improvements.	Not applicable.	Criterion is met.		
(d) monitoring public procurement	PPL A.15(2) Agency function: to monitor and report to the Bureau the performance of the public procurement system.	Not applicable.	Criterion is met.		
(e) providing procurement information	Not specifically provided for in the PPL. However, PPD (para 6.1. 23) assigns the responsibility of providing procurement information, except for information restricted by the PP, to the procurement directorate in the public bodies.	Not applicable.	Criterion is met.		
(f) managing statistical databases	PPL A.15(10) Agency function: to set up, develop, maintain and update a database that covers the entire spectrum of public procurement and property administration.	Not applicable.	Criterion is met.		
(g) preparing reports on procurement to other parts of government	PPL A.15(15) Agency function: to submit quarterly and annual reports to the Bureau regarding the overall functioning of the public procurement administration and provide such data as the Bureau requests.	Not applicable.	Criterion is met.		
(h) developing and supporting implementation of initiatives for improvements of the public procurement system	<p>PPL A.15(2) Agency function: implementation of system improvements.</p> <p>PPL A.15(11) Agency function: develop policies and maintain an operational plan on capacity building both for institutional and human resource development.</p>	Not applicable.	Criterion is met.		
(i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement	<p>PPL A.15(4) Agency function: prepare update and issue SBDs, procedural forms and other attendant documents.</p> <p>Regulation 162/2018 Public Procurement and Property Disposal Service Establishment of the Regional state – A. 6(c) deliver consultancy and training services in relation to procurement to public bodies, public enterprises and charge fees for such services.</p> <p>As regards the integrity training programs, the responsibility lies with the State Ethics and Anti-corruption Commission, which, among others, is in charge of overall responsibility for educating citizens on integrity and corruption matters. Ethic officers in public bodies are responsible to coordinate with the City Administration’s Ethics and Anti-Corruption Commission in providing integrity training relevant to the public body. Under each Ministry, there are ethics officers who organize training programs in their respective agencies.</p>	Not applicable.	Criterion is met.		
(j) supporting the professionalization of the procurement function (e.g.	PPL A.15(3) Agency function: in collaboration with competent authorities, ensure the setting of training standards, competence levels, certification requirements and professional development paths.	Not applicable.	Criterion is met.		

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Assessment criteria [5(b) Responsibilities of the normative/regulatory function]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
development of role descriptions, competency profiles and accreditation and certification schemes for the profession)					
(k) designing and managing centralized online platforms and other e-Procurement systems, as appropriate	PPL A.31 provides that the Agency shall conduct a study and submit a proposal concerning an e-GP system and ensure that public bodies, suppliers and supervising entities develop the necessary capacity. (see e-GP strategy available on Agency website). No action appears to have been taken to date.	Not applicable.	Criterion is met.		

5(c) Organization, funding, staffing, and level of independence and authority

Assessment criteria [5(c) Organization, funding, staffing, and level of independence and authority]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.	PPL A.12 establishes the Public Procurement and Property Administration Agency (“the Agency”) as an autonomous government organ having its own juridical personality. It is accountable to the Bureau. The position for the Director General of the Agency is a high-level political position and is assigned by the President of the Regional State.	Not applicable.	Criterion is partially met. The Agency is accountable and reports to the Bureau but there is a lack of transparency as to where the lines of accountability lie beyond that level. This ties in with wider concerns about the general lack of transparency and accountability in the operation of the public procurement system. Consideration should be given, for example, to accountability of the Agency to the Regional Council, through the Bureau, by means of annual reporting on functioning of the public procurement system. It is also recommended that there be a statutory obligation on the Agency and/or Bureau to prepare and publish reports on the operation of the public procurement system.	✓ Yes	Ensure that the agency has adequate capacity to deliver its responsibilities, commensurate to its responsibilities.
(b) Financing is secured by the legal/regulatory framework, to ensure the function’s independence and proper staffing.	PPL A.18(2)(c) provides that the budget and work plan is prepared by the Agency’s Director General and implemented upon approval. PPL A.20 provides that budget of the Agency is allocated by the Regional State.	Not applicable.	Criterion is partially met. The budget allocation is not independent from the Regional government which has potential to compromise its regulatory role.	✓ Yes	Ensure full independence of the Regulatory function including on financing.
(c) The institution’s internal organization, authority and staffing are sufficient and consistent with its responsibilities.	The Public Procurement and Property Disposal Agency is managed by the Director and reports to the Head of the BoF. The activities of the Agency are organized into the following three Directorates: Public Procurement & Property Administration Training and Follow up Directorates; Public Procurement & Property Audit & Follow up Directorate; and Public Procurement & Property Administration Complaint Handling Directorate. The positions in the Directorates are not fully filled, particularly the Training & Follow up and the Complaint Handling Directorates are filled only 20% and 12% (respectively) of the approved positions as per the staff plan. The Agency’s annual budget has shown steady increment over the last three years from Birr ETB 1,816,923, ETB in the year 2016/17 to ETB 2,741,492 in the year 2018/19. Though more than 40% of the budget is allocated for training, the training expenditure was beyond the allocated budget in the year 2016/17, and 2018/19.		Criterion is partially met. Approved job positions are not fully filled.	✓ Yes	Consider filling all the approved positions as per the staff plan.

5(d) Avoiding conflict of interest

Assessment criteria [5(d) Avoiding conflict of interest]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations										
<p>(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.</p>	<p>Conflicts of interest – institutional</p> <p>The objectives, functions and activities of the Agency are wide-ranging, but this mix of duties and functions is incompatible in many respects, and in absence of clear rules on separation of duties, the system/structure currently in place is insufficient to avoid conflicts of interest.</p> <p>More specifically, the Agency considers and decides on requests for use of non-standard procedures (PPL A.15(5)) but also has responsibility for auditing public bodies' compliance with the procurement rules (PPL A.15(9)) and enforcement (PPL A.15(14)); the Agency is responsible for operating and maintaining the supplier's list (PPL A.15(6)) but also for review and decisions on complaints concerning the conduct of suppliers (PPL A.15(7)), maintenance of the suspension/debarment list (PPL A.15(8)) and enforcement of non-participation of suspended (debarred) suppliers (PPL A.15(17)); the Agency is involved in procurement processes – advice and assistance, authorization - but it also provides the office facilities and technical support to the complaints Board and follow-up on the implementation of Board decisions (PPL A.15(16)).</p> <p>Rules of Ethics and Conflicts of interest - personal</p> <p>PPL A.32 sets out basic Rules of Ethics in Public Procurement, subject to details to be specified in a Bureau Directive.</p> <p>PPL A.32(1)(a) requires persons engaged in public procurement to observe the obligation to notify any actual or possible conflicts of interest.</p> <p>PPD A.33 expands upon the requirements in the PPL and includes provision covering how a public body should respond and investigate a position involving a conflict of interest.</p> <p>The Manual (1.2.2.5) includes a definition of "conflict of interest" and provides examples of what may constitute a conflict of interest. There are specific provisions on conflict of interest in the context of consultancy services. Appendix 6 concerns professional ethics in public procurement and includes commentary on conflicts of interests and how individuals and public bodies should behave in that context.</p> <p>There is a standard form "Statement on Confidentiality and Non-Existence of Conflict of Interest" which all members of the Bid Opening Team must sign. (Manual Appendix 8.8)</p>	<p>In the private sector survey, 28 respondents, who operate in SNNPR, responded as follows:</p> <table border="1"> <caption>Conflict of Interest Responses</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>no real or perceived conflict of interest</td> <td>10%</td> </tr> <tr> <td>conflicts of interest rarely appear to be a problem</td> <td>50%</td> </tr> <tr> <td>conflicts of interest are obvious</td> <td>40%</td> </tr> <tr> <td>abundant conflicts of interest</td> <td>10%</td> </tr> </tbody> </table> <p>As shown on the above graph, 50% of respondents think that the conflicts of interest are obvious or abundant. 50% respondents think that the regulatory institution in SNNPR is free from conflict of interest or rarely it is a problem. It is noted, though, that some respondents may also operate in the Regions and their response may have also considered regulatory institutions across the country.</p> <p>Out of 24 respondents, 70% responded that they experienced a situation where the regulatory institution faced a conflict of interest giving the following reasons:</p> <p>Unclear separation of duties between institutions: 35%</p> <p>Unclear competencies of officials: 30%</p> <p>An official positions used for private advantage: 80%</p> <p>An official's family or other personal relations: 30%</p> <p>An official's political affinities: 40% (more than one answer was allowed).</p>	Category	Percentage	no real or perceived conflict of interest	10%	conflicts of interest rarely appear to be a problem	50%	conflicts of interest are obvious	40%	abundant conflicts of interest	10%	<p>Criterion is partially met.</p> <p>The functions and duties of the Agency are wide-ranging, with insufficient separation of duties to avoid actual or perceived conflicts of interest.</p> <p>For example, the Agency is given the functions of auditing and monitoring. Whilst auditing would normally feed into a monitoring function, the monitoring function encompasses a much broader need for system measurement and analysis.</p> <p>No other authority has the mandate or capacity to carry out procurement system monitoring but there are other authorities responsible for auditing who have more staff, more capacity, and more knowledge of auditing in general. They may not have sufficient capacity in terms of procurement auditing but that can be learned or provided.</p> <p>Building and maintain auditing capacity within the Agency sufficient to provide more than superficial audit reports (of a limited number of entities/contracts) absorbs a good deal of resources and leads to some duplication</p>		<p>See recommendation provided under 5 (c) (a). Consider a review and clear definition of responsibilities among the institutions for best efficiency and avoiding overlap.</p> <p>For RPPA, priority may be given preferably to the monitoring function which will also requires new approaches, capacity, and possibly tailored software to allow for the collection and analysis of data and production of system reports.</p>
Category	Percentage														
no real or perceived conflict of interest	10%														
conflicts of interest rarely appear to be a problem	50%														
conflicts of interest are obvious	40%														
abundant conflicts of interest	10%														

6. Procuring entities and their mandates are clearly defined

6(a) Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Procuring entities are clearly defined.</p>	<p>PPL A.2 Defines a "public body" (procuring entity) as "any public body or other similar body, which is partly or wholly financed by the State budget."</p> <p>"Public procurement" means procurement by a public body using public fund.</p> <p>"Public fund" means any monetary resource appropriated to a public body from the state revenue or subsidy from the Federal Government or aid grants and credits put at the disposal of the public bodies by foreign donors through the Federal Government or internal revenue of that public body."</p>	<p>Not applicable.</p>	<p>Criterion is partially met.</p> <p>See gap analysis at 1(a)(b).</p> <p>There is no published list of all public bodies subject to the PPL. The procurement arrangement at Zonal and Woreda level do not have adequate legal support in the primary document.</p> <p>The centralized procurement system at Zone and Woreda level is not supported by legal provisions. Both the primary and secondary documents do not stipulate the centralized procurement structure. The assessment team has not been able</p>		<p>It should be considered that the PPL provides a more complete and elaborate definition of "public body."</p> <p>Also, it should be considered to publish the full list of public bodies subject to the PPL. This would already increase the certainty on the scope of entities included within the scope of the PPL.</p>

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Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>While the definition of “public body” could arguably encompass a wide range of entities, is unclear as to the coverage of utilities, public enterprises/state owned enterprises, resulting in different perception or practical realities.</p> <p>Also, a list of all public bodies subject to the PPL is not published anywhere. Procurement at local level (woreda and zonal level) is organized in a centralized structure in which the respective finance office consolidates the requirements of the sector office and carries out procurement centrally. This is managed by the Pool Administration Directive issued by MoF which was expected to be endorsed by the Regional council in each of the regional states. The assessment team has not been able to access the Pool Directive issued by the SNNPR Regional State. More importantly, the pool structure at local level is inconsistent with the procurement structure and roles and responsibilities defined in the PPL, something that should be rectified by revising the primary legislation in line with the pool structure.</p> <p>See notes at indicator 1(a)(b) for more detailed discussion.</p>		<p>to access the pool directive issued by the Region. Since the centralized arrangement is not consistent with the arrangement specified in the PPL and PD, it is appropriate to ensure that the arrangement is adequately legalized through legislation preferably in the primary document.</p> <p>The procurement responsibility in case of procurement of works contract is not clear. While the PPL provides delegation to PBs to carry out procurement of all categories (Goods, Works, Consultancy and Non-consultancy services), the Regional construction Bureau is involved in the process of preparation, review and approval of procurement documents including the bidding documents, bid evaluation reports and supervision in case of procurement of works. The practice has as a benefit to access the technical expertise available in the construction Bureau. However, the role of the construction Bureau is not clarified in the procurement documents, creating inconsistency between the rules and the practice.</p>		<p>Consider covering the centralized procurement arrangement (pool System) in the primary document. Clarify the role of the construction Bureau in the procurement of works contract and specify in the legal documents, preferably in the primary legislation.</p>
(b) Responsibilities and competencies of procuring entities are clearly defined.	<p>There is no single list of responsibilities and competencies of procuring entities, but their responsibilities and competencies are set out in the PPL.</p> <p>The Responsibilities of the Heads of Public Bodies are listed at PPL A.8. The position of Head of Public Body itself is not defined in the PPL.</p> <p>The Duties and Responsibilities of the Procurement and Property Administration Unit within the public body are listed at PPL A.9, the Procurement Endorsing Committee at PPL A.10. PPL A.11 Accountability confirms that heads of public bodies, heads and staff of procurement administration units and endorsing committees are accountable for their actions. Please see 6 (a) (a) regarding procurement responsibilities at local level.</p>	Not applicable.	Criterion is partially met. Please see gaps under 6 (a) (a).		See recommendation under 6 (a) (a).
(c) Procuring entities are required to establish a designated, specialized procurement function with the necessary management structure, capacity and capability.* <i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities with a designated, specialised procurement function (in % of total number of procuring entities). Source: Normative/regulatory function.</i>	<p>The PPL requires Heads of public bodies to establish: (1) a Procurement and Property Administration Unit whose duties and responsibilities are listed at PPL A.9. (2) a Procurement Endorsing Committee (PEC) whose duties and responsibilities are listed at PPL A.10.</p> <p>A.11 of PPL “Accountability” provides that staff from the procurement unit staff, head of such unit and PEC shall be accountable for their actions in accordance with the PPL and PPD.</p> <p>The accountability appears to stop at the technical level of the public body.</p>	All 313 Public Bodies including 179 woredas 17 zones and 55 City administrations that follow centralized procurement arrangement have a designated, specialized procurement function.	Criterion is partially met. Capacity and capability of the procurement function of public bodies vary and in many cases are insufficient.		Carry out regular audit to assess structure, capacity and capability of the procurement function of the public bodies to discharge their responsibilities.
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.	<p>The PPL A 10 provides the authority to approve procurement decisions to the Bid Endorsing Committee for all categories of procurements above the threshold specified in the directive.</p> <p>PPD A 7.3, states that the BEC approves procurement above the values stated in A 24/2. However, the amended procurement directive requires the approval of the bid endorsing committee for procurement of Works Birr 500,000, Goods Birr 200,000, Consultancy Birr</p>	Not applicable.	Criteria is not met. Decision making authority is not delegated to lowest competent level consistent with the risks.		Ensure that procurement decisions are expedited through delegation to the appropriate level of structure.

