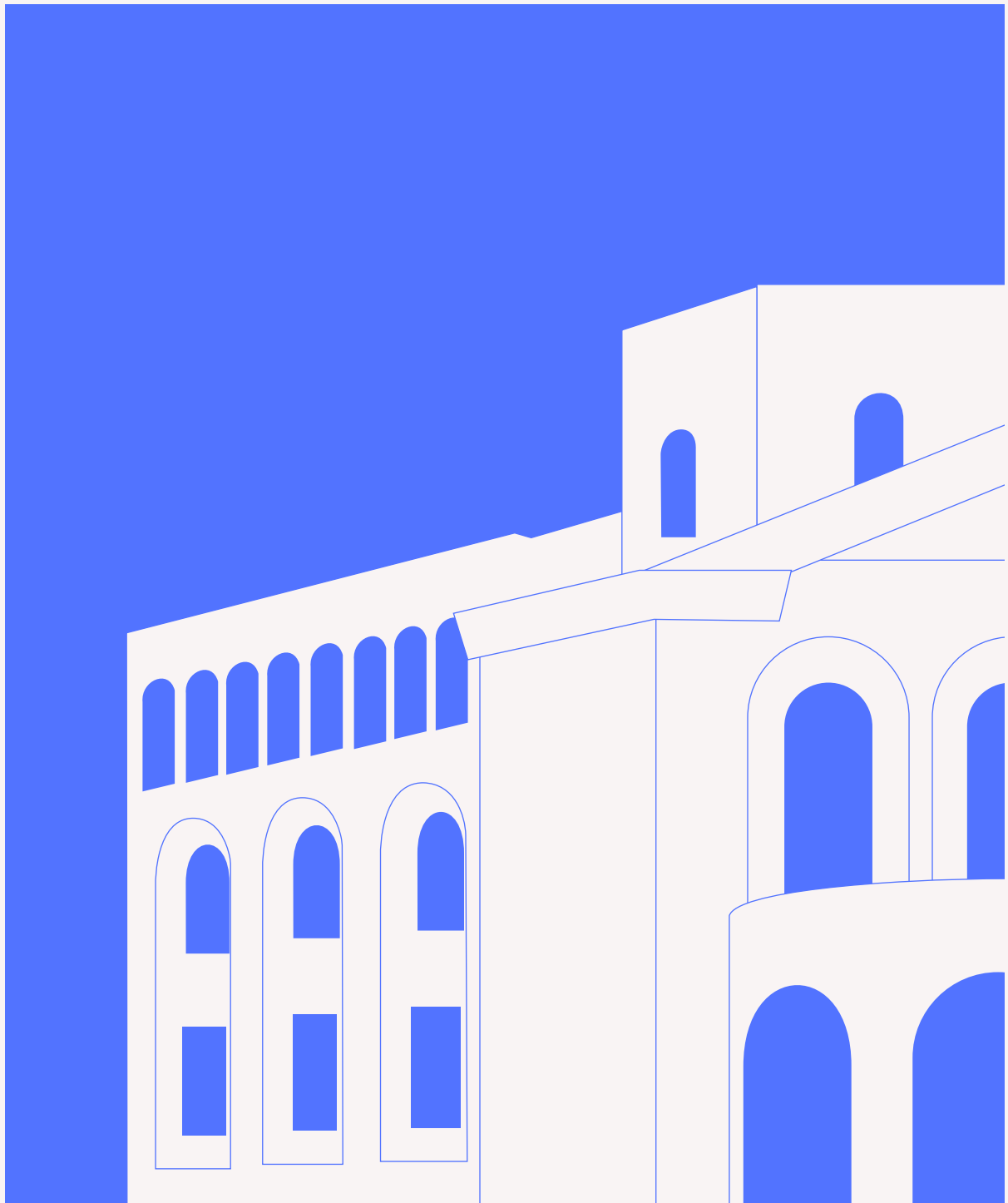


ASSESSMENT OF THE PUBLIC PROCUREMENT SYSTEM



This report presents the results of the assessment of the Armenian public procurement system using the MAPS methodology. The assessment was conducted by Transparency International Anti-Corruption Center NGO in cooperation with National Center of Public Policy Research NGO.

Publication of this report is supported by Open Society Foundations – Armenia.

The content of the material is the responsibility of the Transparency International Anti-Corruption Center and does not necessarily reflect the views of the donor organization.

ASSESSMENT OF THE PUBLIC PROCUREMENT SYSTEM OF THE REPUBLIC OF ARMENIA – 2024

Experts: Armenuhi Burnazyan, Varuzhan Hochtanyan

Transparency International Anticorruption Center
www.transparency.am

Yerevan 2024

TABLE OF CONTENTS

| | |
|---|------------|
| EXECUTIVE SUMMARY | 6 |
| 1. INTRODUCTION | 16 |
| 2. ANALYSIS OF COUNTRY CONTEXT | 18 |
| 2.1. Political, economic, and geostrategic situation of the country | 18 |
| 2.2. The Public Procurement System and its links with the public finance management and public governance systems | 21 |
| 2.3. National policy objectives and sustainable development goals | 24 |
| 2.4. Public Procurement Reform | 27 |
| 3. ASSESSMENT | 31 |
| 3.1. Pillar I - Legal, Regulatory and Policy Framework | 31 |
| Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations | 34 |
| Indicator 2. Implementing regulations and tools support the legal framework | 47 |
| Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations | 49 |
| 3.2. Pillar II - Institutional Framework and Management Capacity | 51 |
| Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system | 54 |
| Indicator 5. The country has an institution in charge of the normative/ regulatory function | 57 |
| Indicator 6. Procuring entities and their mandates are clearly defined | 61 |
| Indicator 7. Public procurement is embedded in an effective information system | 64 |
| Indicator 8. The public procurement system has a strong capacity to develop and improve | 69 |
| 3.3. Pillar III - Public Procurement Operations and Market Practices | 73 |
| Indicator 9. Public procurement practices achieve stated objectives. | 73 |
| Indicator 10. The public procurement market is fully functional | 80 |
| 3.4. Pillar IV - Accountability, Integrity, and Transparency of the Public Procurement System | 83 |
| Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement | 87 |
| Indicator 12. The country has effective control and audit systems | 91 |
| Indicator 13. Procurement appeals mechanisms are effective and efficient | 97 |
| Indicator 14. The country has ethics and anti-corruption measures in place | 101 |
| 4. CONSOLIDATED RECOMMENDATIONS | 114 |
| ANNEXES/APPENDICES | 118 |
| Annex 1: Assessment results by indicator, sub-indicator and assessment criteria | 118 |

| | |
|--|------------|
| Assessment Result Summary | 118 |
| Pillar I. Legal, Regulatory, and Policy Framework | 119 |
| Pillar II. Institutional Framework and Management Capacity | 123 |
| Pillar III. Public Procurement Operations and Market Practices | 127 |
| Pillar IV. Accountability, Integrity, and Transparency of the Public Procurement System | 129 |
| Annex 2: Findings from review of selected procurement procedures and contract files | 134 |
| Annex 3: Enterprise survey questionnaire and responses | 141 |
| Bibliography | 148 |

ACRONYMS

| | |
|----------|---|
| AC | Audit Chamber |
| ADB | Asian Development Bank |
| ADS | Armenia Development Strategy |
| AIS | Automated information system |
| ARLIS | Armenian Legal Information System |
| ARMEPS | Armenian Electronic Procurement System |
| AMD | Armenian dram |
| BSEC | Black Sea Economic Cooperation |
| CEPA | Comprehensive and Enhanced Partnership Agreement |
| CIS | Commonwealth of Independent States |
| CPC | Corruption Prevention Commission |
| CSL | Law on Civil Service |
| CSO | Civil society organization |
| CSTO | Collective Security Treaty Organization |
| DCFTA | Deep Comprehensive Free Trade Agreement |
| EBRD | European Bank for Reconstruction and Development |
| EEU | Eurasian Economic Union |
| GDP | Gross domestic product |
| GFMIS | Government Financial Management Information System |
| GoA | Government of Armenia |
| GPA | Government Procurement Agreement |
| HDI | Human Development Index |
| IA | Internal auditors |
| IMF | International Monetary Fund |
| IRM | Independent Reporting Mechanism |
| MAPS | Methodology for Assessing Procurement Systems |
| MoF | Ministry of Finance |
| MSME | Micro, small and medium-sized enterprise |
| MTPEP | Mid-term Public Expenditure Program |
| NA | National Assembly |
| OGP | Open Government Partnership |
| OSCE | Organization for Security and Co-operation in Europe |
| PEFA | Public expenditure and financial accountability assessments |
| PFM | Public Financial Management |
| PL | Law on Procurement |
| PPCM | Procurement Planning and Contract Management |
| PPP | Public Private Partnership |
| PSL | Law on Public Service |
| RA | Republic of Armenia |
| SAI | Supreme Audit Institution |
| SDGs | Sustainable Development Goals |
| SIGMA | Support for Improvement in Governance and Management |
| SME | Small and medium-sized enterprise |
| SPP | Sustainable Public Procurement |
| UN | United Nations |
| UNCITRAL | United Nations Commission on International Trade Law |

| | |
|-------|------------------------------------|
| UNDP | United Nations Development Program |
| UNWTO | World Tourism Organization |
| WB | World Bank |
| WTO | World Trade Organization |

EXECUTIVE SUMMARY

This report provides the results of the assessment of the public procurement system of the Republic of Armenia (RA) using the Methodology for Assessing Procurement Systems (MAPS).

The main objective of the work has been to use the MAPS assessment tool to evaluate the quality and effectiveness of RA public procurement system and to support Government of Armenia (GoA) in its efforts to further improve the system.

The scope and methodology of the assessment were designed to:

- identify strengths and weaknesses of the public procurement system, their relative importance, and major risks and their likely consequences for the efficiency of the system;
- identify any substantial gaps that negatively impact the quality and performance of the public procurement system;
- identify and recommend actions to strengthen the system;
- form the basis for elaboration of a strategy and reform action plan to continuously improve the quality and performance of the public procurement system.

The main issue encountered in the process has been the lack of effective access to complete and accurate data for describing and analyzing the actual practices and outcomes in the public procurement system.

Many of the existing systems and databases contain only incomplete or inaccurate information or are structured in such a way that relevant analyses are difficult to carry out. Nevertheless, small enterprise survey with a total of 15 respondents and analysis of 54 procedures and contract files have allowed some quantitative data to be collected, which was used mainly to validate the findings of the qualitative analysis.

To make the public expenditure system more effective, the GoA, supported by several multilateral and bilateral development partners, has been making efforts to improve the country's Public Financial Management (PFM) system, including the public procurement system.

In 2011 Armenia was the first of the former Soviet Union countries to become a full member of WTO Government Procurement Agreement (GPA) (including revisions) and since then continuing efforts have been made to develop the public procurement system to comply with international standards.

These efforts received renewed incentive through Comprehensive and Enhanced Partnership Agreement (CEPA) between the EU and Armenia, signed on 24 November 2017. However, Armenia has been a member of the Eurasian Economic Union (EEU) since 2 January 2015, and this has created overlapping and partly conflicting obligations regarding the regulatory and institutional framework and public procurement practices.

The RA procurement system is regulated by the Law on Procurement (PL) adopted on December 12, 2016 and amended several times.

Overall, the legislative and regulatory framework for public procurement is comprehensive, covers central, regional, and local authorities and applies to all procurement of goods, works

and services. The legislation provides opportunities to conduct procurement both electronically and on paper.

Public procurement in Armenia is decentralized. The Ministry of Finance (MoF) is the authority for the oversight of the public procurement in Armenia. It is also responsible for the development and operation and maintenance of electronic government procurement.

The findings can be summarized as follows, with the observations grouped under the four main pillars that constitute the main structure of the assessment methodology. The assessment also leads to several main recommendations, presenting the essence of the consolidated recommendations set out in the report (Part 4). In each case, the detailed assessment in Part 3 of the report gives further details, presented in strict accordance with the structure of the indicators, sub-indicators and corresponding evaluation criteria that compose each pillar.

Pillar I - Legal, Regulatory and Policy Framework

Main Gaps

- While the framework permits use of non-price attributes for award criteria, there is no mention of using life cycle cost or other methods and no guidance as to how to apply them to ensure objective and value-for-money decisions. This opens the risk of abuse.
- The authority to appeal procurement procedures was vested only with the courts. The fact of fully refusing an administrative review appeals system may carry certain risks, one of which is that the fees for submission of appeals in court are higher than the previous fee and can unnecessarily hinder the opportunity for appealing. In addition, despite the legal requirements, the practice shows that the process for admitting or examining complaints is often prolonged and can unduly delay the procurement process.
- Model procurement documents (templates of documents) need further improvement and standardization.
- There is no official comprehensive public procurement manual detailing all procedures for the correct implementation of procurement regulations and laws.
- There is no policy/strategy covering sustainable procurement.
- There is no SPP implementation plan.
- There are no references to SPP in legal and regulatory framework.

Recommendations

- Provide guidance as to the use of non-price attributes in award criteria.
- Study the best practices and choose alternative solution for appeal system in addition to the judicial review.
- Take measures to improve and standardize model procurement documents.
- Develop a unified, official, comprehensive Public Procurement Manual detailing all procedures for the correct implementation of procurement regulations and laws.
- Develop policy/strategy to implement SPP. Include provisions on sustainability (economic, environmental, and social criteria) in procurement legislation.

Pillar II - Institutional Framework and Management Capacity

Main Gaps

- The PL shall explicitly include provision, which requires preparation of procurement plans for the acquisition of items carried out at the expense of all municipal budget funds. Regarding preparation of multi-annual procurement plans, their preparation will become possible, if the approach to the development of Mid-term Public Expenditure Programs (MTPEPs), will be revised to include also activities of 3-year budgetary programs. However, this is out of scope of procurement legislation.
- Budget funds are committed based on procurement plans. However, there are delays in the process.
- Procurement legislation allows solicitation of tenders/proposals and conclusion of contracts before earmarking financial resources.
- The authorized body does not perform public procurement monitoring function.
- Statistics on paper-based procurement processes shall be collected.
- Training programs do not contain topics related to integrity.
- The current staffing level of the institution is inconsistent with its responsibilities
- Acting of the MoF as procuring entity for its own procurement, can create conflict of interest situations.
- The practice of centralized procurement has very limited application.
- It is not possible to monitor procurement outcomes, results, and performance due easily and fully to the incompleteness of published information and often its non-machine-readable format.
- Not all contracting authorities are doing procurement through the e-procurement system.
- The authorized body (MoF) does not have sufficient resources to implement required improvements to the e-portal.
- There are still cases of missing documentation and incorrect data entries in e-procurement system, which affects the accuracy of statistics.
- Suppliers are not classified in the e-portal according to size, so it is not possible to quantify the number of bids submitted by MSMEs.
- Not all information is published in an open and structured format. Some data are published in non-machine-readable format, custom-designed reports for specific use by the public, civil society organizations (CSOs), and other interested entities cannot be easily generated. The full procurement cycle is not currently reflected in the e-portal, which sets some limitations on data monitoring and analysis. Beyond spot checks on compliance, there is no systematic monitoring of data related to procurement performance and compliance.
- The level of procurement training is insufficient. It is very basic and limited to ensure procurement staff have appropriate knowledge, skills, and competencies. There is no clear evidence that staff performance is evaluated on a regular and consistent basis.
- There is a lack of resources to routinely evaluate and adjust training programs.
- There is no overall strategy for developing the capacity of key actors involved in public procurement.
- There is no defined career path for procurement with job descriptions at different levels and requisite qualifications and competencies specified.
- There is no performance measurement system that consistently measures the public procurement system on both quantitative and qualitative aspects.