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria [6(a) Definition, responsibilities, and formal powers of procuring entities]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	120,000 and Services Birr 150,000. The threshold is consistent with the threshold for use of National Competitive Bidding. The Head of the public body or his/her delegate has the authority to approve the procurement below the specified threshold. Normally, the Head of public bodies delegates this authority to the Head of the Procurement Directorate, which is a middle level management structure in public bodies. Thus, lower-level units do not have procurement delegation.				
(e) Accountability for decisions is precisely defined.	PPL A 11 specifies accountability for decision making. But the accountability provision is limited to few actors only - staff or head appointed to lead procurement and property administration units and members of the procurement endorsing committee in public bodies. Other actors are not covered in the accountability provision.	Not applicable.	Criterion partially met. Accountability provision is limited to few actors and doesn't include all actors that are directly or indirectly involved in procurement.		Consider expanding accountability provisions to include all actors that are directly or indirectly involved in procurement decisions.

6(b) Centralized procurement body

Assessment criteria [6(b) Centralized procurement body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.	Yes. See 6(b) below.	Not applicable.	Criterion is met.		
(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following: <ul style="list-style-type: none"> • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is precisely defined. • The body and the head of the body have a high-level and authoritative standing in government. 	Chapter XI of the PPL provides for "Special Procurement", which includes: (i) Large Value Procurement and (ii) Procedure for Framework Contract. For that purpose, the PPL requires establishment of a central body. More specifically: A.60(1) provides that a central body shall be established, by Regulation of the Executive Council, to be in charge of large value procurements having national significance, procurement of supplies for which a demand is shown by more than one public body. Until such body is established, the functions will be exercised by the Bureau. PPL A.61(2)(c) provides that the central body set up in accordance with PPL A.60(1) shall conclude and administer framework contracts in the manner prescribed in the PPL and Bureau Directive. Regulation 162/2018 for the establishment of the Public Procurement and Property Disposal Service of the SNNPR establishes the Public Procurement and Property Disposal Service (PPDS) to carry out procurement of common user items, goods and services which have national strategic significance. PPD A.27 sets out details on the special procurement of common user items by the PPDS using framework agreements and there are related obligations on public bodies to inform and cooperate with the PPDS. Manual on the Use of Framework Agreements: The Agency has issued a Manual on the Use of Framework Agreements, May 2011.	Not applicable.	Criterion is met.		
(c) The centralized procurement body's internal organization and staffing are sufficient and consistent with its responsibilities.	The Public Procurement and Property Disposal Service (PPDS) is led by Bureau Head and reports to the BoF. The core functions of PPDS are organized under 3 directorates (Public Procurement & Market value Assessment Directorate; Property Disposal & Market Estimation Directorate; and Contract Administration Directorate). Both the procurement (up to contract signing) and the contract administration activities have their own dedicated management	Not applicable.	Criterion is partially met. The PPDS is not adequately staffed and thus operates at a limited capacity.		Consider providing adequate staffing to PPDS and expand line items for framework agreement to optimize the benefit from FA.

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria [6(b) Centralized procurement body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	structure and staffing. During the assessment, 64% of the approved positions in the core departments were filled. But the impact of the vacant positions has not been evident in the performance of PPDS due to the limited operation it was engaged in. The service managed to carry out only 7 procurement packages over three years period.				

7. Public procurement is embedded in an effective information system

7(a) Publication of public procurement information supported by information technology

The country has a system that meets the following requirements:

Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	There is no easily accessible system used for publication of procurement information. The PPL A 7 states that the procurement legal documents shall be accessible to the public. The PPD A 14 also requires the Agency to publish aggregate procurement plan on the Agency's website. However, the agency has not developed websites and the procurement documents including the legislations are not easily accessible.	Not applicable.	Criterion is not met. Information on procurement is not accessible to the public.		In the short term, the Agency should discuss and consider use of the federal PPA's website as a central portal and ensure that documents are published and made accessible to the public. In the long terms, the Region/Agency should consider developing its own website.
(b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.	No. see 7 (a) (a) above.		Criterion is not met. There is no integrated information system or online portal used at regional or national level.		
(c) The information system provides for the publication of: * • procurement plans • information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions • linkages to rules and regulations and other information relevant for promoting competition and transparency. // Minimum indicator // Quantitative indicators to	No. See 7 (a) (a).	While there is no centralized online portal or website to publish procurement information, assessment was made what procurement information is published in other means. The quantitative assessment has shown that none of the PEs publish procurement plans. The only procurement information PEs publish is bid opportunities in the national newspaper. For the contracts covered in the assessment, 82% procurement opportunities were published in the national newspaper.	Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a) above.

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Assessment criteria [7(a) Publication of public procurement information supported by information technology]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
substantiate assessment of sub-indicator 7(a) Assessment criterion (c): <ul style="list-style-type: none"> • procurement plans published (in % of total number of required procurement plans) • key procurement information published along the procurement cycle (in % of total number of contracts) : • invitation to bid (in % of total number of contracts) • contract awards (purpose, supplier, value, variations/amendments) • details related to contract implementation (milestones, completion and payment) • annual procurement statistics • appeals decisions posted within the time frames specified in the law (in %). Source: Centralized online portal.					
(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).	No. see 7 (a) (a).		Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a) above.
(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).* * Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e): - Share of procurement information and data published in open data formats (in %). Source: Centralized online portal.	No. see 7 (a) (a).		Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a) above.
(f) Responsibility for the management and operation of the system is clearly defined.	There is no centralized portal or website to be managed by the PPA or PEs.		Criterion is not met. See gap under 7 (a) (a) and 7 (a) (b).		See recommendation provided under 7 (a) (a) above.

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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7(b) Use of e-Procurement

Assessment criteria [7(b) Use of e-Procurement]	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) E-procurement is widely used or progressively implemented in the country at all levels of government.*</p> <p><i>// Minimum indicator // *</i> <i>Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a):</i> <i>uptake of e-Procurement</i> <i>- number of e-Procurement procedures in % of total number of procedures</i> <i>- value of e-Procurement procedures in % of total value of procedures</i> <i>Source: e-Procurement system.</i></p>	<p>E-procurement is not considered. The establishment of e-Procurement system is a work in progress and not yet completed at federal level. There is no strategy that shows how the e-GP will be rolled out in regions.</p>	<p>Not applicable.</p>	<p>Criterion not met. The establishment of e-Procurement system is a work in progress and not yet completed at federal level. There is no strategy that shows how the e-GP will be rolled out in regions.</p>		<p>Consider preparing E-procurement strategy aligned with the progress at federal level.</p>
<p>(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.</p>	<p>See 7 (b) (a) above.</p>	<p>Not applicable.</p>	<p>Criterion not met.</p>		<p>See 7 (b) (a) above.</p>
<p>(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.</p>	<p>See 7 (b) (a) above.</p>	<p>Not applicable.</p>	<p>Criterion not met.</p>		<p>See 7 (b) (a) above.</p>
<p>(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*</p> <p><i>* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):</i> <i>- bids submitted online (in %)</i> <i>- bids submitted online by micro, small and medium-sized enterprises (in %)</i> <i>Source: e-Procurement system.</i></p>	<p>See 7 (b) (a) above.</p>	<p>Not applicable.</p>	<p>Criterion not met.</p>		<p>See 7 (b) (a) above.</p>
<p>(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.</p>	<p>See 7 (b) (a) above.</p>	<p>Not applicable.</p>	<p>Criterion not met. No roadmap for rollout at the regional level.</p>		<p>See 7 (b) (a) above.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Date: June 2021

7(c) Strategies to manage procurement data

Assessment criteria [7(c) Strategies to manage procurement data]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.	All the assessed regional public bodies except PPDS (4 out of 5 PEs) use a procurement performance measurement system using key performance indicators (KPIs). It is an excel format introduced by the federal PPA to capture procurement data starting from planning until contract completion. The implementation of the KPI system at the regional level is supervised and supported by the regional PPA who also assigned a focal person for each of the implementing agencies. The KPI report covers performance including share of procurement through open competition, competition level, performance on contract management, price trend, and complaint management in procurement of goods, works, non-consultancy and consultancy service. The KPI system was supposed to capture data in a real-time basis. In practice, the PEs collect the procurement information from contract files after procurement activities are completed for the purpose of producing a report to satisfy RPPA's and federal PPA's requirement. There is no practice of sharing the report to own management in the PEs, and hence, there has not been any follow up action to improve procurement performance. The RPPA uses the information under few indicators to evaluate the public bodies' performance. The system has not been reviewed or audited by an external party.	Not applicable.	Criterion is partially met. The KPI system is not integrated with the procurement system to capture real-time information; the accuracy of the data collected has not been verified; the KPI system has not been audited; and it is implemented only in few PEs.		Consider integrating the KPI system with the procurement system, expand its application in all PEs and enhance its use.
(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.	See 7 (c) (a).	NA	Criterion is partially met. See 7 (c) (a).		See 7 (c) (a).
(c) The reliability of the information is high (verified by audits).	See 7 (c) (a). Reliability of the information generated by KPI system has not been verified.	Not applicable.	Criterion is not met. Information does not appear reliable and not audited. See 7 (c) (a).		See 7 (c) (a).
(d) Analysis of information is routinely carried out, published and fed back into the system. * <i>// Minimum indicator //</i> * <i>Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):</i> • <i>total number and value of contracts</i> • <i>public procurement as a share of government expenditure and as share of GDP</i> • <i>total value of contracts awarded through competitive methods in the most recent fiscal year.</i> <i>Source: Normative/regulatory function/E-Procurement system.</i>	The RPPA carries out analysis of the data collected through the KPI system annually. However, there is no evidence that shows the KPI report has been used to improve performance. Most importantly, there is no practice of publishing the reports and using the reports for management decision making purpose to improve the system.	Not applicable. The team was not able to access any official report or analysis showing public procurement as a share of government expenditure and as share of GDP. No report on total value of contracts awarded through competitive methods in the most recent fiscal year.	Criterion is not met. See 7 (c) (a).		See 7 (c) (a).

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria [8(a) Training, advice and assistance]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) substantive permanent training programs of suitable quality and content for the needs of the system.	There are no permanent procurement training programs in the region. However, the RPPA provides Procurement and Property administration training to staff at Woredas, Zones, and city administrations, as part of the PFM Institutionalized training. The training was designed to create awareness on the procurement rules and regulations. This training has been conducted only once for 978 trainees and at the time of the assessment, the 2 nd round of training was ongoing for 1050 participants. The institutionalized training is not regular and does not focus on procurement skills but is designed to create awareness on the applicable rules and procedures. Besides, the RPPA provides ad hoc procurement trainings to create awareness on the procurement rules. For instance, the RPPA provided training to members of the bid endorsing committee and procurement staffs from regional sectors to introduce the revised procurement directive issued in 2018.	Not applicable.	Criterion is not met. There are no permanent procurement training programs of suitable quality in the region.		Consider establishing permanent training programs of suitable quality, or work with the federal PPA to access training programs offered at federal level.
(b) routine evaluation and periodic adjustment of training programs based on feedback and need.	There is no routine evaluation and periodic adjustment of the existing training programs. The PFM institutionalized trainings were assessed after one year of the provision of the training in 2019 (2011 E.C). The evaluation was conducted through a questionnaire distributed and collected from 29 trainees. The main focus areas of the evaluation were to learn the extent to which application of the new procurement rules improved and no adjustment to the training program was made.	Not applicable.	Criterion is not met. There was no routine evaluation of training programs.		See the recommendation provided under 8 (a) (a).
(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.	The RPPA established a help desk and assigned focal staff for each implementing agency to provide technical support, as requested. Under the helpdesk, staff in RPPA provide technical clarification and advice on the procurement rules and procedures. The technical support is accessible and valued by staff in the public bodies. The procurement staff in PEs highly regard the benefit of the helpdesk in providing real-time solution to their problems. The PPA provides the advisory service to the Suppliers when requested. PPA also accesses the public and address concerns through the Radio programs broadcasted twice a week. In the private sector survey, 33% of 18 respondents said that they are aware of the regulatory agency's helpdesk and 28% used the helpdesk. Those who did not use gave the following reasons: (i) not being aware of the helpdesk; (ii) having no trust that this would help; (iii) feeling disadvantaged in case of a dispute between the firm and the Agency.	Not applicable.	Criterion is met.		Consider expanding the legal requirement to provide advisory service to all key stakeholders.
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	Capacity Building and Good Governance is one of the pillars in the current Growth and Transformation Plan (GTP) II (2016-2021) of Ethiopia. The plan recognizes the need to develop public procurement capacity, and strengthen transparency and accountability in the use of public resources. Following the GTP document and based on the prototype from the MoF, the BoF (SNNPR) prepared the PFM strategy that has also identified public procurement capacity building as one focus areas. However, the strategy is not well integrated with other measures for developing the capacity of key functions in public procurement, such as improving the procurement Regulatory framework. Though the regulatory function lacks the capacity in terms of qualified staff and structure to deliver its responsibilities, this is not covered in the strategy document. Similarly, there is no strategy in place to improve the capacity of the private sector as key players in public procurement despite the challenges PEs face due to limited local market and capacity of the private sector, particularly the small-scale suppliers and contractors.		Criterion is partially met. The PFM strategy document is not comprehensive in addressing the capacity need of key actors in procurement. The capacity of the key actors like the Regulatory function and the private sector is overlooked. The strategy document appears the same in all regional states and may not be adequately customized to the reality of the region.		Update and expand the BoF's PFM strategy to address capacity challenges in key public procurement stakeholders, including the regulatory function and the private sector.

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8(b) Recognition of procurement as a profession

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

Assessment criteria [8(b) Recognition of procurement as a profession]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Procurement is recognized as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	The procurement function is organized as a "team" either under the "Procurement Finance and Property Administration Directorate" or "Procurement and Finance Directorate". In some PBs it is organized as a directorate - "Procurement and Market Value Assessment Directorate" which is a higher-level positioning in the organization structure. In addition, the procurement positions are graded from junior level up to team coordinator or Director level at different levels, and requirements are based on seniority. However, the procurement jobs' grading focuses only on educational qualifications and generic experiences and doesn't consider other essential competencies required to deliver procurement responsibility. It specifically misses competence requirements (skill and behavior) required to carry out procurement responsibility successfully.	Not applicable.	Criterion is partially met. Procurement job requirements are generic and not based on competencies (technical and behavioral) and not linked with the certification requirements.	✓ Yes	Revise the procurement job requirements to include required technical and behavioral competencies at different levels.
(b) Appointments and promotion are competitive and based on qualifications and professional certification.	The procurement job grades are not linked with procurement professional certifications and competency requirements. Instead, they are based on generic educational qualifications and experiences that are not directly relevant to perform procurement tasks under different level of complexities. As a result, though procurement positions are filled competitively, the selection criterion does not allow for identification of the right expert based on skill and competency requirement.	Not applicable.	Criterion is partially met. While the appointments are competitive, they are not based skill and competency requirements specific to the job.	✓ Yes	Link job requirements with certification program preferably with a program that runs locally. See 8 (b) (a).
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	Staff performance is evaluated every six months on a regular basis as part of the human resource management function in public bodies. There are no separate evaluation criteria for procurement staffs related to measuring the procurement performance. The staffs' performance score is considered for internal promotion or job competition.	Not applicable.	Criterion is partially met. Performance evaluation is generic and not tailored to procurement job requirements. Besides, performance evaluation is not linked to promotion or training requirements and is carried out to meet HR requirements.	✓ Yes	Consider developing a performance evaluation system specific to public procurement and link with incentives and promotion.