- Lack of monitoring and reporting system for implementation of the Action Plan of the Concept of Development of the Procurement System.
- Responsibilities are not clearly defined in the Action Plan of the Concept of Development of the Procurement System.

Recommendations

- Extend the provision in PL requiring preparation of procurement plans for the acquisition of items carried out at the expense of municipal budget funds.
- Eliminate or limit the opportunity of the initiation of procurement procedures without availability of funds.
- Include public procurement monitoring within the functions of the authorized body
- Create machine-readable, open data- and open code-based statistical databases on procurement data.
- Organize integrity trainings also for invited persons, who work as procurement coordinators.
- Conduct a more detailed institutional analysis of the body and prepare recommendations on staffing levels and functions.
- Consider in PL assigning to other unit of the Government the functions of procuring entity for the procurement of the MoF. The most relevant candidate for that role could be the Office of the Prime Minister.
- Expand the use/application of centralized procurement.
- Take adequate steps for implementation of the objectives defined in the Concept of Development of the Procurement System and its Action Plan, which stipulates modernizing the e-procurement system and expanding the circle of procuring entities operating the system.
- Consider the publication of data in open and structured machine-readable format in the context of modernizing the e-procurement system
- Develop a roadmap for the development of the e-Procurement systems and include sustainability issues in the plan.
- Decrease the use of manual operations in the new e-procurement system and improve the skills of procurement staff to meet the requirements of digital technology.
- Establish a public record-keeping system on SME participation in public procurement, maintain and publish statistics.
- Publish all data in machine readable format.
- Expand the report function to have the facility to design and generate reports for specific requirements.
- Analyze the public procurement skills of contracting authorities and economic operators, identify
 - their training needs and prepare a training strategy to meet them.
- Include the issue of sustainability of training materials as part of the strategy for professional development of procurement specialists and other stakeholders involved in public procurement.
- Update the online training courses.
- Take steps to implement the targets regarding capacity development in the Concept of Development of the Procurement System and its Action Plan.

- Analyze the public procurement skills of contracting authorities and economic operators, identify their training needs and prepare a training strategy to meet them.
- Include in the strategy for professional development the defined career path for procurement with job descriptions at different levels and requisite qualifications and competencies specified.
- Analyze the public procurement skills of contracting authorities and economic operators, identify
- their training needs and prepare a training strategy to meet them.
- Conduct a study of international good practice relating to performance measurement of public procurement systems and develop and implement recommendations.
- Develop a monitoring and reporting system for implementation of the Action Plan of the Concept of Development of the Procurement System.
- Review and clearly define responsibilities in the Action Plan of the Concept of Development of the Procurement System.

Pillar III - Public Procurement Operations and Market Practices

Main Gaps

- There is no evidence of strategic approach to procurement planning based on needs analysis and market research.
- There is no evidence that output/outcome-based requirement definition is regularly practiced.
- There is no evidence of the use of sustainability criteria.
- Documents need further standardization.
- There are no sustainability clauses included in contracts. While penalty clauses are included in contracts, incentive clauses are not.
- Data on contract management are not in machine readable format and there is little information regarding the implementation status (only invoices and delivery-acceptance acts are published)
- Though invoices and delivery-acceptance acts are published in the e-portal, the data are in non-machine-readable format and it is not clear how the inspection, quality control and supervision of work was done.
- Payment of invoices is sometimes delayed.
- Information on contract amendments is published in non-machine-readable format.
- There is no clear system in place which will measure and improve procurement practices.
- The records on contract management are not kept in a single file.
- There are no institutionalized mechanisms for cooperation and consultation with private sector/business associations in public procurement.
- There is no regular capacity building for suppliers on participating in public procurement.
- Many suppliers are reluctant to participate in public procurement.
- Perceptions of unfair competition, not appropriate technical specifications, award criteria mostly based on prices and the limited possibilities to compete on quality and performance create disincentives for many private companies for participating in public procurement.

- Key sectors associated with the public procurement market have not currently been identified. Risks associated with certain sectors and opportunities to influence sector markets are not assessed by the government and sector strategies are not developed.

Recommendations

- Develop training materials and conduct training on procurement strategy development including needs analysis and market research.
- Develop procurement manual and include guidance on procurement strategy development such as needs analysis and market research in it.
- Develop training materials and conduct training on requirement definition using output/outcome-based (functional) specifications.
- Take steps for standardization of procurement documents
- Review international good practice on sustainable procurement and incentive clauses in contracts, develop and implement recommendations.
- Consider mandatory requirement for publication of data regarding contract amendments and contract implementation in machine readable format, when developing new e-procurement system. Ensure the completeness and accessibility of records in a single file.
- Explore how linkages with other systems can be improved to facilitate invoice payment and avoid delay in it, when developing new e-procurement portal.
- Develop a modern electronic system that meets all the requirements to measure and improve procurement practices.
- Make frequent use of institutionalized mechanisms for cooperation and consultation with private sector, such as advisory boards and working groups.
- Develop government programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.
- Dialogue with business associations and develop action plan to improve perceptions and address constraints.
- Raise contracting authorities' skills in preparing and carrying out procurement with greater focus on value for money, using simple and practical approaches tailored to the supply market in question.
- Consider identifying key sectors, when developing a strategy for centralized/collaborative procurement.

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

Main Gaps

- There are no official programs and activities to develop the capacity of relevant stakeholders to understand, monitor, and improve public procurement.
- Consultative discussions with civil society are held not frequently and feedback is mostly considered partially.
- There is no provision for citizens to participate in the phases of a procurement process, except for contract execution and management phase.
- Participation of citizens in public monitoring remains poor.

- Data is not available in the case of internal audit. No gap for external audit. Systems to follow up on the implementation/enforcement of the audit recommendations are not foreseen by law and they are not in place.
- The mechanisms of responsibility of the authorities/officials who do not implement the recommendations of the AC are not effective/poorly functional.
- There is no established program for auditors to ensure that they are qualified to conduct high-quality procurement audits.
- Process for challenges and appeals is often prolonged and can unduly delay the procurement process.
- The fees for submission of appeals in courts are higher than the previous fee and can unnecessarily hinder the opportunity for appealing.
- Most of the appeals are either unresolved within the specified timeframe or were resolved exceeding timeframe specified in the law. The process of issuing the decisions often exceeds the timeframes specified in the law/regulations.
- None of the articles included in the list of corruption crimes of the current Criminal Code has provisions, which are specific to the manifestations of corruption (including fraud) in procurement.
- In the absence of provisions specific to the manifestations of corruption (including fraud) in procurement, obviously, there could not be 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.
- For companies, involved in single-source procurement procedure there is no explicit requirement of beneficial owners' disclosure. Definitions of affiliated persons is broader in sub-legislation (GoA Decree No. 526-N) than in PL, which can create contradictions.
- There are no any special measures in place for the detection and prevention of corruption associated with procurement, as far as corruption in procurement is not specified.
- There is no any legal act in Armenian legislation, which specifically defines manifestations of corruption (including fraud) in public procurement and penalties for their commitment. Thus, corruption crimes in procurement are not specified, and there is no statistics on corruption-related legal proceedings and convictions.
- PL mentions only about "crimes against economic activity". However, corruption crimes occur not only in "economic activity."
- There is no mechanism in place for systematically identifying corruption risks and for mitigating these risks specifically in public procurement.
- There is no special integrity training in place for procurement specialists.
- There are few CSOs operating in procurement and/or social audit and control, however there are a few that are quite active. Thus, more active and open participation by civil society should be encouraged.
- There is no clear evidence that suppliers and business associations actively support integrity and ethical behavior in public procurement.
- There is lack of information on procuring entities that have a mandatory code of conduct or ethics, with provisions for those involved in public financial management, including procurement. In addition,
- There is lack of information on officials involved in public procurement that have filed financial disclosure forms required by law.

- The regulations do not define administrative or criminal liabilities as the consequences of failure to comply to the code of conduct or law.
- The scope of trainings on ethics is limited and more comprehensive approach is needed.
- There is no evidence on how the conflict-of-interest statements, financial disclosure forms and information on beneficial ownership is utilized by decision-makers. There is no separate statistics specially for procurement officials regarding declarations or on beneficial ownership for companies acting as suppliers in procurement procedures.

Recommendations

- Engage with relevant stakeholders to implement mechanisms to develop their capacity for understanding, monitoring, and improving public procurement (authorized body). Be more proactive in seeking input, comments, and feedback from civil society.
- Include provisions in legislation, which will allow the engagement of civil society in procurement planning process through consultations, participation in bid opening, evaluation, and contract award process when appropriate.
- Improve regulations and practices regarding the participation of citizens and civil society in public monitoring, in addition to further improvement of data publication in e-procurement system.
- Strengthen/establish the new mechanisms of responsibility of the officials who do not implement the audit recommendations. This could be linked to budgeting process.
- Maintain a continuous training process for auditors in the field of public procurement.
- Strengthen the skills to perform performance audits in the field of public procurement
- Implement mechanisms that will effectively neutralize delays in admission and examination of complaints in courts for various reasons, including intentional ones
- Review the amount of fees for submission of appeals in order not to unnecessarily hinder the opportunity for appealing.
- Implement mechanisms that will effectively neutralize delays in admission and examination of complaints in courts for various reasons, including intentional ones
- Introduce provisions in PL, which will specifically define the actions of corruption (including fraud) for which its perpetrators will bear criminal liability. After it, 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 could also be introduced in PL, as far as currently, there is only a declarative in nature provision stating that “Illegal actions of the procuring entity and supplier within the framework of the procurement process shall cause liability defined by law.” (Part 1 of Article 12 of PL).
- In PL extend the legal obligation of disclosure of beneficial owners also on companies, who are awarded contracts through single-source procurement procedure.
- Synchronize the definition of affiliated persons in PL and sub-legislation to avoid contradictions.
- Oblige the Office of the Prosecutor General of the RA and MoF to collect and present statistics on corruption (including fraud) in public procurement and investigation of those crimes, after implementing provisions in PL, which will specifically define the actions of corruption (including fraud) bearing criminal liability.
- Extend the effect of provision of Point 3 of Part 1 of Article 6 to cover all corruption crimes defined in the list of corruption crimes in Appendix 1 of the Criminal Code.

- Pay increased attention by anti-corruption institutions regarding cases of corruption and fraud in public procurement, with the publication of statistical data on such cases.
- Develop and implement special measures for the detection and prevention of corruption specifically in public procurement.
- Develop and include in the certification process training modules on integrity for procurement specialists.
- Work toward a more active enabling environment for civil society engagement and feedback.
- Take measures to encourage suppliers and business associations support integrity and ethical behavior in public procurement
- Develop and enforce sectoral code of conduct for those involved in public financial management, including procurement.
- Maintain and publish statistics (also sectoral) on the fulfillment of the financial disclosure requirements stipulated by the legislation.
- Include administrative or criminal liabilities for non-compliance to several rules in addition to disciplinary sanctions.
- Include ethics training as part of the certification training program for procurement specialists
- Maintain separate statistics specially for procurement officials regarding declarations or on beneficial ownership for companies acting as suppliers in procurement procedures.
- Maintain and publish statistics on monitoring and investigation of conflict-of-interest statements and disclosure information.

Assessment Result Summary: number of assessment criteria met, by pillar

Color Codes:

Criterion

Substantially Met - Green

Partially Met - Yellow

Substantially Not Met - Red

Not Applicable - Blue

| MAPS Pillar | Criteria | | | | Total |
|--|--------------------------|----------------------|------------------------------|-----------------------|--------------|
| | Substantially Met | Partially Met | Substantially Not Met | Not Applicable | |
| Pillar I: Legal, Regulatory, and Policy Framework | 54 | 5 | 4 | 4 | 67 |
| Pillar II: Institutional Framework and Management Capacity | 26 | 22 | 3 | 4 | 55 |
| Pillar III: Public Procurement Operations and Market Practices | 7 | 13 | 5 | 1 | 26 |

| | | | | | |
|--|-----|----|----|---|-----|
| Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System | 32 | 27 | 3 | - | 62 |
| Total | 119 | 67 | 15 | 9 | 210 |

Full assessment results by indicator, sub-indicator and assessment criteria are presented in Annex 1.

1. INTRODUCTION

Starting from January 2023, Transparency International Anti-corruption Center (TIAC) NGO, which is the official accredited chapter of Transparency International leading global anti-corruption international NGO in Armenia, launched the assessment of the Armenian public procurement system, using the revised MAPS¹. This project was supported by a grant “Assessment and Monitoring of the Armenian Public Procurement System of Armenia” received from the Open Society Foundations – Armenia implemented from March 1, 2021 to December 31, 2023.

This assessment and its findings will, primarily, contribute to the implementation of the procurement-related provisions of the of the 2021-2026 Program² of the Government (see p. 101 of the Program) and, stemming from those provisions, and objectives and measures (activities) of that Program’s Action Plan³ (see Measures 7.1, 8.1, 9.1, 10.1, 11.1, 12.1 and 13.1 of Objectives 7-13, as well as Measure 26.1 of Objective 26 related to GFMS). It will also contribute to the implementation of the procurement-related provisions of the Government’s Anti-Corruption Strategy and respective goals and activities of its 2023-2026 Action Plan.⁴ Finally, the assessment contributed to the implementation of Armenia’s anti-corruption obligations in the framework of Organization of Economic Development and Cooperation (OECD) Anti-corruption Network’s (ACN) Istanbul Action Plan (IAP) to which Armenia is member. One of the Performance Areas of its 5th Round of Monitoring (Performance Area 5 - Integrity in Public Procurement) relates to public procurement. The results and findings of the first year (2023) of the performance aimed at achieving the benchmarks defined by the 5th Round Monitoring are summarized in the publication “Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Armenia” published in March 2024.⁵ The monitoring will continue in 2024 and this assessment will help to better implement that monitoring.

The main objective of the assessment has been to use the MAPS assessment tool to evaluate the quality and effectiveness of RA public procurement system and to support GoA in its efforts to further improve the system.

The scope and methodology of the assessment were designed to:

- identify strengths and weaknesses of the public procurement system, their relative importance, and major risks and their likely consequences for the efficiency of the system;
- identify any substantial gaps that negatively impact the quality and performance of the public procurement system;
- identify and recommend actions to strengthen the system;

¹ MAPS was originally created by a joint initiative of the World Bank and the Development Assistance Committee (DAC) in 2003.

² RA Government Programme 2021-2026, <https://www.gov.am/files/docs/4586.pdf>

³ RA Decree N 2300-L On the Introduction of Changes in the November 18, 2021 RA Decree N 1902-L, December 25, 2023, <https://www.gov.am/files/docs/5145.pdf>

⁴ RA Decree N 1871-L On the Approval of the Anti-Corruption Strategy of the Republic of Armenia and Its 2023-2026 Implementation Action Plan, October 26, 2023, <https://www.arlis.am/DocumentView.aspx?DocID=184674>
See pp. 67-68 of the Strategy and Specific Goal “Improvement of Integrity, Accountability and Transparency in Procurement Processes” with respective Activities 4.10-4.14 of the 2023-2026 Action Plan (see pp. 112-118).