8(c) Monitoring performance to improve the system

Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	There is no workable and consistently applicable performance measurement system that focuses on both qualitative and quantitative aspects. However, the federal PPA introduced (and adopted by SNNPR) a performance measurement system based on identified Key Procurement Performance Indicators (KPI). The system uses an Excel format to collect, analyze, and report procurement performance against the indicators. The system has not been systematically integrated into the procurement system and hence, the use of the system is left at the discretion of the procuring entities and staff. The system has been introduced in 2015 but the use of the system in SNNPR level is limited to few PBs. There is clear lack of ownership and of high-level commitment to rollout and use the system. It appears that it is implemented largely because it was linked with disbursement in the World Bank-financed PforR project (PBS III ¹ and ESPES ²).	Not applicable.	Criterion is not met. The KPI system is not rolled out successfully. It is not a comprehensive tool in measuring performance in qualitative and quantitative terms. It is important to enhance the KPI system and integrate with the procurement system to allow real-time data collection, analysis and reporting both on qualitative and quantitative terms		Develop a comprehensive data capture and performance measurement system integrated with the e-procurement system to be introduced. Consider integrating the KPI into the procurement measurement system
(b) The information is used to support strategic policy making on procurement.	There is no system used for collection and analysis of procurement data to support strategic policy making on procurement. The information collected through the KPI system does not appear to be complete and accurate and used as reliable data for procurement policy making. It appears that the limited report generated from the system is meant to satisfy requirements in the World Bank-financed PforR projects and not used for procurement strategic policy making decisions.	Not applicable.	Criterion is not met. The information generated through the KPI system is not used for strategic policy making.		In addition to enhancing the functioning of the KPI system into a comprehensive data capture and performance measurement system, it is appropriate to establish a procurement policy team that utilizes the data to make

¹ Promotion of Basic Services Phase III Program.

² Enhancing Shared Prosperity for Equitable Services Program.

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Assessment criteria [8(c) Monitoring performance to improve the system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
					procurement policy recommendation. The team should ensure the consistency of the procurement system and implementation to the broader policy objectives of the government.
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	No evidence was obtained that supports the existence of a strategic plan including result framework.	Not applicable.	Criterion is not met. No evidence was obtained that supports the existence of strategic plan including result framework.		Introduce a strategic plan supported by a result framework to improve the procurement system. Consider the recommendation provided under See 8 (c) (a).
(d) Responsibilities are clearly defined.	The procurement proclamation 146/2012 Article 15 (2) mandates PPA to monitor and report on procurement performance. Within the Agency, the Training, Monitoring and Evaluation Directorate is responsible for the implementation of the KPI system at the regional level.	Not applicable.	Criterion is met.		

Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	All of the visited PEs carry out need analysis and market research. However, the market assessment is not carried out especially for purpose of guiding selection of the procurement approaches. Procurement methods are selected mainly based on threshold, following the provisions in the directive. Besides, the market analysis is not systematized and integrated into the procurement system. There is no guidance and template to support need analysis and market research and ensure application of the results to inform procurement decision making. It was revealed that there is a general attitude to comply with procurement rules instead of finding and pursuing innovative solutions that evidently support better procurement outcome.	Not applicable.	Criterion is not met. There are no mechanism or supporting tools to enable procuring entities to carry out meaningful market assessment that informs the selection of the optimal procurement approach. Selection of the procurement approach is basically made based on threshold as provided in the procurement documents, instead of market realities and outcomes. In addition to a lack of supporting tools, the procurement system is hampered by fear of discretion and risk avoiding behavior. It is key to enhance confidence in a procurement decision making process that focuses on procurement outcome than mere compliance to rules.		Consider introducing requirements and provide tools/templates to support needs analysis and market research for purpose of defining optimal procurement strategy. Empower procurement decision makers to consider innovative and optimal approach based on market information.
(b) The requirements and desired outcomes of contracts are clearly defined.	The requirements and desired outcomes of contracts are described in the procurement documents. The PEs specify the requirements in the specifications, Terms of reference, and Bill of Quantities as appropriate. Requirements in case of works contract are normally defined through cross referencing the standard technical specification of building works developed by the former Building and transport Construction and Design Authority (BaTCoDA) and standard technical specification of road works developed by Ethiopian Roads Authority (ERA). Procuring Entities use these standards through cross referring name of the standard and as part of the contract. However, it appears that there are problems in practice with the use of discriminatory specifications.	Not applicable.	Criterion is partially met. It appears that there are problems in practice with the use of discriminatory specifications, particularly in procurement of goods and services.		Enhance procurement audit carried out by RPPA to put emphasis on the technical specifications and follow up to ensure improvement in preparing the specifications. Expand training on the requirements for neutral specifications, functional where appropriate, and based on international norms when possible.

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Assessment criteria [9(a) Planning]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	The procurement arrangement supports social and economic objectives which are integrated into the procurement legal framework and SBDs. The procurement proclamation article 25 specifies preference for locally manufactured goods and services and Micro and Small Enterprises (MSEs). The MSEs Regulation No.172/2019 requires PEs to set aside procurement market for contracts up to the maximum of Birr 10 million in case of works contract. Besides, on all other contracts, the provision requires PEs to demand for mandatory sub-contracting of MSEs up to 20% of contract amount. It appears that some PEs experienced challenges due to low performance of contracts by MSEs. Most importantly, the definition of MSEs targets only job seeker youths and exclude contractors that are similar size but already operating in the market. The preference margin in some sectors appears too high (25% in health sector) to strike balance between social objectives and value for money in procurement.	Not applicable.	Criterion is not met. There is no legal requirement and practice to use sustainability criteria (environmental, social, and economic) to ensure value for money. The only exception is the price preference margin allowed for goods and services manufactured locally or participation of MSEs. The preference for MSEs has been changed into "set aside" of contracts up to defined thresholds excluding other groups of similar size from accessing the market. This is likely to create unintended social consequences. The decision for granting price preference (where and how) has not been supported by any analysis that shows the value addition and consistency with the national economic objectives. Thus, it is exposed to risk of misuse. The mandatory subcontracting is implemented contrary to the procurement rules and appears unbalanced.	✓ Yes	Having the history of using the preference schemes, both at the Federal and Regional level, it is recommended to study the use of the requirements and their impact. This study can be carried out jointly as similar schemes at both levels and the Regions are looking to the Federal government for guidance. Revise the preference schemes based on the evidence generated from the study.

9(b) Selection and contracting

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	The procurement documents provide a procedure for use of a multi-stage approach. However, there was no practice of using the procedure because, unless for a very rare case, procurements at the regional level are not complex.	Not applicable.	Criteria is met.		Consider using multistage procedures in case of complex procurement, as appropriate. Prepare guidance on how to use multistage procedure.
(b) Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	Public bodies use standard bidding documents (SBD) developed by the federal PPA particularly for works contract and for procurement from international market through ICB procedure. The RPPA issued SBDs for procurement of Goods and Services through National Competitive Bidding procedures. The SBDs incorporate all sections that are found in typical SBDs including Instruction to Bidders, Bid Data Sheet, schedules and templates, Standard Conditions of Contract, Special Conditions of Contract, etc. However, it appears that the SBDs are considered complex and their use is discretionary and limited to procurement of works contract and ICB procedures. As a result, the SBDs issued by the RPPA are not widely used by the PBs.	The choice of procurement methods is guided mainly by the applicable threshold as provided in the procurement legal framework. These thresholds are not always consistent with the development of markets in some sectors like construction. There is a tendency of complying to the threshold requirements instead of applying professional judgment in selecting an appropriate procurement method that is relevant to attain successful result in the procurement. The application of one size fits all approach in setting thresholds is not working well. The construction sector may need different thresholds, commensurate with the local capacity in the sector.	Criterion is not met. The federal SBDs were issued in 2011 and not updated to meet the current practice and market operation. Besides, SBDs are not used for all procurements including Goods and services from the local market and not officially endorsed by the appropriate authority for mandatory use.		Discuss with the federal PPA and ensure that national SBDs are issued that accommodate the specificity in regions and proportional to the market.
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	The procurement legal framework defines open bidding as the default procurement method which is largely followed by the public bodies. But other procurement methods are also used if the procurement meets the conditions stated in the directive and if the procurement is within the specified threshold. It appears that there is a high tendency of complying with the threshold requirements instead of applying professional judgment in selecting appropriate procurement method that is relevant to attain a successful result in the procurement.	Not applicable.	Criterion is partially met. There is practice of procuring contrary to the rules specified in the procurement rules. In other cases, the choice of procurement methods is guided mainly by the applicable threshold as provided in the procurement legal framework. These thresholds are not always consistent with the development of markets in some sectors like construction. There is a tendency of complying with the threshold requirements instead of applying professional judgment in selecting the appropriate procurement method that is relevant to attain a successful result in the procurement.		Consider following the procurement procedures as specified in the legal documents. Ensure accountability for decisions taken otherwise. Provide guidance/tools to guide evaluation and selection of workable procurement options. Consider updating procurement methods thresholds to reflect the capacity of the local market.

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations								
			The application of one size fits all approach in setting thresholds is not working well. The construction sector may need different thresholds, commensurate with the local capacity in the sector.										
(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.	<p>Procedures for bid submission, receipt and opening are clearly described in the procurement documents including PP, PPD and SBDs. No evidence has been observed that shows the procedures were not fully complied by the PEs covered in the assessment. The PPD 16.18 specifies that representatives of mass media or any interested observer can attend the bid opening ceremony, as far as practicable and as far as it does not interfere with the bid opening process and availability of space.</p> <p>However, the PBs do not specify the actual bid opening date in the Invitation for Bid (IFB) due to uncertainty on the actual date of publication of the IFB on the Newspaper. Instead, they express the number of days that the IFB floats and bidders are required to calculate the bid opening days at their own risk. This has created uncertainty on the actual bid closing/opening day to a risk of rejecting bids due to late submission.</p>		<p>Criterion is partially met. The IFB does not specify bid closing/opening day.</p>	✓ Yes	Discuss and agree a mechanism with the press agency on how to specify the bid closing/opening day in the IFB.								
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	<p>The PPL A 44 specifies the rule of confidentiality. It requires PEs not to disclose information related to examination, clarification, bid evaluation and award decision until the award is publicly announced. Rules of confidentiality is also expressed in the legal documents as one of the ethical standards expected from persons engaged in public procurement. The same is reflected in the SBDs issued by the regional PPA that requires process to be confidential and all communication with bidders to be in writing. However, there were cases in which confidentiality requirements were breached. There is no practice of orienting evaluators on the rules of confidentiality and no detailed guidance is provided. The PPD A 44.2 requires PEs to communicate the result of the technical evaluation in writing to all bidders at the same time for bids submitted through two envelopes system. The technical evaluation committee receives complaints and responds including making the necessary correction on the report before the PE reaches final decision by the authorized officials. Though the process is supported by the legal document, it exposes the procurement process to unintended external influences and unfair practices.</p>	<p>While a quantitative indicator is not envisaged here, the Assessment Team asked the private sector in the survey about their perception of confidentiality of the procurement process.</p> <p>23% of respondents said that confidentiality is ensured throughout the bid evaluation and award process. 23% said that it is not, and 54% was not sure.</p> <table border="1"> <caption>Confidentiality Perception Survey Results</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>23%</td> </tr> <tr> <td>No</td> <td>23%</td> </tr> <tr> <td>Not sure</td> <td>54%</td> </tr> </tbody> </table>	Response	Percentage	Yes	23%	No	23%	Not sure	54%	<p>Criterion is partially met. The procurement system does not provide tools to ensure and support maintaining confidentiality which might include requiring evaluators to sign a declaration to uphold confidentiality.</p>		Consider providing tools and templates to enforce confidentiality provisions.
Response	Percentage												
Yes	23%												
No	23%												
Not sure	54%												
(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.	<p>The procurement proclamation allows two types of evaluation: least cost and best advantageous bid which considers quality as one aspect of evaluation. In practice, PEs are inclined to use the least cost evaluation method. The award criteria are specified in the bidding document and the team has not come across cases in which it was not complied with. In most cases, award is made by selecting the least cost among bids that meets minimum requirements.</p> <p>However, the RPPA issued circular requiring PEs to reject bidders whose costs are 15% above the Engineer's estimates and who made arithmetic errors beyond + or - 2%. PEs integrated the requirement into the bidding documents and is applied in procurement of works contract. The main driver for this arrangement has not been clarified. While it is inconsistent with the award criteria specified in the PPL, the practice obviously leads to rejection of competitive bids and is exposed to abuse and misuse. For procurement of IT facilities etc., PEs use a merit point evaluation system with due consideration of quality aspects in the evaluation of bids. Other techniques like Best and Final Offer (BAFO) or competitive negotiation etc. are not accommodated in the procurement legal framework and are not applied.</p>	Not applicable.	<p>Criterion is partially met. The award criteria are limited to the least cost and merit point evaluation only. Given the development in the market and the increasing complexity of procurement, other award criterion should be considered in the legal documents and applied in practice. Ensure consistency of rules in award criteria.</p>		See the recommendation 1 (f) (b). Ensure that the PEs apply award criteria that are not subject to abuse/misuse and safeguard competitive from unreasonable rejection. Ensure that the training program includes how to design and apply the evaluation criteria.								
(g) Contract awards are announced as prescribed.	<p>Article 46 of the Proclamation stipulates the manner in which the contract award is notified. The PEs comply with the provision by notifying the contract award decision both to the successful and unsuccessful bidders including the reason why the unsuccessful bidders are not considered. However, it was observed that some of the PEs (3 out of the 5 visited) didn't specify in their letter the technical reason that led for rejection of a particular bid.</p>	Not applicable.	<p>Criterion is partially met. However, it was observed that some of the PEs (3 out of the 5 visited) didn't specify in their letter the technical reason that led for rejection of a particular bid.</p>		Provide guidance and training on the minimum content of the award notification letter. Consider publishing contract awards at least for								

MAPS assessment in:

Name/organization: The World Bank in cooperation with the Ministry of Finance and the Public Procurement and Property Administration Agency of the Government of Ethiopia

Date: June 2021

Assessment criteria [9(b) Selection and contracting]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations						
					procurement above specified threshold.						
(h) Contract clauses include sustainability considerations, where appropriate.	PPA's SBD, which PBs in the region use, provide clauses that require suppliers/contractors to respect environmental considerations as stipulated in the Ethiopian law. The SBDs for works contract has extended provisions on environment and social aspects including the required measures that should be taken to address HIV/Aids risks and other STDs during construction. The PEs apply the provisions as stipulated in the SBDs.	Not applicable.	Criterion is partially met. Use of the federal SBDs is not a mandatory requirement in the region.		See recommendation under 2 (b) (a).						
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	There are no provisions and practices that provides incentives for exceeding performance levels. However, there is disincentive clause for failure to meet agreed terms particularly on slippage from the agreed delivery time. It appears that the PEs are obliged to apply the liquidated damage clauses which is 0.1% for each day of delay. Not applying the liquidated damages is indicated as a non-compliance in audit reports.	Not applicable.	Criterion is not met. Contract clauses do not provide incentives for exceeding performance.		Standard contracts may provide for an incentive for timely excellent performance (that exceed expectations above the agreed terms like time, quality) (e.g. a bonus). Consider introducing the value engineering provision that allows enhancing performance, reliability, quality, safety, effectiveness, or other desired characteristics.						
(j) The selection and award process is carried out effectively, efficiently and in a transparent way. * *Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j): - average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each procurement method used) - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) Source for all: Sample of procurement cases.	The selection and award process is not carried out effectively, efficiently and in a transparent manner. The assessment team learnt there were various instances in which the procurement processes were nullified due to delays in awarding contracts within the bid validity periods. It is also observed that the process lacks transparency. For instance, it is not a common practice to publish award information in accessible media.	Average time to procure per procurement method: <table border="1"> <thead> <tr> <th>Method</th> <th>Av. time</th> <th>Range</th> </tr> </thead> <tbody> <tr> <td>NCB</td> <td>75</td> <td>52-92</td> </tr> </tbody> </table> <p>The number of ICB contracts carried out during the assessment period were only two in one of the visited PEs. The average time to procure of these contracts were 124 days. On average, 2 and 5 responsive bids were obtained in procurements conducted using ICB and NCB procedures respectively. This implies that there was fairly adequate competition under NCB procedure and no adequate competition under ICB procedure. However, there was huge heterogeneity in performance among the visited PEs. The best performing PE attracted 9 responsive bids per contract while the low performing PE was able to attract only 2 responsive bids per contract.</p> <p>Compliance with publication requirement: On average, 37% of the contracts assessed were conducted in full compliance with the publication requirement, as per the rule. The level of compliance again was quite variant among the visited PEs with a range that varies from 0% to 100% of compliance. More than 62% of the visited PEs didn't comply with the publication requirement for any of the contract they processed during the period covered in the assessment.</p>	Method	Av. time	Range	NCB	75	52-92	Criterion is not met. The average time to process procurement is significantly longer than the normal bid validity time and international practices. This makes the procurement process inefficient. The level of compliance to publication requirement is also low.	✓ Yes	Regularly review by each public body the procurement processes to identify inefficiencies and bottlenecks, based on which define and implement measures to improve the processes. Monitoring efficiency and transparency of the processes should be incorporated as part of monitoring and reporting function by the PPA.
Method	Av. time	Range									
NCB	75	52-92									