⁵ Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Armenia: Istanbul Anti-Corruption Action Plan, https://www.oecd-ilibrary.org/governance/baseline-report-of-the-fifth-round-of-monitoring-of-anti-corruption-reforms-in-armenia_fb158bf9-en

- form the basis for elaboration of a strategy and reform action plan to continuously improve the quality and performance of the public procurement system.

The assessment part of the mentioned-above grant was implemented by TIAC in cooperation with the National Center of Public Policy Research (NCPPR), an Armenian think tank working on the issues of public finance.

The qualitative analysis is focused on the legislative framework and institutional structure of the Armenian public procurement system. The quantitative analysis looked at (a) 54 randomly selected public procurement procedures and contracts; and (b) online survey responses from private sector actors.

The MAPS assessment covers RA public procurement system governed by the current PL adopted by RA National Assembly (NA) on December 16, 2016 and enacted on April 25, 2017 along with its amendments enacted and sub-legislation as of March 2024.

2. ANALYSIS OF COUNTRY CONTEXT

2.1. Political, economic, and geostrategic situation of the country

Armenia is a landlocked country situated in the South Caucasus, bordered by Turkey, Georgia, Azerbaijan, and Iran. Its location has historical and geopolitical significance, as it serves as a crossroads between Europe and Asia.

Armenia has a total land area of approximately 29,743 square kilometers (11,484 square miles) and a population of about 2.9 million (2023). The country's population has declined due to increased emigration since the break-up of the Soviet Union, which has resulted in development of more than 10 million Armenian diaspora worldwide.

Currently only two trade borders with Iran and Georgia are open, because borders with Azerbaijan and Turkey have been closed since 1991 and 1993, respectively, because of the Nagorno-Karabakh conflict.

The country's geostrategic situation also intersects with economic considerations, including energy transit routes and infrastructure projects. Regional dynamics impact trade and economic development.

Armenia maintains relatively good relations with its southern neighbor Iran and northern neighbor Georgia. Armenia collaborates with Iran on various economic and energy projects.

Armenia has sought to strengthen ties with the European Union (EU) and other Western partners. While it was previously involved in negotiations to sign a Deep Comprehensive Free Trade Agreement with EU (DCFTA) to establish a free trade area between Armenia and EU, the country later in 2017, after joining the EEU, a Russia-led economic bloc, signed a less ambitious Comprehensive and Enhanced Partnership Agreement (CEPA) with EU, which provided for close cooperation in several areas, including energy, transport, environmental protection, trade, and investment. Also, the agreement seeks to strengthen comprehensive political and economic cooperation and partnership, and stipulates the level of Armenia's involvement in the policies, programs, and activity of the EU.

The close relationship with Russia is marked by not only economic membership in EEU, but also military and political cooperation. Armenia is also a member of the and the Collective Security Treaty Organization (CSTO), a regional military alliance led by Russia. Besides Russia and Armenia, other members of CSTO are Belarus, Kazakhstan, Kyrgyzstan, and Tajikistan.

Armenia is a member of several international organizations, which include Organization for Security and Co-operation in Europe (OSCE), Black Sea Economic Cooperation (BSEC), United Nations (UN), World Tourism Organization (UNWTO), World Trade Organization (WTO), International Monetary Fund (IMF), European Bank for Reconstruction and Development (EBRD), World Bank (WB), Commonwealth of Independent States (CIS), a regional organization that includes some of the former Soviet republics, etc.

Overall, the main sectors of economy contributing the most to the country's gross domestic product (GDP) are industry, agriculture, wholesale and retail trade, real estate activities and construction. The services sector, particularly information technology and software development, has experienced significant growth in recent years and Armenia has become a

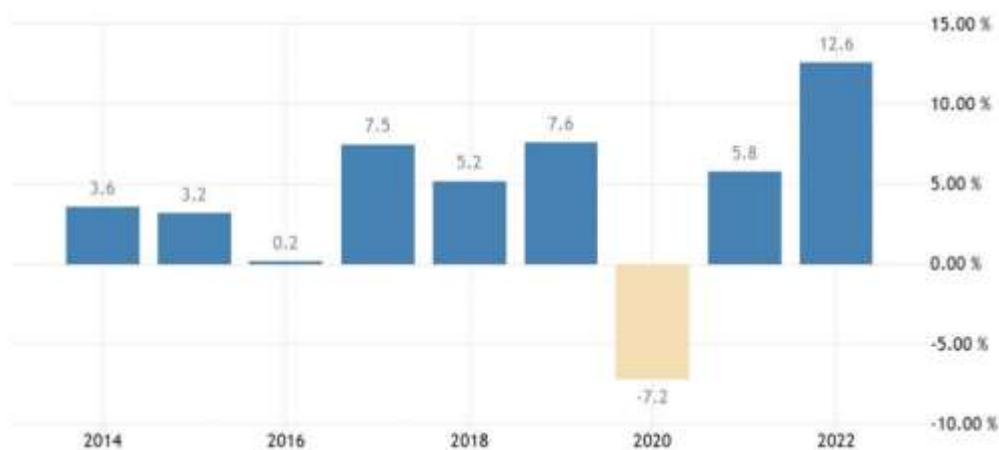
notable hub for IT outsourcing and technology-related services. Remittances from Armenians working abroad (particularly in Russia, the United States and Europe) play a vital role in the country's economy.

In recent years Armenia has experienced significant socio-political and economic shocks. In 2018 Velvet Revolution, which toppled the previous ruling political force (Republican Party of Armenia) and the government formed by him and brought to power (through snap parliamentary elections) the political force, which led the Revolution (Civic Contract Party), whose leader, Nikol Pashinyan, became the new Prime Minister of Armenia. In 2020 Armenia experienced a double shock of the COVID-19 pandemic, which in addition to health and life concerns brought challenges to various sectors of economy, and the 44-day war in Nagorno-Karabakh, which resulted in large numbers of casualties, loss of the territories in Nagorno-Karabakh controlled by local Armenian government supported by Armenia and had a negative impact on the state of Armenia's economy (resulting in 7,2 percent decrease in GDP).

In 2023, because of a nine-month blockade and military aggression imposed by Azerbaijan more than 100,000 ethnic Armenians living in Nagorno-Karabakh had to flee into the territory of Armenia, posing another significant challenge for the country.

However, despite these challenges, Armenia's economy has exhibited impressive resilience and adaptability in 2022. One of the factors influencing this was that the country absorbed a notable influx of migrants, businesses, and capital following Russia's intervention in Ukraine, which stimulated domestic demand and led to the strengthening of the national currency, resulting in a substantial 12.6 percent increase in real GDP (Figure 1).

Figure 1. GDP annual growth rate in percent

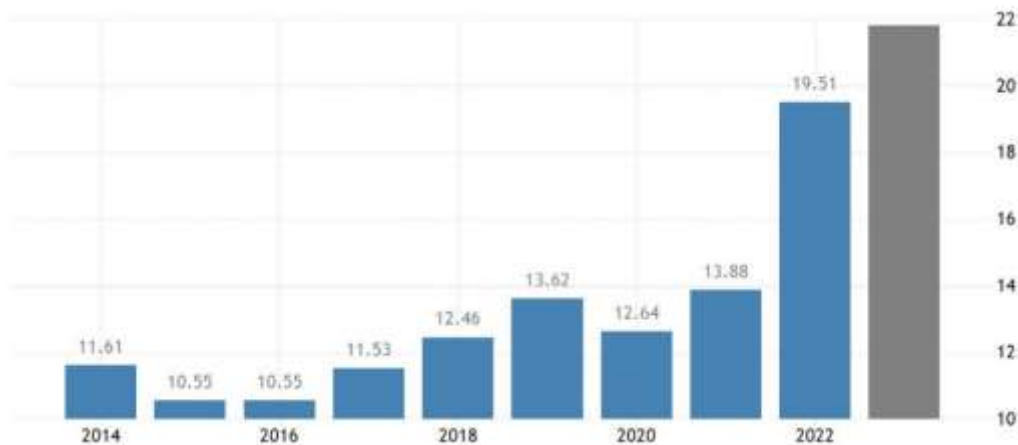


Source: Trading Economics, World Bank⁶

According to official statistics, in 2022 Armenia's GDP was worth USD 19.51 billion and GDP per capita was USD 5116.21 (Figure 2 and 3).

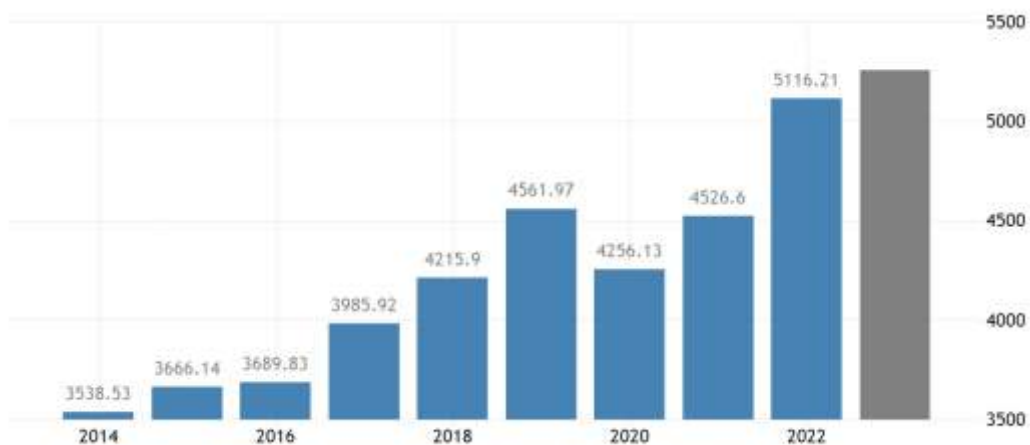
⁶ Trading Economics, World Bank, <https://tradingeconomics.com/armenia/full-year-gdp-growth>

Figure 2. GDP in USD



Source: Trading Economics, World Bank⁷

Figure 3. GDP per capita in USD



Source: Trading Economics, World Bank⁸

Armenia ranks in 47th place (score 64.9 – worst score since 2000) and is classified as “moderately free” in the 2024 report of Index of Economic Freedom by Heritage Foundation⁹. This is the highest rank among other EEU countries, as well as ahead of many EU economies like France, Spain, Italy, Hungary etc. (ranked 26th freest among the 44 countries in the Europe region). According to this report the overall regulatory framework remains efficient, and policies that support open markets are in place. The country performs relatively well in many of the four pillars of economic freedom, but the foundations of economic freedom are not strongly sustained by an independent judiciary and government integrity.

⁷ Ibid, <https://tradingeconomics.com/armenia/gdp>

⁸ Ibid, <https://tradingeconomics.com/armenia/gdp-per-capita>

⁹ Freedom by Heritage Foundation, 2024 report of Index of Economic, <https://www.heritage.org/index/>

Armenia scored 47 points out of 100 on the 2023 Corruption Perceptions Index reported by Transparency International¹⁰. According to the report the country has significantly improved its score over the past 10 years.

In terms of the Human Development Index (HDI) Armenia's latest HDI score for 2021 was 0.759, which put the country in the high human development category, positioning it at 85 out of 191 countries published.

2.2. The Public Procurement System and its links with the public finance management and public governance systems

According to official statistics, in 2022 total value of procurement was about AMD 390,6 billion (excluding purchases containing state secrets)¹¹, which accounted about 26,5% of government expenditure and 7% of GDP. Of the total volume of public procurement, procurement of goods equaled about AMD 102,9 billion (26,4%), procurement of works AMD 124,7 billion (31,9%), and procurement of services AMD 163 billion (41,7%). The value of public procurement in 2022 increased by 19% compared with 2021, when the volume was AMD 327,9 billion.

To make the public expenditure system more effective, the Armenian government, supported by several multilateral and bilateral development partners, has been making efforts to improve the country's PFM system, including the public procurement system.

In 2011 Armenia was the first of the former Soviet Union countries to become a full member of WTO GPA (including revisions) and since then continuing efforts have been made to develop the public procurement system to comply with international standards. These efforts received renewed incentive through CEPA between the EU and Armenia, signed on 24 November 2017, in which public procurement is covered in Chapter 8. However, Armenia has been a member of the EEU since 2 January 2015, and this has created overlapping and partly conflicting obligations regarding the regulatory and institutional framework and public procurement practices.

The procurement system in Armenia is regulated by the Law on Procurement (PL) adopted on December 12, 2016 and amended several times. The law is based on the United Nations Commission on International Trade Law (UNCITRAL) model and was drafted with support from the EU's Support for Improvement in Governance and Management (SIGMA) program and the EBRD. NGOs were also consulted during the drafting process. PL is primarily aimed at increasing the efficiency of the use of public funds and leveling corruption risks by ensuring transparency of procedures throughout the chain. PL reflects good practices such as value for money, equal rights and non-discrimination, competition, transparency and openness, and proportionality in the procurement process.

As secondary legislation to PL, there are several regulations adopted by Government Decrees or Ministry of Finance Orders meant to guide contracting authorities throughout the procurement process and to regulate several public procurement issues. One of the most important decrees is the Government of Armenia (GoA) May 4, 2017 Decree No. 526-N on Approving the Regulation on Organizing the Procurement Procedure. The main areas of secondary legislation cover the public procurement process (also listing the items to be

¹⁰ Transparency International, Corruption Perceptions Index 2023, <https://transparency.am/en/cpi>

¹¹ MoF, Annual procurement report 2022, https://gnumner.minfin.am/hy/page/2022_tvakani_hashvetvutyunner/

procured by closed periodic tenders), e-procurement in general, and e-auctions in particular (also listing the items to be procured using e-auctions) etc.

Overall, the legislative and regulatory framework for public procurement is comprehensive, covers central, regional, and local authorities and applies to all procurement of goods, works and services. The legislation provides opportunities to conduct procurement both electronically and on paper. There are no registration fees for participation in tenders.

The public procurement in Armenia is decentralized. The Ministry of Finance (MoF) is the authority to oversee the public procurement in Armenia. It is also responsible for the development and operation and maintenance of electronic government procurement.

The procurement cycle begins after the approval of the annual budget, but procuring entities can in some cases launch tenders without securing funding.

Procurement planning is an integral part of annual budgeting and planning. The Treasury plays an important role in public procurement, as it is responsible for contractual payments after the necessary verifications of contracts, invoices, etc. The Audit Chamber (AC) is responsible for external auditing, including procurement audits. Key procuring entities, such as Ministry of Defense, Ministry of Health, etc., have internal auditors. The internal auditors are responsible for reviewing all contracts below AMD 20 million (USD 49,000) on an ex-post review basis, and above this amount on a prior review basis. All contracts above this value are subject to audit, and in case of procurements below this amount, at least 30% must be audited.

Armenia's public procurement system has been the subject of several assessments and diagnostic works by international organizations and international financial institutions. In particular, the Asian Development Bank (ADB) Country Governance Risk Assessment of Armenia in 2019¹² noted that significant reforms were implemented in public procurement from 2008 to 2018. The assessment provided scores across four pillars-legislative and regulatory frameworks; institutional framework and management capacity; procurement operations and market practices and the integrity of the public procurement system.