9(c) Contract management

Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Contracts are implemented in a timely manner.*	Contracts are not implemented timely. Time overrun in the reviewed sample of contracts was significant. The reasons vary.	Time overrun of contracts implementation beyond their original completion date: on average, time	Criterion is not met.		Public bodies should regularly analyze contract

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)		overrun for all contracts covered under the assessment is 88 days.	Contracts are not implemented timely. In some cases, the time overrun exceeds 2 years.		performance and outcome, identify reasons for contract time overrun and implement corrective measures. Consider preparing guidance tools and provide training to staff.
(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.* Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)	The General Conditions of Contract in the regional PPA's SBDs provide provisions for Inspection and Tests of items procured and delivered and works performed. The PEs responded that they carry out inspection routinely before acceptance of the Goods. But the quantitative data shows that quality control and inspection was carried out in 78% of the contracts reviewed. For works contract, PBs follow established procedure and employ a consultant for supervision of construction projects.	Quality control and inspection work were carried out in 61% of the contracts covered by the assessment. In all PEs, the practice of quality control has been observed while the performance differs from contract to contract.	Criterion is partially met. Quality control and inspection work were not routinely carried out for all contracts.		Public bodies should regularly monitor contract management, identify reasons for non-compliance and implement corrective measures.
(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).	Please see 4 (b) (b) The procurement Directive Article 27.5 specifies the payment procedure mandating PEs to effect progress payments for works contract within 14 working days after receipt of payment certificate from the consultant. However, in most cases, the payment time specified in the contract documents exceed the time specified in the PPD. PBs are required to submit invoices with the supporting documents for payments above Birr 1,000,000 to the BoF for verification and authorization for payment only once a month..	On average, only 57% of the invoices were paid on time. The performance among the visited PEs, except for two, is quite uniform and is about 70-80%. The two outliers paid 20-30%.	Criterion is partially met. Invoices are not paid on time. In some of the PEs, compliance to timely payment is very low. This might be related to weak contract management capacity and follow-up mechanisms that leads to delay in contract completion as observed above, and consequential costs to the government.	✓ Yes	Review the invoice verification process and payment obstacles to optimize the payment process and minimize delay due to unavoidable reasons such as prevalent shortage of Forex that cannot be mitigated at the time of payment.
(d) Contract amendments are reviewed, issued and published in a timely manner.* Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)	Contract amendments are prepared and reviewed by the relevant work unit in the PBs in consultation with the procurement team. In case of works contract, the region's Urban and Construction Bureau reviews the amendments before it is submitted and approved by the Head of the PBs. The decision-making procedure for contract amendment is not clear in the legal documents. It was observed that the established procurement decision approval procedure, which involves review and approval by the Bid Endorsing Committee, has not been practiced. The legal provision requires for variation order above 25% of contract amount reviewed and approved by the RPPA. There is no experience of publishing contract amendments. For work contracts, issuing amendments is lengthy and involves multiple actors.	On average, 6% of the contracts covered in the assessment were amended resulting in 3% price increase.	Criterion is partially met. While the contract amendments are normally issued, they are not prepared timely. The approval process established for procurement is not followed as it may not be clear in the legal framework.	✓ Yes	Clarify the approval process for contract amendments.
(e) Procurement statistics are available, and a system is in place to measure and improve procurement practices.	There are no procurement statistics available that could be used to measure and improve procurement performance. The KPI system is designed to collect key procurement data against the KPIs with the intention of measuring performance throughout the cycle. But the system is not rolled out in all PEs in the region and the data collected through the system is not reliable. Most importantly, it is not reported to the management and used to improve the procurement performance.	Not applicable.	Criterion is not met. The KPI system is not fully functional and integrated with the procurement system in capturing procurement data, measuring, and improving procurement practices. It is also not used by all public bodies.		Please see the recommendation under 7 (c) (a).

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Assessment criteria [9(c) Contract management]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.</p>	There is no practice of involving relevant external stakeholders in public procurement and contract management.	There was no direct involvement of Civil society organizations in any of the contracts covered in the assessment.	<p>Criterion is not met.</p> <p>There are no opportunities for direct involvement of external stakeholders in procurement. The procurement system has not reached the level of maturity that encourages stakeholders' participation in the procurement process. Even though engagement of external stakeholders is not prohibited, they are not engaged because there are no CSOs working in the procurement area.</p>	✓Yes	Encourage and support participation of CSOs and their watchdog function as well as citizen's participation in procurement.
<p>(g) The records are complete and accurate, and easily accessible in a single file.*</p> <p>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g): - share of contracts with complete and accurate records and databases (in %) Source: Sample of procurement cases*</p>	Records are not accessible in a single file. In most of the PEs, the records are incomplete and not kept in easily accessible manner. Except in few cases, procurement and payment documents are kept separately in different files and accessing the documents depend on the memory, availability and willingness of staff involved in the process. In all of the PEs, the payment documents are kept in finance unit/archive and procurement records up to contract signing are kept in procurement unit. Accessing and relating the procurement document and the payment documents have been difficult. There is no reliable data retrieving system. The assessment team was forced to drop sampled procurement contracts, due to incomplete and inaccessible data.	<p>Not applicable.</p> <p>Record management is a systemic challenge across all public bodies. Procurement records are not complete and accessible and supported by data base. Thus, the team dropped the quantitative analysis as it is not possible to make meaningful comparison and different result is not expected.</p>	<p>Criterion is not met.</p> <p>Procurement records are not kept in complete and accessible manner. The assessment team dropped review of some contracts due to incomplete and inaccessible records.</p>	✓Yes	Given how widespread the problem with record keeping appears to be, a special attention is recommended during the next year procurement review to review the record keeping arrangements held by the public bodies and follow up within let's say 3 months in case of negative findings (not awaiting the next audit). Special attention should be maintained until significant improvement.

10. The public procurement market is fully functional

10(a) Dialogue and partnerships between public and private sector

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator</p>	The RPPA organizes an annual forum jointly with the region's chamber of commerce. In the forum, both the private sectors and the public bodies are represented. The main focus of the forum is to discuss all relevant procurement issues that affect the procurement performance and propose possible solutions. The PPA uses the forum to introduce new/revised procurement laws of the region. However, the assessment team has not been presented with evidence showing the proceedings of the forum. The Zones had also similar experiences of conducting joint forum at Zone level but discontinued.	Out of 39 respondents to the private sector survey, 26% responded that the private sector is sometimes consulted before changes are introduced to the procurement rules and procedures. 64% responded that such consultation is made rarely or never. 10% are not sure.	<p>Criterion is partially met.</p> <p>The RPPA carries out regular discussion with the private sector through the associations. This mainly reaches to the big suppliers/contractors that are members of the different associations. However, it may not reach sufficient coverage of the private sector. The results of the survey show that an open dialogue with the private sector and the consultative process in adopting change to the procurement framework is limited.</p>		RPPA should enhance the engagement by creating venues also for the involvement of small businesses as well as ensuring awareness of the Forum among all relevant associations, to enable them to participate in the dialogue with the Regional Government.

Assessment criteria [10(a) Dialogue and partnerships between public and private sector]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations			
<p>10(a) Assessment criterion (a): - perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.</p>		<p>of 21 respondents who responded to the question whether opinions of the private sector are considered, (i) none of them said that yes; (ii) 43% said no; and (iii) 57% were not sure.</p>						
<p>(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.</p>	<p>The RPPA does not have a formal training program for the private sector. Training to the private sector is provided through annual workshops, and dissemination of information.</p> <p>RPPA also holds regular radio program twice a week each program running for a duration of 20 minutes. In the programs, the RPPA discusses different procurement issues, rules and provide clarifications/ response to queries from audiences. The RPPA considers the program successful in creating awareness of the procurement system among the public.</p> <p>In the private sector survey, the following results were obtained.</p>	Not applicable.	<p>Criterion is partially met.</p> <p>The regular radio program helps to orient the public including the private sector regarding the procurement rules of the region. But a more in-depth and focused training program helps to create better understanding among the private sector and enhance responsiveness.</p>		RPPA should monitor capacity and competitiveness of the private sector, and act, if necessary, to adjust the availability of procurement training and its quality on the market.			
	<table border="1"> <tr> <td>Are you aware of capacity building programs being run by the government for private contractors?</td> <td>Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	Are you aware of capacity building programs being run by the government for private contractors?	Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?					
Are you aware of capacity building programs being run by the government for private contractors?	Are you aware of capacity building programs being run by the Government of Ethiopia for SMEs?							

10(b) Private sector's organization and access to the public procurement market

Assessment criteria [10(b) Private sector's organization and access to the public procurement market]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) The private sector is competitive, well-organized, willing and able to participate in the competition for public procurement contracts.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p>	<p>The participation and organization level of the private sectors varies from sector to sector and based on procurement volume. In procurement of high-value works contract and consultancy services, the level of participation is relatively high, and the contractors are better organized as compared to small-value works procurements. The PBs consider that, even in procurement of goods, the level of participation differs from item to item. For instance, there is consideration of better participation of private sectors in IT, Electronics, Office Equipment and Furniture procurements.</p> <p>However, the local market is limited and not responsive even for small-value petty procurements conducted through Local Competitive Bidding or RFQ. It was learnt that the</p>	Not applicable.	<p>Criterion is not met.</p> <p>Due to the limited local market, procurement is not efficient and cost effective.</p>	✓ Yes	Consider using innovative procurement arrangements to mitigate the impact of limited market at local level including enhanced use of centralized procurement arrangement.

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Assessment criteria [10(b) Private sector's organization and access to the public procurement market]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations																																																
<ul style="list-style-type: none"> number of registered suppliers as a share of total number of suppliers in the country (in %) share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) total number and value of contracts awarded to domestic/foreign firms (and in % of total) Source: E-Procurement system/Supplier Database.	PBs should travel to the center (Addis Ababa) to carry out procurement including small-value items, leading to very high transaction cost and inefficiency.																																																				
(b) There are no major systemic constraints inhibiting private sector access to the public procurement market. * Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b): - perception of firms on the appropriateness of conditions in the public procurement market (in % of responses). Source: Survey.	The local market is very limited. Bidders are largely located in Addis Ababa and participation in a bidding process requires travel to the Regional City to procure bidding documents, submits bids and follow-up on matters of contract. The distance and leniency to use other means of communication including electronic means to deliver bidding documents and collect bids from bidders inhibits many of the bidders from participation. The other systemic constraint is related to shortage of foreign currency. The private sector is hesitant to participate in bids that involve import from abroad. There are some other constraints raised by the private sector such as unclear evaluation criteria, delay in procurement processing, etc.	Based on the private sector survey, appropriateness of conditions in the public procurement is shown in the table below. 32 respondents responded to the question whether the below listed conditions to participate in competition for public contracts are met: <table border="1"> <thead> <tr> <th></th> <th>Always</th> <th>Sometimes</th> <th>Rarely</th> <th>Never</th> <th>Not sure</th> </tr> </thead> <tbody> <tr> <td>Access to financing</td> <td>6%</td> <td>22%</td> <td>31%</td> <td>31%</td> <td>10%</td> </tr> <tr> <td>Procurement methods are proportionate to the risk and value</td> <td>3%</td> <td>31%</td> <td>50%</td> <td>13%</td> <td>3%</td> </tr> <tr> <td>Procurement rules are simple and flexible</td> <td>3%</td> <td>19%</td> <td>41%</td> <td>34%</td> <td>3%</td> </tr> <tr> <td>Contracting provisions help distribute risk fairly</td> <td>7%</td> <td>17%</td> <td>40%</td> <td>36%</td> <td>0%</td> </tr> <tr> <td>Payment provisions are fair</td> <td>6%</td> <td>28%</td> <td>44%</td> <td>22%</td> <td>0%</td> </tr> <tr> <td>Effective mechanism for appeals and dispute resolution</td> <td>3%</td> <td>16%</td> <td>47%</td> <td>34%</td> <td>0%</td> </tr> <tr> <td>Conditions are conducive to win contracts in the public procurement</td> <td>7%</td> <td>27%</td> <td>53%</td> <td>13%</td> <td>0%</td> </tr> </tbody> </table>		Always	Sometimes	Rarely	Never	Not sure	Access to financing	6%	22%	31%	31%	10%	Procurement methods are proportionate to the risk and value	3%	31%	50%	13%	3%	Procurement rules are simple and flexible	3%	19%	41%	34%	3%	Contracting provisions help distribute risk fairly	7%	17%	40%	36%	0%	Payment provisions are fair	6%	28%	44%	22%	0%	Effective mechanism for appeals and dispute resolution	3%	16%	47%	34%	0%	Conditions are conducive to win contracts in the public procurement	7%	27%	53%	13%	0%	Criterion is not met. See 10 (b) (a) . As per the feedback from the private sector, the non-proportional method, unfair contract and payment conditions, complex and rigid procurement rules are constraints for participation in the public procurement market.		Enhance the capacity and performance of the centralized procurement system (Framework agreement) and consider other arrangements to minimize the impact of limited market on the effectiveness of the procurement process. Address other constraints as reflected by the private sector including defining proportional procurement methods, simplifying rules, streamlining payment provisions, contract conditions, etc., which are included in the relevant section in the matrix.
	Always	Sometimes	Rarely	Never	Not sure																																																
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10 (c) Key sectors and sector strategies

Assessment criteria [10(c) Key sectors and sector strategies]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Key sectors associated with the public procurement market are identified by the government.	The regional government identified the five development sectors as key specifically Agriculture, Education, Health, Road and Water sectors along with Finance and Trade and Industry as key sectors. The Regional government allocates close to 70% of the budget in these five development sectors, implying their significance for public procurement market.	Not applicable.	Criterion is met.		As part of the recommendation under the indicator 10 (a) (a), RPPA should ensure that the key sectors are engaged in the dialogue on procurement with the government.
(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government,	There is no practice of undertaking procurement risk assessment centrally or at the sector level. High-spending procurement entities rarely analyze their market or suppliers/contractors to come up with workable approach in specific procurements. There is no evidence showing that the assessments informed procurement policy objectives.	Not applicable.	Criterion is not met. There is no practice of assessing risks associated with key sectors.		RPPA should carry out regular assessments of risks associated with the identified key sector, to ensure

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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and sector market participants are engaged in support of procurement policy objectives.					collaboration of the sector markets in specific areas to support the procurement policy objectives.
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Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

11. Transparency and civil society engagement foster integrity in public procurement

11(a) Enabling environment for public consultation and monitoring

Assessment criteria [11(a) Enabling environment for public consultation and monitoring]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	There is no practice of consulting the public when formulating changes to the public procurement system. However, the Regional Council holds public consultation before new proclamation is enacted. All other changes to the public procurement system are carried out without transparent and adequate public consultation.		Criterion is not met. The practice on public consultation is not adequate. The PBs do not carry public consultation, which is limited at the legislative level.		RPPA and BoF should monitor that a transparent and consultative process is followed when formulating changes to the public procurement system by any public body that issues such changes.
(b) Programs are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.	There is no regular and comprehensive capacity building program established to build the capacity of relevant stakeholders. However, RPPA conducts a biannual forum with the private sector on public procurement issues, performance, challenges etc. In addition, the RPPA's officials hold regular discussion and live Question and Answer sessions through mass media and discuss with the public regarding procurement rules and performance.		Criterion is partially met. There is no regular and comprehensive capacity building program established to build the capacity of stakeholders.		Consider a more comprehensive capacity building program which includes private sector and CSOs to enhance their role and participation in procurement.
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	The participation of Civil Society in the region's public procurement is missing.		Criterion is not met.		See recommendation under 11 (c) (a).