The IMF's Technical Assistance Report - Public Investment Management Assessment¹³ of 2019 highlights the openness and transparency of online tools as a strength of public procurement, noting that all documents pertinent to procurement are published. At the same time, the effectiveness of procurement processes is assessed as average, noting that although the practice of single-source procurement is decreasing, the cost estimates are not realistic, and the analytical reports on complaints still need to be improved. The report proposes to integrate the comprehensive e-procurement system into the PFM system, improve the public procurement system related to capital programs, and strengthen the capacity of public procurement managers through capacity building of public procuring entities by developing and introducing public procurement key performance indicators; and review the formation of strategic procurement at the country level and create mechanisms for planning strategic procurement.

¹² Asian Development Bank, Country Governance Risk Assessment Armenia, Technical Assistance Consultant's Report, 2019 https://www.adb.org/sites/default/files/project-documents/49156/49156-001-tacr-en_1.pdf

¹³ IMF Staff Country Reports, Republic of Armenia: Technical Assistance Report-Public Investment Management Assessment, January 2019, <https://www.imf.org/en/Publications/CR/Issues/2019/01/30/Republic-of-Armenia-Technical-Assistance-Report-Public-Investment-Management-Assessment-46565>

The Principles of Public Administration of Armenia report by SIGMA¹⁴ in 2019 included an assessment of the public procurement system of Armenia. The assessment was based on five indicators with scores from 0 to 5 given to each (0 being the lowest and 5 the highest):

- Quality of legislative framework for public procurement and public-private partnerships/concessions (3 points);
- Central institutional and administrative capacity to develop, implement, and monitor public procurement policy (2 points); effectively and efficiently
- Independence, timeliness, and competence of the complaints handling system (2 points);
- Efficiency, non-discrimination, transparency, and equal treatment practices in public procurement operations (1 point);
- Availability and quality of support to procuring entities and economic operators to strengthen professionalization of procurement operations (2 points).

The Report states that PL is generally in line with the international experience, except for the complaints/appeals system, which was later changed (in recent amendments in PL, the authority to appeal procurement procedures was vested only with the courts). In addition, the report mentions that the secondary legislation deriving from PL partly contradicts the law and causes unnecessary and confusing complexity; planning and preparation regulations are in place, but they severely limit the timing of public procurement and the use of evaluation criteria other than the price; existing advisory support is not always timely and clear; training is limited and the range of standard documents, instructions, and examples is narrow, even though more than half of the surveyed users are satisfied.

Overall, transparency and service delivery improvements were achieved through various electronic government systems. They include the Armenian Electronic Procurement System (ARMEPS)¹⁵, which was launched on January 1, 2012, moving a share of procurement online. Considerable progress has been achieved in expanding the e-procurement system through adding new modules that provide a more comprehensive coverage of the procurement process. Procurement Planning and Contract Management (PPCM)¹⁶ module became functional, where all the most important data concerning state-budget funded e-procurements is being recorded and published. Currently the ARMEPS covers the whole procurement cycle from planning to payment. It is expected that the Government Financial Management Information System (GFMIS), including a comprehensive electronic government procurement (e-GP) system with a block chain module, will be developed, and introduced soon.

However, even though the information published in the system is relevant and timely; yet, it cannot be considered as complete since not all procuring entities are involved and some of the data at the e-portal is published in non-machine-readable format. Thus, it is not possible for the interested parties to access data and monitor public procurement outcomes, results, and performance easily and fully. This issue was taken into consideration by the authorities and in result, one of the priorities of PFM Reform Strategy for 2019-2023 was to modernize

¹⁴ Baseline Measurement Report: The Principles of Public Administration, Armenia March 2019, <https://sigmaweb.org/publications/Baseline-Measurement-Armenia-2019.pdf>

¹⁵ RA Ministry of Finance, Armenian Electronic Procurement System (ARMEPS), <https://www.armeps.am/>

¹⁶ Ibid, <https://armeps.am/ppcm/public/reports>

the e-procurement system by expanding access to more procuring entities and introducing online monitoring of supply of goods and services within the specified time, quality, and order.

2.3. National policy objectives and sustainable development goals

The Armenia Development Strategy (ADS) 2014-2025 was approved in March 2014 and is one of the strategic frameworks for development of state policies.

The ADS has four main priorities:

- employment growth (creating well-paid jobs);
- human capital development (enhancing scope, quality, and accessibility of primary services as well as professional growth, civic education, and better cultural activities);
- improving the social protection system (ensuring the effectiveness of existing systems, provision of social guarantees, reducing social risks and poverty, and gradual transiting from monetary social aid to needs-based social assistance); and,
- institutional modernization of the public administration and governance (adopting policies focusing at improved public service efficiency, targeted use of public resources, improved service quality and accessibility, reduced corruption, transparent decision-making, and increased civil society participation in these processes).

To modernize public administration and improve governance (priority no. 4), the ADS calls for strengthening PFM, reforming the state inspection system, enhancing local self-governance, developing e-government, improving the civil service and judicial systems, and reducing corruption. The government has prepared separate strategies for civil service reform, e-governance, digital transformation, and anticorruption.

In 2021, the Armenian government approved the five-year Government Program and Action Plan for 2021-2026. The program consists of 6 sections: security and foreign policy, economy, development of infrastructures and human capital, law and justice, and institutional development. The activities concerning public procurement are mentioned in point 7 of Section "6.10 State Expenditure" of the program, which states that to increase effectiveness of the organizing of procurement procedures, it is planned to introduce a new system of electronic procurement complying with modern functional requirements by the year 2025, and this will raise the level of transparency and effectiveness of the system. The Action Plan details more widely all the steps for achieving this objective. These steps include:

- Defining the primary directions and the action plan for the development of the procurement system
- Introducing a new system of electronic procurement
- Reducing terms for making payments for the result of the contract
- Continuous capacity building of persons that are involved in the procurement process and that of decision makers
- Improving the toolkit for providing methodical support on procurement processes
- Providing consultation to state administration bodies within the framework of the methodical support for procurement processes
- Reducing the risks of improper execution of procurement contracts

In 2015, the Armenian government-initiated preparations for adopting the Sustainable Development Goals (SDGs) of the UN, but this only gained traction when the Prime Minister

established an Inter-Agency Committee under the National Council for Sustainable Development in February 2017. On the same year, in November, with support from United Nations Development Program (UNDP), the world's first National SDG Innovation Lab was set up¹⁷, which aims to help accelerating the achievement of SDGs by drawing upon innovative methodologies and expertise. Also, a National SDG Statistical Platform has been developed by the Statistical Committee of Armenia with UN support¹⁸.

In addition, the country has adopted a comprehensive, sustainable development strategy, called the Sustainable Development Strategy 2030, which is aligned with SDGs. The strategy sets goals and targets in key areas such as energy, transport, agriculture, tourism, and education, and aims to create a sustainable and prosperous future for all Armenians. It aims to ensure that Armenia's economic development is socially inclusive and environmentally responsible. Implementing the strategy, however, will be challenging.

According to the latest Sustainable Development Report 2023¹⁹ Armenia is ranked 56th out of 166 countries. The country has the score of 73,3 which is above regional average (71,8) (Figure 4).

Overall, Armenia has so far had mixed results in implementing SDGs. Currently only one indicator of Reduced Inequalities is marked as achieved. Most of the goals still have significant challenges, however some improvement is achieved for indicators of no poverty, health and well-being, gender equality, clean water and sanitation, industry, innovation and infrastructure and partnerships for the goals. The most concerning results are for the indicator of life on land, which relates to protection, restoration, and promotion of sustainable use of terrestrial ecosystems, sustainably management of forests, combating desertification, and halting and reversing land degradation and halting biodiversity loss.