11(b) Adequate and timely access to information by the public

Assessment criteria [11(b) Adequate and timely access to information by the public]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	The procurement proclamation article 7 obliges procurement law and directives and other procurement documents to be accessible to the public. But even the main procurement legal documents are not accessible to the public.	Not applicable.	Criterion is not met. No adequate and timely access to procurement information by the public.		Consider requirement to publish key procurement information in an easily accessible manner. Consider use of centralized federal PPA's website to publish procurement information.

11(c) Direct engagement of civil society

Assessment criteria [11(c) Direct engagement of civil society]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal/regulatory and policy framework allows citizens to participate in the following	The procurement regulatory framework does not specifically mention and allow participation of citizens in the procurement system.	Not applicable.	Criterion is not met.		Encourage and support participation of CSOs and their watchdog function as

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<p>phases of a procurement process, as appropriate:</p> <ul style="list-style-type: none"> • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local law • contract management and completion (monitoring). 			<p>While it does not prohibit, the legal framework does not explicitly state that participation of CSOs in the procurement process is allowed.</p> <p>In practice, the public bodies do not prohibit their participation. However, there are no active CSOs working in public procurement in the region. Restrictive provisions and practices may have created a non-conducive environment for CSOs in Ethiopia and subsequently the lack of their involvement in procurement.</p>		<p>well as citizen's participation in procurement.</p>
<p>(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.</p>	<p>Few of the visited PEs reported the practice of involving community in particular council members in construction monitoring activities. Community participation during planning, fundraising and follow-up of rural road projects were reported. However, no evidence of participation has been provided.</p>	<p>Not applicable.</p>	<p>Criterion is partially met.</p>		<p>See the above recommendation.</p>

12. The country has effective control audit systems

12(a) Legal framework, organization and procedures of the control system

The system in the country provides for:

<p>Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]</p>	<p>Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)</p>	<p>Step 2: <u>Quantitative analysis</u></p>	<p>Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)</p>	<p>Red flag?</p>	<p>Recommendations</p>
<p>(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies</p>	<p>Proclamation 176/2011 Re-established the office of the Auditor General of the SNNPR and sets out its functions. It covers external audit.</p> <p>Its main function is to investigate that the activities all covered public entities in SNNPR are carried out effectively, economically and in accordance with the rules and regulations of finance, to and notify the results to the Head of the audited entity for response. Where the response is unsatisfactory, the discovered failures will be recorded in its annual report. Curiously, it is also given the power to audit the accounts of private contractors relating to government contractual work involving sums in excess of Birr 500,000.</p> <p>Audits may be carried out over all entities or by spot check. The audits cover the two previous fiscal years, only except that if the Auditor General suspects failures before then, he may perform audits covering earlier years. Penalties are foreseen for lack of cooperation by the entities being audited.</p> <p>Internal audit is provided for in Proclamation 128/2009 on the revised SNNPR State financial administration. A.6 gives the head of the Bureau the power to conduct audit of public bodies 'if it deems necessary'. It is also given power to oversee the internal audit function of those public bodies; develop appropriate standards of work and conduct to be applied by public bodies in internal audit functions; develop internal control standards and assist in building the capacities of internal audit.</p> <p>Accountability for public funds is vested in the heads of the public bodies and these must ensure, <i>inter alia</i>, that the internal audit systems are properly staffed and trained, so that internal audits are carried out efficiently, effectively and economically; the timely preparation and dissemination of reliable financial information; and submission of a financial report to the Bureau.</p> <p>The internal audit bodies are made responsible for conducting internal audits at specific intervals and submitting audit reports to the head of the body and the Bureau and to follow-</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		

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Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	up on measures based on the audit findings; develop appropriate audit programmes and procedures; develop a monitoring system which regularly reports to management on regulatory compliance; and advise management on internal practices and controls. RPPA also provides procurement audit function as part of the overall oversight framework.				
(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations	The procurement function and decision-making structure in PEs is organized in a manner that provides internal control and check & balance. Procurement decision above a specified threshold is reviewed and approved by a bid endorsing committee established as an independent body from the procurement unit which is involved in day-to-day management of the procurement activities. Besides, the Head of the PE, who has no involvement in the procurement award decision, is responsible for reviewing and responding to complaints. The decision-making arrangement provides check and balance within the system and enhances internal control. Besides, there is an internal audit function established in every procuring entity that carries out audit and reports to the management. As part of the financial audit, the internal auditors carry out procurement compliance audit to check compliance against the regional procurement rules. The internal audit prepares monthly reports including gaps and recommendations and submits to the management with a copy to BoF. At the time of the assessment, it was learnt that the region has been working to revise the finance administration proclamation to enhance accountability and provide more independence to the internal audit function.	Not applicable.	Criterion is met.		
(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	The procurement decision making authority is assigned to the Bid Endorsing Committee which is authorized to approve procurement decisions above specified threshold (high-value procurement). The Head of the PE is authorized to approve or delegate for procurement below the threshold that falls under the authority of the Bid Endorsing Committee. In the public bodies visited, this authority is delegated to the Head of the procurement unit (Finance and procurement administration Directorates). This has allowed to provide a proper balance between timely decision-making and risk mitigation on procurement that involve high-value contracts.	Not applicable.	Criterion is met.		
(d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management	As per the proclamation No. 176/2011, Office of the Regional Auditor (ORAG) is re-established as an independent body from the executive both in terms of financing and reporting. The auditor general and the deputies are assigned by the parliament and serves for seven-year terms which is extendable by the decision of the council. Besides this, ORAG requests and secures the budget required for its operation directly from the Regional council without the involvement of the executive. ORAG undertakes three types of audit, which are (a) Financial Audit, which is mainly compliance audit and includes auditing transactions on procurement. The financial audit is carried out annually covering at least 75% the public bodies. (b) Performance audit, which focuses on the performance of the system including the procurement system and is largely focused on providing recommendations on how to improve the system. (c) Investigative Audit, which is an audit undertaken based on demand when requested by external parties. In addition, the RPPA conducts procurement compliance audit and provides findings and recommendations to the PEs and the BoF.	Not applicable.	Criterion is met.		
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	As per the proclamation No 176/2011, the ORAG submits its audit report to the Regional council. Besides this, the proclamation requires public bodies to take appropriate action on audit findings and report to the council and ORAG. The budget, finance and audit standing committee in the Regional council is responsible to follow-up and ensure that public bodies implemented audit recommendation. The PPA procurement audit report is submitted to BoF. There is no evidence of actions taken on PPA's audit report.	Not applicable.	Criterion is partially met. The functions of the Agency are (rightly) quite broad and so it will be important to ensure that priorities and capacities are properly targeted. For example, the Agency is given the functions of auditing and monitoring. Whilst auditing would normally feed into a monitoring function, the monitoring function encompasses a much broader need for system measurement and analysis.	✓ Yes	Ensure enforcement of actions and addressing the audit findings and follow-up by the public bodies.

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Assessment criteria [12(a) Legal framework, organization, and procedures of the control system]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
			<p>No other authority has the mandate or capacity to carry out procurement system monitoring, but there are other authorities responsible for auditing who have more staff, more capacity, and more knowledge of auditing in general. They may not have sufficient capacity in terms of procurement auditing but that can be learned or provided.</p> <p>Building and maintaining auditing capacity within the Agency sufficient to provide more than superficial audit reports (of a limited number of entities/contracts) absorbs a good deal of resources and leads to some duplication.</p> <p>RPPA's audit report is not submitted to a higher organ within the Regional government that has a supervising authority of all the procuring entities at the Regional level. As a result, there is no clarity of its impact in enhancing accountability within the procurement system</p>		
(f) clear mechanisms to ensure that there is follow-up on the respective findings.	<p>Both the external audit and the internal audit do have clear follow-up procedures. The follow-up on the external audit is conducted both by the ORAG and legislature (Regional Council) as follows:</p> <ol style="list-style-type: none"> 1) ORAG carries out two types of follow up on audit findings and recommendations. For Performance Audit, 2 years after the audit, ORAG shall undertake a follow-up audit/investigation to see the implementation of the action plans and the improvement in the system, which is reported to the Standing Committee of the Council. Hearing of the investigations takes place among the PB management, the Standing Committee and the ORAG. For Regularity Audit, the auditors check the implementation of audit action plans as part of the audit and include the actions not taken in the report for the following year. The follow-up by the Regional Council is conducted through the Budget, Finance and Audit Standing Committee, which is the public Accounts Committee that receives the action plans from all public bodies with adverse and disclaimer findings after the findings are presented to the Regional Council. Based on the action plan, the committee undertakes follow-up through hearing and field visits. The field visit is conducted by incorporating an Auditor from OAG in the Team. Besides this, the relevant standing committee in the Regional Council reviews the progress in the implementation of the audit action plans during the annual review of the performance of public bodies. 2) There is a clear mechanism for the follow-up on the findings of the internal audit. The follow-up on internal audit is carried out by the Internal Audit Directorate in the procuring entity and the follow-up report is submitted both to the management in the PE and the Inspection and Audit Directorate in the BoF. 3) PPA's procurement audit report is submitted to the BoF and follow-up is conducted by PPA itself. The follow up is not backed by support from a high-level body with oversight authority. 	Not applicable.	Criterion is partially met. RPPA's audit recommendation is not supported with an independent and authoritative follow up mechanism.		Ensure enforcement of actions and addressing the RPPA's audit findings by the public bodies with support of the high-level management.

12(b) Coordination of controls and audits of public procurement

Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	The finance administration proclamation extensively covers the requirements for the internal control and audit, including the responsibility on the head of the PB. In addition, the internal audit activities are carried out based on the Internal Audit Manual issued by the Federal MoF, and internal audit performance and ethical standards directive No. 05/2004 (E.C.) issued by	Not applicable.	Criterion is met.		

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Assessment criteria [12(b) Coordination of controls and audits of public procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations																
	the region's BoF. Both documents provide detailed procedures for conducting internal audit including Value for Money Audit and audit on major contracts/projects.																				
(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.	<p>The OAG uses a Regularity Audit Working Directive developed to ensure consistency of Audit Approach throughout the region. External audit is conducted following the international audit standards as specified in the AFROSAI-E Regularity audit manual 2013 version. The manual is prepared in national language – Amharic. The audit covers both compliance audit and performance audit, and a joint annual audit report is submitted to the Regional Council.</p> <p>The procedure for internal audit is described in the internal audit manual and includes both the compliance audit and special audit including value for money audit and audits on major contracts/projects.</p>	Not applicable.	Criterion is partially met. There is no procurement audit manual specific to the region.		Consider preparing a procurement audit manual specific to the context in the region.																
<p>(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c): - number of specialised procurement audits carried out compared to total number of audits (in %). - share of procurement performance audits carried out (in % of total number of procurement audits). Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>The Auditor General carries out financial audits annually by taking samples. The OAG audit coverage shows that in 2009 EC 77%, in 2010 78%, and in 2011 EC 79.5 % of the public bodies were audited on regular/financial audit. The OAG also conducted performance audit in 9, 9 and 10 public bodies in 2009, 2010 and 2011 EC, respectively.</p> <p>There is evidence that the internal audit was conducted throughout the region public bodies which covers financial audit, property audit and special audit. The internal financial audit is carried out consistently throughout the region's procuring entities and 100% of the expenditure document/transactions were audited. All regional sectors produce and submit monthly financial report whereas the City administrations, Zones and Special Woredas (lower-level government structures) produce and submit quarterly reports to the BoF inspection and Internal Audit Directorate. The internal audit also conduct property audit every six months. There is no separate procurement audit conducted by the Internal Auditors.</p> <p>Procurement audits are conducted by the regional PPA, but most of the PEs are not covered and there is no fixed schedule. PPA conducted procurement compliance audit in 91, 55, and 78 PEs in the year 2016/17, 2017/18 and 2018/19, respectively. There is no special audit conducted by RPPA in the past three years.</p> <p>Reviewing the PPA audit coverage plan of 25% of the Woredas, 10% of the Zones and 10% of the regional sectors, it will take the PPA 4 years to cover all the Woredas and 10 years to cover the Zones and regional sectors.</p>	<p>The percentage of specialized procurement audit against total audit in the region during the three years assessment period looks as follows:</p> <table border="1"> <thead> <tr> <th>Audit Type</th> <th>2016/17</th> <th>2017/18</th> <th>2018/19</th> </tr> </thead> <tbody> <tr> <td>External audit</td> <td>341</td> <td>308</td> <td>337</td> </tr> <tr> <td>Procurement audit</td> <td>91</td> <td>55</td> <td>78</td> </tr> <tr> <td>%age</td> <td>27%</td> <td>18%</td> <td>34%</td> </tr> </tbody> </table> <p>The specialized procurement audit covers a good share of the total audit.</p>	Audit Type	2016/17	2017/18	2018/19	External audit	341	308	337	Procurement audit	91	55	78	%age	27%	18%	34%	Criterion is met.		
Audit Type	2016/17	2017/18	2018/19																		
External audit	341	308	337																		
Procurement audit	91	55	78																		
%age	27%	18%	34%																		
(d) Clear and reliable reporting lines to relevant oversight bodies exist.	<p>As per the provision specified in the Region's Constitution, the report from ORAG is submitted to the Regional Council. The budget, finance and audit standing committee is responsible for closely reviewing the report and undertaking follow-up action on behalf of the Council.</p> <p>The internal audit reports are normally submitted to the head of the public body as per article 8 of the finance administration proclamation. During the time of the assessment, BoF has been working to revise the reporting line of the Internal Auditors to be directly accountable to the BoF similar to the arrangement at federal level. Once implemented, this could help to enhance the independence of the internal auditors.</p> <p>RPPA's procurement audit report is submitted to the BoF.</p>	Not applicable.	Criterion is met.																		

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

Assessment criteria [12(c) Enforcement and follow-up on findings and recommendations]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Recommendations are responded to and implemented within the time frames established in the law.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>The legal provisions both on external and internal audit require PBs to take corrective action within 15 days from the date of receipt of the report. However, it was responded that, in both cases, PBs do not take action on audit findings within the specified time period which is a recurrent problem for both types of audit. There is no specified time frame in the legal document to respond to the procurement audit carried out by RPPA.</p>	Not applicable.	<p>Criterion is not met. Action on audit reports is not taken timely.</p>	✓ Yes	Enhance the enforcement mechanism.
<p>(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.</p>	<p>There are multiple arrangements in place to follow-up on the implementation of audit recommendations. The Regional Council, through the budget finance and audit standing committee, undertakes regular follow-up on the implementation of audit recommendations by public bodies through hearings and site visits. On the other hand, ORAG carries out follow-up on audit recommendations through a dedicated follow-up directorate. There is a practice to report to law enforcement bodies in case the findings imply criminal activity.</p> <p>Regarding internal audit, the head of the public body is responsible for implementation of the audit recommendations. The follow-up on internal audit recommendations is normally carried out by the Internal Audit Department in the PBs. However, the internal audit department is responsible to report to the BoF inspection and Internal Audit Directorate in case recommendations are not implemented. The BoF Inspection and Internal Audit Directorate supports the follow-up on major audit findings. In addition, the directorate holds a forum semi-annually with Heads of PBs and discusses findings and progress in the implementation of audit recommendations.</p> <p>Follow up on procurement audit is carried out by focal staff in RPPA assigned to each of the PBs.</p> <p>Despite multiple arrangements, implementation of audit recommendation is reported to be weak both on internal and external audits. The arrangement lacks adequate legal framework on the aspect of enforcement.</p>	Not applicable.	<p>The criterion is partially met. It appears that there is a system in place for audit follow-up particularly external carried out by ORAG and internal audit. But no significant change happens due to weak or lack of enforcement. RPPA's audit has no clear enforcement mechanism.</p>	✓ Yes	Consider a strong accountability and enforcement mechanism Define the enforcement mechanism to ensure that the findings of the RPPA's audit are addressed timely.

12(d) Qualification and training to conduct procurement audits

Assessment criteria [12(d) Qualification and training to conduct procurement audits]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) There is an established program to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</p> <p>* Recommended quantitative indicator to substantiate</p>	<p>The OAG office provides regular training on the procurement rules to equip the auditors with knowledge required to carry out procurement audit. It coordinates with the regional PPA to train the auditors for at least 25 hours on procurement.</p> <p>The Internal Auditors are provided training through the PFM institutionalized training. But the training focuses on overall auditing practices and not on procurement. The internal auditors understanding of procurement is limited to knowledge acquired by own readings of the procurement legal documents.</p> <p>Similarly, the Procurement Auditors in PPA didn't receive training on procurement and auditing.</p>	Not applicable.	<p>Criterion is not met. There is no regular training to auditors to equip them with knowledge and skill required to carry out procurement audit.</p>		Establish an effective procurement training program targeting to auditors.

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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<p>assessment of sub-indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits. Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.</p>					
<p>(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>	<p>Auditors are not specifically required to have procurement knowledge to carry out procurement audit. Rather, their educational background is largely on accounting and auditing. There is no experience either in supporting auditors with service from procurement specialists or consultants while undertaking procurement audit. As a result, there is growing concern among procurement staff that the audit carried out both by internal and external auditors lacks the benefit of good understanding of the procurement environment and there is a tendency to overly rely on compliance.</p>	<p>Not applicable.</p>	<p>Criterion is not met.</p> <p>The selection of auditors does not require procurement knowledge. Even the auditors in RPPA who are fully engaged in auditing procurement contracts and processes are not required to have a procurement knowledge. Most of the auditors join the agency directly from University with no prior working experience. With limited or no training, the auditors carry out procurement audit without adequate knowledge and skills in public procurement.</p>	<p>✓ Yes</p>	<p>Consider revising job requirements to include procurement knowledge and introduce a competitive scheme to attract qualified and experienced staff.</p>
<p>(c) Auditors are selected in a fair and transparent way and are fully independent.</p>	<p>The selection of the auditors (internal or external) follows an open competitive procedure in accordance with the HR recruitment procedure. One of the proposed changes to the structure of internal audit is to assign HR management responsibility to BoF including decision on recruitment and promotion of internal auditors. Similarly, OAG carries out the recruitment and promotion decision of its own auditors.</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>	<p>✓ Yes</p>	<p>Ensure that the proposed changes to the HR management of Internal Auditors is enacted and implemented.</p>

13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) Decisions are rendered on the basis of available evidence submitted by the parties.</p>	<p>Decisions are required by the law to be rendered on the basis of available evidence submitted by the parties, which may include an oral hearing.</p> <p>The main provisions in the legal framework on the right of appeal and appeal process are set out in PPL A.69 to A.75; PPD Parts X and XI, A.36 to 47; and The Manual on Public Procurement Complaint Procedure (2011) ("Complaints Manual").</p> <p>The Complaints Manual contains detailed provisions on the submission of evidence and documentary evidence to be relied upon by the Board in considering the complaint. Complaints Manual, Paragraph 4.2.7.4 Evidence: requires that all relevant documentary evidence is submitted to the board. Review proceedings by the Board may be undertaken either on paper or by way of oral hearing. When an oral hearing takes place, the Board may take into account oral evidence. The Decision of the Board is confined to the issues raised in the Complaint and the public body's decision (para.4.2.8).</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		

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Assessment criteria [13(a) Process for challenges and appeals]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations																								
	<p>The Agency issued internal guidance (dated Feb 2005 EC) that provides detailed procedures for submission, review and the decision on complaints submitted to the Complaint Review Board. The guidance sets out the possible evidence that is likely to be reviewed in reaching the decision. The evidence is associated with the submission and decision on the complaint at the public body level and relevant procurement documents. The guidance indicates that all relevant documentary evidence is submitted to the Board. Review proceedings by the Board may be undertaken either on paper or by way of oral hearing. When an oral hearing takes place, the Board may take into account oral evidence.</p> <p>The following sample cases reviewed as part of the assessment shows that the CRB relies on the available evidence which were cited in the decision letters.</p> <table border="1" data-bbox="433 646 1175 1566"> <thead> <tr> <th>#</th> <th>Issue</th> <th>Decision</th> <th>Evidence referred and cited</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Bid rejected technically by introducing technical criteria not included in the bidding document.</td> <td>PE to reevaluate the bid using the evaluation criteria/specification in the bidding document.</td> <td>- Bidding Document that refers the technical specification and evaluation criteria - Procurement manual 13/2005 Article No. 16 (19)</td> </tr> <tr> <td>2</td> <td>Rejection of bids during technical evaluation</td> <td>Reject the Bidder complaints</td> <td>-Bidding Document submitted by bidder and found incomplete</td> </tr> <tr> <td>-3</td> <td>- Awarding bidder who submitted incomplete bid document and questioning transparency of the bid process</td> <td>- The PE is ordered to cancel the bid</td> <td>- Procurement directive Article 16.19.2.1 - Bidders bid document - Evaluation reports</td> </tr> <tr> <td>4</td> <td>Bidders' offer is rejected for arithmetic error reasons beyond the 2% tolerance limit but not included in the bid invitation and bidding document</td> <td>PE is ordered to cancel the bid and retender</td> <td>- Bidding Document - Procurement directive Article 16.19.2.1 -Circular to include the 2% in the bidding document</td> </tr> <tr> <td>5</td> <td>Complaint on the technical evaluation result</td> <td>To correct the evaluation result of the bidder and continue the procurement process</td> <td>-Bidding document -Bid document of bidder -Audit report of the bidder and tax clearance certificate -Evaluation report</td> </tr> </tbody> </table>	#	Issue	Decision	Evidence referred and cited	1	Bid rejected technically by introducing technical criteria not included in the bidding document.	PE to reevaluate the bid using the evaluation criteria/specification in the bidding document.	- Bidding Document that refers the technical specification and evaluation criteria - Procurement manual 13/2005 Article No. 16 (19)	2	Rejection of bids during technical evaluation	Reject the Bidder complaints	-Bidding Document submitted by bidder and found incomplete	-3	- Awarding bidder who submitted incomplete bid document and questioning transparency of the bid process	- The PE is ordered to cancel the bid	- Procurement directive Article 16.19.2.1 - Bidders bid document - Evaluation reports	4	Bidders' offer is rejected for arithmetic error reasons beyond the 2% tolerance limit but not included in the bid invitation and bidding document	PE is ordered to cancel the bid and retender	- Bidding Document - Procurement directive Article 16.19.2.1 -Circular to include the 2% in the bidding document	5	Complaint on the technical evaluation result	To correct the evaluation result of the bidder and continue the procurement process	-Bidding document -Bid document of bidder -Audit report of the bidder and tax clearance certificate -Evaluation report				
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<p>(b) The first review of the evidence is carried out by the entity specified in the law.</p>	<p>PPL A.73 provides that, in the first instance, candidates submit a complaint to the public body.</p> <p>The head of public body is obliged to review and decide upon the complaint in accordance with the provisions of the PPL and PPD. It is a legal requirement, as per Article 4 of the manual, that aggrieved bidders submit the complaint to the Head of the PB before proceeding to the CRB. In practice, in some public bodies the head delegates the responsibility to procurement staff and the bid endorsing committee.</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		<p>Ensure that the complaint is responded to by the Head of the public body and not delegated to the unit that had carried out the process concluded with the decision complained about. The response should be provided timely.</p>																								

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<p>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p> <p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.</p>	<p>There is no specific statement in the PPL that the decisions of the Board are final and binding (enforceable).</p> <p>However, the PPD stipulates that a bidder or a supplier that is not satisfied with the decision of the CRB can take the case to the competent court of law. This implies that the decision of the appeal body is final & enforceable if no further complaint is submitted by the complainant to the court.</p>	<p>Not applicable. The team was not able to access data on the number of appeal decisions that were enforced. The regulatory body nor the appeal body do not systematically follow the enforceability of the decisions and capture records in a central data base.</p>	<p>Criterion is partially met. There is no specific statement in the PPL that the decisions of the Board are enforceable.</p>		<p>Introduce a provision in the PPL showing that the CHC's decision is enforceable.</p>
<p>(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.</p>	<p>The time frames for submission and review of challenges, appeals and issuing of decisions set out in the legal framework do not unduly delay the procurement process or make an appeal unrealistic.</p> <p>Time frame for submission of challenges and appeals: PPL A.73(2) requires the candidate to submit the complaint to the head of the public body within five working days from the date he knew, or should have known, the circumstances giving rise to the complaint</p> <p>Time frame for issuance of decision by the head of the public body: PPL A.73(3) Unless the complaint is resolved by mutual agreement, the head of the public body shall suspend the procurement proceedings and has 10 days after submission of the complaint to issue a written decision, with reasons. PPD A.45.1(d) requires the public body to give the complainant a copy of the decision within 5 working days from the date the decision was made.</p> <p>Time frame for complaint to the Board: PPL A.73(4) If the head of the public body does not issue the decision within that time limit or if the candidate is not satisfied with the decision, the candidate is entitled to submit a complaint to the Board. The complaint to the Board must be submitted within 5 five working days from the date on which the decision had been or should have been communicated to the candidate.</p> <p>Time frame for issuance of decision by the Board: PPL A.74(4) requires the Board to issue its decision within 15 working days of receiving the complaint, stating the reasons for its decision and remedies granted, if any. However, PPD A.46(f) states that the Board shall give its decision in writing within 15 working days of receipt of the public body's statement in response to the complaint. This is inconsistent.</p>	<p>Not applicable.</p>	<p>Criterion is partially met.</p> <p>The CRB does not provide a resolution within the stated time frame. Almost all the decisions were made after unduly delay. Physical distance limits the capacity of bidders from zones and woredas to submit and follow-up on appeal who are required to submit appeal within the same time frame as bidders located in Hawassa where the CRB is located.</p>		<p>Capacitate the CHB with structure and competence to ensure that decisions are rendered within the specified time frame. Establish a practical and accessible appeal system for procurement at local level.</p>

13(b) Independence and capacity of the appeals body

The appeals body:

Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) is not involved in any capacity in procurement transactions or in the process</p>	<p>The links between the Agency and the Complaint Review Board are close. PPL A.71(2) provides that the Agency shall serve as the Secretariat of the Board. In that context the Secretariat receives and processes complaints. Its functions include not just</p>	<p>Not applicable.</p>	<p>Criterion is not met.</p>		<p>Links between the Board and the Agency/Authority:</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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leading to contract award decisions	<p>administrative and logistical support but also analysis of the complaints and expert opinions on complaints.</p> <p>PPL A.15(16) and A.71(2) provides that the Agency shall provide the Board with office facilities and technical assistance.</p> <p>PPL A.15(16) also provides for the Agency to follow up on the implementation of decisions of the Board (though in practice this is not clear how it is done).</p> <p>Board members: PPL A.71 provides that membership of the Board shall be drawn from persons representing the private business sector, relevant public bodies, and public enterprises. There is however a discrepancy with the PPD A.35 which foresees a six-member Board with one member from the Bureau as chair, a member from the Agency and a second non-voting member from Agency who acts as secretary and expert advisor.</p> <p><u>In practice</u>, the Board members are five and four are from the government office and one from regions Chamber of Commerce. One of the members is the Director General from the Public Procurement and Property Administration Agency who is involved in issuing decisions on requests to use a procedure that deviates from the established rules. This implies that the Agency Director General is potentially involved in procurement decisions that lead to contract award.</p>		<p>Links between the Board and the Agency/Authority: The close links between the Agency/Authority and the Board creates the potential for conflict with other advisory, regulatory and monitoring roles of the Agency/Authority in relation to procurement and contracts.</p> <p>Appointment of Board members: It is not clear whether open competition is required for the appointment of board members. Membership of the Board is an important, quasi-judicial role. Appointment as a Board member should be by way of an open, public competition. The type and level of necessary experience should be clearly specified to ensure that Board members are appropriately qualified and experienced to undertake this important task. It is common practice for a number (not necessarily all) of the Board members to be legally qualified.</p> <p>Board members: Conflicts: Board members are drawn from representative groups which create the potential for conflicts of interest. There are provisions in the PPD and Complaints Manual concerning Disclosing and managing conflict of interest (PPD A.40, /Complaints Manual 2.1.4, 2.1.5) and ethical conduct. However, Board members from these organizations are placed in a potentially difficult position concerning actual or perceived independence and conflict. Each of the represented organizations has a day-to-day interest in the conduct of public procurement in general and may have direct interest in particular procurements in an advisory or review capacity, or as public bodies or bidders or representative of those organizations.</p>		Review body should, ideally be supported by its own secretariat, independent of the Agency and other bodies.
(b) does not charge fees that inhibit access by concerned parties	No fees are levied on complaints.	Not applicable.	Criterion is met.		
<p>(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available</p> <p><i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c): - appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %). Source: Appeals body.</i></p>	The procedures for review are clearly defined in the PP, PPD and Complaints Manual.	<p>Not applicable. There is no centrally maintained data showing time frame on appeal decision.</p>	<p>Criterion is partially met. The procedure is not publicly available.</p>		Ensure that the procedure is publicly available. Follow the recommendation provided on accessibility of documents in the relevant section of the matrix.
(d) exercises its legal authority to suspend procurement proceedings and impose remedies	<p>Suspension: PPL A.74(1) provides that, upon receipt of a complaint, the Board shall promptly give notice of the complaint to the public body concerned, and that notification automatically suspends further action by the public body until the Board has settled the matter.</p> <p>Remedies: PPL A.74(2) lists the remedies which may be imposed by the Board.</p>	Not applicable.	Criterion is met.		

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Assessment criteria [13(b) Independence and capacity of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
	<p>The CRB has legal authority to suspend the procurement proceedings and impose remedies. According to Article 74 (2) of the proclamation, unless the CRB dismisses the compliant, it has the authority to render one of the following decisions: (a) prohibit the public body from acting or deciding unlawfully; (b) order the public body to proceed in a manner conforming to the rules in the proclamation other than a decision to award or conclude a contract; (c) annul in whole or in part, an unlawful act or decision by the public body.</p> <p>It is supported with evidence that, upon receipt of complaints, the CHB issues a letter suspending the procurement proceedings and issues decisions imposing remedies.</p>				
(e) issues decisions within the time frame specified in the law/regulations*	The assessment team analyzed the timeline in resolving appeals at CRB for 15 cases. On average, the CRB took 38 calendar days, which is 153% more days beyond what is specified in the rule (15 days). The performance varies from case to case, ranging from 14 days minimum to 103 days maximum.		Criterion is not met. Decision of the CRB is not rendered within the time limit (15 calendar days) specified in the law and contributes to unduly delay in procurement implementation.		Enhance the capacity of the CRB. See recommendation under 13 (b) (a).
(f) issues decisions that are binding on all parties	There is no specific provision in the PPL stating that decisions are binding on all parties. But the CRB has the legal authority to suspend the procurement proceedings and impose remedies as stated above in 13 (b) (d).	Not applicable.	Criterion is partially met. There is no specific provision in the PPL stating that decisions are binding on all parties.		Include specific provision in PPL dealing with binding nature of decisions.
(g) is adequately resourced and staffed to fulfil its functions.	<p>The procurement manual (para. 7) specifies only the monthly allowance payable to the members of the Board and the manner the payment is effected. No other resource requirement and source of funding is indicated in the manual, the PPL or the PPD.</p> <p>There is no adequate staff that enables the board to fulfill its function properly. The Complaint Handling Directorate under RPPA provides support to the Board but the directorate is highly under-staffed. More than 80% of the approved positions were vacant at the time of the assessment.</p>	Not applicable.	Criterion is not met. The CRB and the support team are not adequately resourced.		See recommendation under 13 (b) (a).

13(c) Decisions of the appeals body

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

Assessment criteria 13(c) Decisions of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations												
(a) based on information relevant to the case.	<p>According to the procurement directive Article 46 and the Complaint handling directive Article 4, decision shall be given based on the bidding document, evaluation reports, letter of complaints of the bidder, the procurement proclamation and procurement directives. The actual review of the 5 sample cases, (please see Indicator 13 (a) (a)) shows that the CRB cited evidence reviewed and considered in reaching decisions. However, the survey result shows that the private sector lacks the confidence on the appeal system. Based on the private sector survey, the perception on challenges of the appeals system is as follows:</p> <table border="1"> <thead> <tr> <th>ANSWER CHOICES</th> <th>RESPONSES</th> </tr> </thead> <tbody> <tr> <td>▼ The system acts in accordance with rule of law and is predictable</td> <td>0.00% 0</td> </tr> <tr> <td>▼ Most actions within the system are in accordance with rule of law and are predictable</td> <td>28.57% 6</td> </tr> <tr> <td>▼ Only a very limited number of actions is in accordance with rule of law and predictable</td> <td>57.14% 12</td> </tr> <tr> <td>▼ The actions do not seem to be in accordance with rule of law and are not predictable</td> <td>19.05% 4</td> </tr> <tr> <td colspan="2">Total Respondents: 21</td> </tr> </tbody> </table>	ANSWER CHOICES	RESPONSES	▼ The system acts in accordance with rule of law and is predictable	0.00% 0	▼ Most actions within the system are in accordance with rule of law and are predictable	28.57% 6	▼ Only a very limited number of actions is in accordance with rule of law and predictable	57.14% 12	▼ The actions do not seem to be in accordance with rule of law and are not predictable	19.05% 4	Total Respondents: 21			Criterion is not met. While the procedures governing the decision-making process of the appeals body provide that decisions are based on information relevant to the case, perception among the private sector is that the decisions are not in accordance with rule of law.		Improve the structure and capacity of the CRB, including ensuring specifying the minimum qualification and experience required from each member of the Board. Improve transparency of the appeal decisions and sensitize the private sector to establish positive perception.
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Assessment criteria 13(c) Decisions of the appeals body]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
<p>(b) balanced and unbiased in consideration of the relevant information.*</p> <p>Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.</p>	<p>In principle the respondents to the private sector survey do not see the appeal system as fair and trustworthy or consistent. The results of the survey are presented in the column on the right.</p> <p>The private sector responded suggesting the following areas for improvement:</p> <ul style="list-style-type: none"> • Transparency • Accountability • Timeliness • Fairness • Independence • Competence and procurement knowledge 	<p>70% of the 30 respondents to the private sector survey said that they appealed the decision of public body to the complaints review Board.</p> <p>45% of the 20 respondents responded that their appeals were not resolved timely.</p> <p>95% of the 20 respondents said they were not satisfied with the outcome of the complaints review mechanism.</p> <p>100% of the 17 respondents said that they do not consider the appeal system as fair and trustworthy.</p> <p>95% of the 20 respondents said that the appeal decision was not consistent.</p> <p>88% of 17 respondents, who have never appealed the decision of the Public Body, said that they felt that the decision of the Public Body was unfair, but did not appeal because they did not believe the appeal system was sufficiently trustworthy.</p>	<p>Criterion is not met.</p> <p>The private sector does not consider the Complaint Handling Board as trustworthy and fair. This is mainly due to:</p> <ol style="list-style-type: none"> 1) the reporting structure of the Board (to Ministry of Finance) created mistrust on the impartiality of the Board, 2) the limited capacity in delivering its decisions within the time frame, and 3) The involvement of the agency in the reviewing and analyzing the complaints which is not viewed as independent and impartial. <p>Lack of minimum qualification and experience requirement and the formal positions of members of the Board are viewed as limiting factors in delivering responsibilities capably and independently.</p>		See recommendation under 13 (c) (a).
<p>(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favor of procuring entity; decision in favor of applicant) (in %).Source: Appeals body.</p>	<p>The CRB has the legal authority to suspend the procurement proceedings and impose remedies including (a) prohibit the public body from acting or deciding unlawfully; (b) order the public body to proceed in a manner conforming to the rules in the proclamation other than a decision to award or conclude a contract; (c) annul in whole or in part, an unlawful act or decision by the public body.</p>	<p>The Report on the performance of the CRB in the year 2016/17, 2017/18 and 2018/19 shows that from the total 108 appeal cases reviewed by the CRB, 61 cases (more than 56%) were decided in favor of the complainant. But the private sector does not consider the appeal system balanced and trustworthy (see survey result 13 (c) (b)).</p>	<p>Criterion is met.</p>		
<p>(d) decisions are published on the centralized government online portal within specified timelines and as stipulated in the law.*</p> <p><i>// Minimum indicator //</i> <i>*Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d):</i> - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralized online portal.*</p>	<p>There is no legal requirement to publish full decisions and currently no Agency portal on which to do so. The procurement complaint manual requires the Board to communicate its decision in writing to relevant parties. There is no requirement for public accessibility to the Board's decision.</p> <p>The Secretariat must also maintain copies of the full text of each decision and make it available to interested parties on request.</p>	<p>Not applicable.</p>	<p>Criterion is not met. Publication of full decisions: In order to ensure transparency and an effective complaints system, all decisions should be published in full on a central online portal. This could also help to build positive perception on the appeal system.</p>		Include a provision in primary legislation requiring publication of full decisions within a specified time period. Ideally this should be in a user friendly and easily searchable format.

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14. The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

The legal/regulatory framework provides for the following:

Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.</p>	<p>The Manual at 2.10 sets out definitions of corrupt, fraudulent, collusive, coercive , practices as follows: “Corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the action of a public official in the procurement process or in contract execution; “Fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation; “Collusive practices” is a scheme or arrangement between two or more Bidders, with or without the knowledge of the Public Body, designed to establish prices at artificial, non-competitive levels; and “Coercive practices” is harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract. These definitions fulfill the requirement of the United Nations Convention against Corruption (UNCAC) which Ethiopia signed on 10 December 2003 and adopted through Proclamation no 544/2007 on 26 November 2007. The UNCAC requires that States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.</p>	<p>Not applicable.</p>	<p>Criterion is partially met.</p> <p>There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law which define fraud & corruption in different ways, and also set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations may contradict each other, such as, for example, application of the specific law above general while the specific law does not provide for specific issues up to the professional standard. For example, PPL is a specific law but its definition of offenses lacks a standard required for prosecution e.g., intent of the wrongdoing.</p>	<p>✓ Yes</p>	<p>Ensure consistency among the procurement documents, anti-corruption law and international obligations.</p>
<p>(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.</p>	<p>Responsibility/accountability of government employees: PPL A.32(1)(e) requires personnel engaged in public procurement to observe rules of ethics which include the requirement to report to the law enforcement agencies any intended or completed action of corruption and contribute to the effort to fight corruption and malpractice. PPD A.33.5 requires any employee of person in a position of responsibility to notify the appropriate body of any acts of corruption, intended or perpetrated. In such a situation the individual must make sure the allegation is supported by evidence and isolate themselves from facilitation or assisting in the intended act. Penalties for government employees: PPL A.77 sets out offences and punishments for persons appointed to or employed by a public body and procurement and property administration officers. The penalties for offences under these provisions, which include fraudulent and corrupt practices as well as bribery, include fines and terms of imprisonment. Responsibilities of private firms: PPL A.32(2) requires that any candidate or supplier shall refrain from any act contravening the public procurement process. Candidate or supplier is prohibited, in summary, from actions intending to influence the public body, and must not make gifts or offer other forms of inducement. (PPL A.32(2)(d)). Bidders must sign an anti-bribery pledge form and a statement of undertaking to observe the Ethiopian Law against Fraud and Corruption which are included as part of the bid documents. (PPD A.16.4.2 (e)). PPD A.34 Ethics expected of candidates requires candidates and suppliers to refrain from making gifts to persons with responsibility for public procurement, not to engage in collusive</p>	<p>Not applicable.</p>	<p>Criterion is partially met.</p> <p>There appears to be no alignment between the public procurement legal framework, anti-corruption law, and the criminal law which define fraud & corruption in different ways and set the corresponding criminal and civil punishments inconsistently. These inconsistencies require the relevant authorities to interpret which law prevails. And some interpretations may contradict each other, such as, for example, application of the specific law above general while the specific law does not provide for specific issues up to the professional standard. For example, PPL is a specific law, but its definition of offenses lacks a standard required for prosecution, e.g., intent of the wrongdoing.</p> <p>In addition, the offences set up in the PPL mix criminal and administrative wrongdoing with criminal penalties for all of them.</p>	<p>✓ Yes</p>	<p>Ensure consistency of the public procurement legislation and other laws.</p>

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Assessment criteria [14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
	<p>behavior (connivance) and to disclose to the appropriate body an intended or perpetrated act of corruption and not be complicit in such act.</p> <p>Disqualification: PPD A.16(21) provides that a public body may disqualify a bidder where it is proved that the bidder has committed and act of embezzlement, fraud or connivance with other bidders.</p> <p>Rejection of bid: PPL A.30(1)(f) provides that a public body may reject a bid in whole or in part where it is proved that the bid is not sufficiently competitive as a result of collusion (connivance) or unethical conduct.</p> <p>Fines and imprisonment: PPL A.76(5) provides that any candidate who, with the intention of deriving unlawful advantage, presents falsified documentary evidence, conceals information or colludes (connives) shall, upon conviction be punishable with a fine and imprisonment.</p> <p>Debarment: PPD A.47 Reports to the Agency on misconduct of bidders and suppliers states that any public body which can prove that any bidder has committed fraud, falsified documents, committed and act of connivance (collusion) or corruption may file a report with the Agency. This leads to an investigation by the Agency with the potential for bidder debarment as a result. An appeal lies to the Agency first (for reconsideration) and then to the courts.</p> <p>PPD para. 43.5 requires any employee or person in a position of responsibility to notify the appropriate body of any acts of corruption, intended or perpetrated. In such a situation the individual must make sure the allegation is supported by evidence and isolate themselves from facilitation or assisting in the intended act.</p> <p>The procurement manual (para 2.10.3) specifies that when the public body is aware of the occurrence of corrupt, fraudulent, collusive, and coercive practices, it shall request the alleged bidder to provide a written explanation. Where, without adequate justification, a written explanation is not given by the relevant person or official, the public body can take the following actions:</p> <ul style="list-style-type: none"> - suspend the challenged bidder or person from participating in future bids - reject the recommendation to award contract to the challenged bidder - if the public body suspects in particular that corruption has occurred, it shall report this to the region's Ethics and Anti-corruption Commission - report to the Agency all the actions taken by the public body <p>Compensation: PPD A.47(5)(5) provides that without prejudice to any action which may be taken by the Agency, public bodies shall be entitled to seek compensation for any damage or loss they have sustained on account of an act or omission by a supplier or bidder in connection with any procurement in accordance with the contract or the law.</p>		<p>Fines and Imprisonment: PPL A.76 sets up what are in effect criminal penalties. Whilst it has been common, historically, to refer to criminal penalties in administrative type laws such as the PP, this is again not based on a strict reading of the constitution which gives the Federal Government the mandate to adopt a penal code. Regions are permitted to adopt penal laws only to the extent that they are not specifically covered by the Federal code. Where penalties are included in regional laws, it is based, so it would seem, on the desire to make subjects aware of those penalties, i.e., they are not intended to create new penalties but merely to reflect those adopted by the Federal Government. This is not, however, how the SNNPR PPL is drafted. The Attorney-General has the task of ensuring the consistency between the Federal penal code and any other law which includes them (as explained above, as a matter of transparency) but there is a suspicion that the offences 'created' in the SNNPR PPL are not always consistent, thereby giving rise to a legal conflict and possibility of challenge.</p>		<p>Fines and Imprisonment: It would be preferable to ensure consistency between any penalties contained in the PPL with penalties provided for the same offences in the Federal penal code.</p>
<p>(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.</p>	<p>Responsibility/accountability of government employees: PPL A.32(1)(a) requires personnel engaged in public procurement to observe rules of ethics which includes the obligations to notify any actual or possible conflict of interest and isolate oneself from any processes involving such conflict.</p> <p>The PPD (para 33.1) requires employees directly or indirectly related to procurement to notify in writing any activities that benefit himself/herself or families and isolate himself/herself from the process. The PPD further provides how the conflict of interest should be managed by the public body.</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		

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14(b) Provisions on prohibited practices in procurement documents

Assessment criteria [14(b) Provisions on prohibited practices in procurement documents]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.	The PPL para 76 specifies prohibited practices that should be observed both by public officials and procuring entities. As per the review of the federal SBD for procurement of works contract using National Competitive Bidding, the Instructions to Bidders (clause 3 in Federal SBD Works NCB) include a section which refers to the requirement on both public bodies and bidders to observe the highest standard of ethics. It uses the definitions of corrupt, fraudulent, collusive, coercive and obstructive practices referred to in the Manual (see 14(a)(a) above). It confirms that the public body will reject a recommendation for award if it determines that the bidder has been engaged, directly or indirectly, in one of these practices. It also refers to the debarment process and list of debarred bidders held by the Agency and published on the Agency's website. It states that the public body may terminate a contract if at any time it determines that corrupt or fraudulent practices have been engaged in. Bidders are required to indicate their acceptance of the provisions on fraud and corruption through the statement in the Bid Submission Sheet (Part 1, section 4 : Bidding Forms, Form A). Bidders must permit the Agency to inspect their accounts, records and other documents. The PPD (para 16.4.2) requires the Instruction to Bidders prepared by the public bodies to include a provision that requires the bidders to respect Ethiopian law with regard to corruption and fraudulent practices, and fill and sign the template provided in the bidding document pledging not to involve themselves in corrupt activities.	Not applicable.	Criterion is partially met. SBDs are used in limited categories of procurement and use of federal SBDs is not mandatory.		Please refer to recommendation provided under sub-indicator 9 (b) (b) in the relevant section in this matrix.
(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.	The General Conditions of Contract (clause 5 in the Federal example used; SBD for Works, National Competitive Bid (NCB)) includes provisions on fraud and corruption including reference to contract cancellation and debarment. The General Conditions of Contract are part of the SBD and may not be altered.	Not applicable.	Criterion is partially met. See 14 (b) (a).		Consider the recommendation given on SBDs under the relevant section in this matrix.

14(c) Effective sanctions and enforcement systems

Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.	PPL A.32(1)(e) Rules of Ethics requires personnel engaged in procurement to report to law enforcement agencies any intended or committed act of corruption. The legal documents refer only one aspect of malpractice "corruption" and are lenient on the other aspects of malpractices including fraud. There is also inconsistency between the proclamation and the directive regarding whom to report in which the proclamation specifies "law enforcement authorities" while the Directive refers to "relevant authorities". Besides, there is no clear procedure to report allegation of fraud and corruption to the law enforcement authorities. The legal framework also requires e.g., public bodies reporting corruption to provide evidence. Given that non-professionals are not in a position to do it, many allegations may go unreported. Staff in PEs do not appear to understand the requirement to report cases of malpractice. For instance, the practice of rejecting bidders alleged with forged documents (fraud) from the bidding process without reporting to the law enforcement authorities.	Not applicable.	Criterion is partially met. The reporting structure on fraud and corruption and other illegal practices has to be clearly established and communicated to all parties including staff in procuring entities. The languages between the directive and the proclamation and other documents including the SBDs has to be consistent and comprehensive so that it avoids misconception or misinterpretation.	✓ Yes	Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the public procurement legal framework and with other laws. Consider providing training and guidance to staff on how to report on cases of corruption and other malpractices anonymously.
(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.	There is no clarity to whom corruption allegations are to be reported as explained above. In practice, they are reported to RPPA, REAC, Regional Attorney General and police commission. However, it is not clear whether all allegations are directed to the agency responsible for acting on them. Cross check did not provide such assurance.	Not applicable.	Criterion is partially met. See 14 (c) (a).	✓ Yes	The working relationship among the relevant agencies in particular among RPPA, REAC, ORAG, Regional Attorney General and police commission has to be worked out together with clarity and

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Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
					consistency of the legal framework for reporting corruption. See recommendation under 14 (c) (a)
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	The procurement proclamation Article 15 (7) mandates RPPA to review and decide on the complaint from public bodies submitted on the conduct of bidders or suppliers. PPL Article 75 provides the procedure for reviewing and deciding on complaints, which includes a requirement on the BoF to notify and take into account information and argument presented by the parties before reaching at decision. The list of debarred companies/individuals is communicated to the federal PPA for purpose of cross debarment and communication to all PBs at federal and Regional level. Currently, there are 108 companies debarred from participation in public procurement across the country including 4 companies debarred by SNNPR.		Criterion is met.		Improve coordination and information flow among the procurement regulatory bodies and law enforcement authorities to ensure malpractices are legally addressed.
(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d): - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory function/anti-corruption body. - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body. - Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). Source: Survey.	The Assessment Team was not able to obtain data on enforcement of the laws on fraud, corruption, and other prohibited practices. Information obtained from the federal AG informs only about the recent 7 cases of indictment for fraud and corruption. The Team was not able to verify whether these cases were reported to PPA and Regions to act on debarment. The Team reviewed the Reports of FEAC which provide a lot of information including performances in Regions. In the Reports issued at the time when the investigation and prosecution functions were with FEAC, data related to fraud and corruption were aggregated and the Team was not able to establish the number related to fraud and corruption in procurement. Based on public information, it is known that from time to time, public officials are detained on suspicion of corruption and many of them are released after varied time counted in months without indictment.	In the private sector survey, out of 26 respondents 62% said that they believe that the companies are expected to give a gift to secure a contract in the public sector. 14 respondents skipped this question.	Criterion is not met. There is no access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.	✓ Yes	Ensure availability and access to information showing evidence that the laws on fraud, corruption and other prohibited practices are being enforced.

14(d) Anti-corruption framework and integrity training

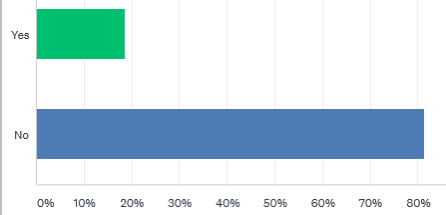
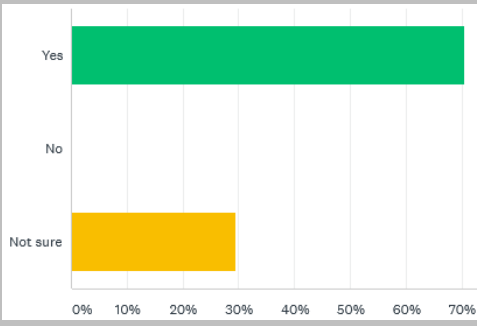
Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalize corruption in government that involves the	The country has in place a comprehensive anti-corruption framework. The anti-corruption responsibility is divided among three entities established at federal level and in each of the regions (except Addis Ababa which share the federal agencies). The anti-corruption commission is responsible for preventing and fighting corruption through public education	In the private sector survey, out of 27 respondents 19% said that they believe that the anti-corruption measures undertaken by the Government are effective and 81% that it is not.	Criterion is partially met. While Ethiopia has in place a comprehensive anti-corruption framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of	✓ Yes	Review factors that help preventing corruption and improve them both in the legal framework and practice.

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag?	Recommendations
<p>appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.*</p> <p>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a): - percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey.</p>	<p>and awareness. The law enforcement responsibility is placed in the Attorney General (prosecution and overseeing investigation) and Police (investigation).</p> <p>In addition, different arrangements were established and are up and running with the purpose of creating awareness and fighting corruption at national level. The anti-corruption commission formed 14 coalitions at national level with different groups and interested parties including youth, women, religious groups, teachers, students etc. They have also established a joint platform with the Federal Auditor General to plan and tackle corruption based on audit findings and recommendations. There is a plan to hire a consultant and prepare a national anti-corruption policy.</p> <p>However, the capacity of the anti-corruption commission is limited. The commission lacks the technical competence and budget to deliver its responsibility.</p> <p>FEAC undertook survey to understand the nature of corruption in procurement. The survey was conducted in collaboration with Transparency International on the construction sector.</p>	 <p>54% of 27 respondents chose from the proposed options law enforcement as a very effective measure to reduce corruption, and 38% of 27 respondents said e-procurement is a very effective measure.</p> <p>Asked to indicate their priorities to enhance anti-corruption measures the respondents most often indicated:</p> <ul style="list-style-type: none"> • Transparency (11) • Appropriate staff (9) • E-procurement (7) • Proper controls (7) • Law enforcement (7) • Fair bid criteria (4) <p>71% out of 24 respondents responded positively to the question whether they think that introduction of e-procurement will lead to reduction in corruption. 0% responded negatively, and 29% were not sure.</p> <p>71% of 17 respondents said that CSO involvement in overseeing procurement contracts would be beneficial in future.</p> 	<p>government with a level of responsibility and capacity to enable its responsibilities to be carried out, the legal framework lacks transparency in the first place. The private sector indicated some features they believe should be improved to support the existing system.</p>		
<p>(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.</p>	<p>There are certain mechanisms that are in place to detect and mitigate corruption risks in the public procurement cycle. The procurement organizational structure that provides segregation of roles and responsibilities with fairly adequate internal control and check & balance is one of the mechanisms to detect and mitigate corruption risks. In addition, each procuring entity has established an ethics office that is closely accessible to report corruption allegations. The Regional government identified procurement as one of the sectors vulnerable to corruption. As a result, all government officials and employees in the Region that are involved in procurement activities are required to declare and register their assets at the Regional Ethics and Anti-Corruption Commission and update every two years. Assets that are acquired above the official income are considered as obtained through corruption and can lead to prosecution.</p> <p>Besides, the region's anti-corruption commission identified included in the training manual procurement phases at which are vulnerable for corruption.</p>	<p>Not applicable.</p>	<p>Criterion is met.</p>		

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Assessment criteria [14(c) Effective sanctions and enforcement systems]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	There is no practice to adequately compile statistics on corruption-related legal proceedings. However, the assessment team came across reports that were annually issued by FEAC before the mandate was transferred to Federal Attorney General. FEAC compiled information from the federal and regions and issued annual report covering the performance on training and awareness, prevention, investigation and prosecution including information on number of allegations received, investigation done, prosecution and conviction. It appears that the good experience in FEAC has not continued by the Attorney General.	Not applicable.	Criterion is not met. Statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	✓ Yes	Ensure that statistics on corruption related legal proceedings and others are compiled and published.
(d) Special measures are in place for the detection and prevention of corruption associated with procurement.	There is no special mechanism in place for detecting and preventing corruption in procurement.	Not applicable.	Criterion is partially met. There are no special measures other than what is described under (b) above.	✓ Yes	Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system.
(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.	There is no regular integrity training program on procurement. But the corruption prevention Department provides dedicated support on integrity training. Also, REAC provides anti-corruption awareness to the public and training to public bodies when requested.	Not applicable.	Criterion is not met. There is no regular integrity training program on procurement. But corruption prevention Department provides dedicated support on integrity training.	✓ Yes	Incorporate integrity training session in the PFM training program or as a standalone program delivered on a regular basis.

14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are strong and credible civil society organizations that exercise social audit and control.	There are no strong and credible civil society organizations that exercise social audit and control.	Not applicable.	Criterion is not met. There are no strong and credible civil society organizations that exercise social audit and control.		See indicator 9 (c) (f)
(b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.	The new Organization of Civil Society Proclamation No 1113/2019 opened a new era in the establishment and operation of CSOPs in Ethiopia. The new law, inter alia, allowed all CSOs to engage in any lawful activities and relaxed the distribution of funds between administrative and operational costs. While there is a relatively conducive environment for the operation of CSOs, the procurement environment has no procedure to encourage the involvement of CSOs in public procurement. As a result, there are no practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.	Not applicable.	Criterion is partially met. The new CSO law provides opportunities to enhance the role and operation of CSOs in Ethiopia. However, the procurement procedure has not identified and provided guidance on the involvement of CSOs in public procurement.		See indicator 9 (c) (f)
(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil society organizations (CSOs), including national offices of international CSOs) actively providing oversight and social	There are not many CSOs that are working on public procurement in Ethiopia. The Construction Sector Transparency Initiative (CoST Ethiopia) is the only active CSO working on the transparency aspect of procurement related to construction contracts. CoST provides for the disclosure of project information on a selection of construction projects and the procurement aspect. PPA redesigned its website for purpose of publication with support from CoST Ethiopia. The main benefit of enhancing transparency in the sector is to improve the integrity and accountability in the system. However, this is only a single CSO, and its engagement is limited to construction projects. There is no evidence of its involvement at the regional level.	13 respondents out of 40 responded to the question whether civil societies are allowed to monitor bid submission, receipt, and opening, and 23% said that they are allowed. 24% said that they are not allowed, and 23% were not sure. Out of 27 respondents who responded to the question whether they are aware of any CSO providing an oversight in procurement 7% said that they are aware and the remaining 93% said that they are not aware. Out of 17 respondents who responded to the question whether they think that CSO involvement in	The criterion is partially met. The procurement legal framework should encourage the involvement of CSOs in public procurement as oversight and monitoring partners. PPA should establish closer working relationship with relevant CSOs to attract their interest and support their involvement on public procurement.		See indicator 9 (c) (f)

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Assessment criteria [14(e) Stakeholder support to strengthen integrity in procurement]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
control in public procurement. <i>Source: Survey/interviews.</i>		overseeing procurement contracts could be beneficial 71% said yes, 0% said no, and 29% were not sure. Asked to tell obstacles for CSO participation in public procurement the respondents indicated lack of funding, political affiliation in procurement, and lack of motivation and commitment.			
(d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). <i>Source: Supplier database.</i>	There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.		Criterion is not met. There is no evidence that the suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.	✓ Yes	RPPA should work with the business associations to promote adopting internal compliance measures by private firms to support integrity and ethical behavior in public procurement.

14(f) Secure mechanism for reporting prohibited practices or unethical behavior

Assessment criteria [14(f) Secure mechanism for reporting prohibited practices or unethical behavior]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.	The information regarding the suspected fraud/corruption/prohibited practice cases can be channeled to the anti-Corruption Office/Police through telephone, unidentified papers, email, or physical reporting anonymously. The reporting is kept confidential.	Not applicable.	Criterion is met.		
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	As per the amended Ethics and Anti-Corruption Commission Establishment Proclamation no. 14/2012, one of the Powers and Duties of the Commission is to provide protection to informants and witnesses. This same responsibility is also described as one of the responsibilities of the Region's Justice Bureau. Legal provisions provide penalties for officials who directly or indirectly take any reprisal measure against a whistle-blower or witness. There was no evidence presented during the assessment of its applicability.	Not applicable.	Criterion is met.		
(c) There is a functioning system that serves to follow up on disclosures.	As per Article 5 of Proclamation no. 177/2018 (2011 E.C), the Regional Attorney General provides authority to investigate tough and complex criminal cases. The attorney general is working with the region's police to follow-up on disclosures once the information is channeled through the Region's Police Bureau. There is collaboration between the Regional Attorney General and police while undertaking investigation.	Not applicable.	Criterion is met.		

14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public	The PPL A 32 provides rules of ethics required from personnel engaged in public procurement and candidates or suppliers on public procurement. In addition, the procurement directive Article 33 and 34 provides relatively expanded provisions on ethics or code of conduct	Not applicable.	Criterion is partially met. No Code of Conduct applicable for staff working in PFM.		Consider developing Code of Ethics applicable to staff and officials working on PFM area.

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Assessment criteria [14(g) Codes of conduct/codes of ethics and financial disclosure rules]	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag?	Recommendations
financial management, including procurement.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a): - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.	expected from employees or public officials and candidates engaged in public procurement. The code of conduct is mandatory and applicable in all PEs and staff involved in procurement. In addition, there is an Ethics Directive issued from the Region's Bureau of Finance. The code of ethics for internal auditors is available in the Inspection and Internal Audit Ethics Directive. <i>But</i> no code of conduct has been found for staff involved in Public Financial management activities.				
(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.	Accountability for decision making is clearly stipulated in the procurement Proclamation. Article 11 of the procurement proclamation states that "Procurement and property administration staff or heads of procurement and property administration units and members of the procurement endorsing committee in public bodies shall be accountable for their actions in accordance with this Proclamation and the directives to be issued by the BoF". In addition, the regional government issued a proclamation to provide Disclosure and Registration of Asset No 107/2012 that obliges public officials to disclose their asset and register at the regional ethics and anti-corruption commission. The asset registration law is enforced on all relevant staffs throughout all public bodies and is consistently applied.	Not applicable.	Criterion is partially met. Accountability provision is limited to few staff and doesn't cover employees directly or indirectly involved in procurement activities and decisions.		Consider expanding accountability provision to cover all involved in procurement activities and decisions.
(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.	The code of ethics in procurement is mandatory. It is stipulated in the procurement Proclamation and Directive that are applicable in all PEs and to procurement staff involved in public procurement.	Not applicable.	Criterion is met.		
(d) Regular training programs are offered to ensure sustained awareness and implementation of measures.	The Regional Ethics and anti-corruption commission established a dedicated Unit that organizes and provides training. The ethics officers in each of the PEs are also responsible to coordinate with REAC and ensure that employees receive trainings. However, there is no regular training program related to code of ethics. The Commission mentioned budget and technical constraints in providing regular trainings.	Not applicable.	Criterion is partially met. There is no regular training program.	✓ Yes	Ensure regular training of ethics. Besides delivery by REAC, it can be jointly organized either as part of the PFM training or standalone program.
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.	There is no requirement to capture information on beneficial ownership. There is also no system to systematically capture and maintain information on conflict of interest. Thus, the information on beneficial ownership, conflict of interest or asset disclosure are either not available or not systematically captured, maintained, utilized for decision making.		Criterion is not met. There is no established procedure and practice to capture information on beneficial ownership. Similarly, there is no established procedure to notify, address and capture information on conflict of interest.		Ensure that Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.