¹⁷ Armenia National SDG Innovation Lab, <https://www.sdglab.am/en>

¹⁸ Republic of Armenia National Statistical Committee: Armenia SDGs indicators, <https://armstat.am/en/?nid=759>

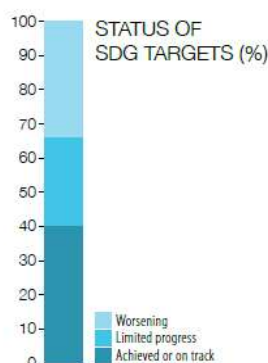
¹⁹ Sustainable Development Report 2023, <https://s3.amazonaws.com/sustainabledevelopment.report/2023/sustainable-development-report-2023.pdf>

Figure 4. Performance regarding SDGs

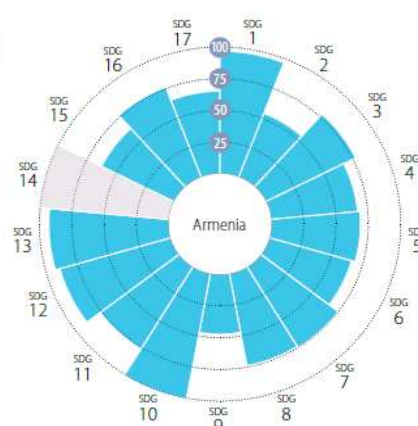
ARMENIA

Eastern Europe and Central Asia

OVERALL PERFORMANCE



AVERAGE PERFORMANCE BY SDG



SDG DASHBOARDS AND TRENDS



Source: Sustainable Development Report 2023

Armenia has been a member of the Open Government Partnership (OGP) since 2011, and is currently implementing its fifth action plan (2022–2024). It includes 10 commitments, focused mostly on improving government transparency. It introduces new commitments around government-held data, government communication, compliance with freedom of information, participatory budgeting, and judicial transparency. The inclusion of commitments on judicial transparency and participatory budgeting address Independent Reporting Mechanism (IRM) recommendations.

Like the previous action plan, this plan includes commitments incorporating legislative changes. All commitments are linked to other national strategies (particularly the 2021-2026 Action Plan of the GoA) and to SDGs. Several commitments also address recommendations by the Organization for Economic Co-operation and Development and the Group of States against Corruption. While these links could strengthen support for implementation, civil society noted that the government planned to implement the activities regardless of their inclusion in the action plan.

2.4. Public Procurement Reform

Reflecting the need to meet diverse international obligations, Armenia has continued to refine procurement legislation, introducing anti-corruption measures, and increasing the transparency and effectiveness of the system. Amendments have also been calibrated to bring government procurement in line with Armenia's commitments as a member of the EEU. Achievements include more robust guidelines for beneficial ownership disclosure, conflict of interest, debarment, and recordkeeping for bid evaluations. New institutions have been created to institutionalize and manage procurement processes, allow authorities to make real time statistics, to oversee the procurement processes and outcomes, as well as allow monitoring by civil society.

Since becoming a party to the GPA under the WTO in 15 September 2011, Armenia has taken obligation to apply international standards for public procurement. The efforts to do so have received renewed incentive through signing of the CEPA between the EU and Armenia (on 24 November 2017), in which public procurement is covered in Chapter 8. However, Armenia has been a member of the EEU since 2 January 2015, and this has created overlapping and partly conflicting obligations regarding the regulatory and institutional framework and public procurement practices.

The government (in place since May 2018), has made reform of PFM one of its cornerstones of economic and social development, underlining the importance of public procurement.

The PFM Reform Strategy for 2019-2023 had set one commitment for public procurement, which stated: "Introducing a fair and transparent system of public procurement. A new e-procurement system will be introduced, which will also allow to expand the range of customers operating the system. Also, the supply of goods and services in a timely manner, with prescribed quality and order will be monitored electronically. In case of deviations, the legislative field will be continuously improved based on the problems identified, reflecting the necessary changes in the electronic procurement system as well."

This included three components:

1. Component 15. Modernization of electronic procurement system
2. Component 16. Procurement planning
3. Component 17. Procurement appeal system

| Target | Measure | Description of steps aimed at the implementation of measures | Expected result indicator/s |
|--|---|--|---|
| Target 34. New software for e-procurement system | Development and introduction of a new software for e-procurement system | <ul style="list-style-type: none">• Procurement of a new software at the expense of RA state budget or financial resources provided by the international donor organizations• Introduction, testing and maintenance of software | Provision of new software for current e-procurement |

| | | | |
|---|--|--|--|
| | | <ul style="list-style-type: none"> • Organization of training programs for beneficiaries using the system | |
| Target 35. Improvement of procurement planning system | Draft RA Government decision on determining the cost estimates of items with the same description and introducing a unified system for planning in an automated manner | Stipulation of legal grounds for meeting identical needs with same descriptions of procuring entities and purchasing with estimated prices | Procuring entities' identical needs are met by the items with the same specifications and the same estimate prices |
| Target 36. Improvement of procurement appeal system | Amendments in RA Law on Procurement | Procurement appeals are reviewed by the courts – by stipulating special proceedings decision making process for such cases | Effective and independent review system |

However, among these ambitious commitments and targets, only third commitment of improving the procurement appeal system has been implemented and is in effect starting from June 1, 2022 (Procurement appeals are reviewed by the courts).

On August 25, 2022, by the Decision of the Prime Minister No. 977 – L, the Concept of Development of the Procurement System and its Action Plan were approved. The main directions for development of the procurement system are defined as:

- Capacity development
- Ensuring increased access to information
- Adapting the role of the RA MoF to existing requirements
- Digitalization/development of a new e-procurement system
- Standardization and green procurement
- Continuous targeted system improvements

The current PL was adopted on December 16, 2016 and entered into force on January 14, 2017. Following this, several decrees and orders were issued by the GoA and the MoF to regulate key details of the application of PL.

Overall, after adoption of PL, key developments in the public procurement system include the following:

- On May 4, 2017 GoA Decree No. 526-N “On Approving the Regulation on Organizing the Procurement Procedure” was introduced, which defined the important provisions of the procurement process.

- On May 18, 2017 the GoA Decree No. 534-N approved the procedure for online e-auctions and the list of goods, works, and services that could be acquired through online e-auctions. An online E-auction system was launched.
- In 2019, a review of the public procurement legislation was initiated, and in result several legislative reforms were implemented. Amendments were made to the GoA Decree No. 526-N to increase the efficiency of procurement, attract more participants (including SMEs and start-ups), and reduce unnecessary bureaucracy at the bid review stage.
- During the last quarter of 2019, further amendments were introduced to increase the efficiency of procurement and reduce processing times, mitigate potential risks arising from the implementation of contracts, and increase the objectivity of decision-making by evaluation committees. The need for these changes was conditioned by the fact that the existing regulations did not sufficiently ensure the efficiency of procurement and contract implementation, which sometimes allowed the suppliers to endanger the full implementation of the programs by their improper behavior. However, some of the proposed changes were challenging. On October 10, 2019, the GoA Decree No. 1422-N reversed previous attempts for liberalization and tightened conditions for participation in public procurement. The introduction of a new institute for qualification criteria was important for SMEs, but this was accompanied by stricter application requirements. Most worrying was the requirement to provide a bank guarantee for 100% of the bid price, which created serious obstacles for SMEs. Following negative reactions from the private sector, the conditions were changed. On May 19, 2022 the GoA approved the Decree No. 727-N. which reduced the requirement from 100% to 15% (for contracts of up to AMD 80 million) or 30% (for contracts above AMD 80 million). Moreover, except for construction projects, the requirement for a bank guarantee was removed for procurement lots under AMD 25 million.
- In 2021 new amendments to PL introduced public monitoring within the framework of contract implementation and management. For procurements that do not contain state secrets, participating bidders, non-governmental organizations, and media can participate in the monitoring and control of the procurement bids of the contract execution.
- Several changes were also made to PL and related legislative acts in 2022. The purpose of these amendments was to regulate two issues: the harmonization of the appeals system for the fulfilment of obligations under international agreements, and streamlining of procurement procedures for use of funds provided by foreign donors and international organizations. Certain thresholds for applications of procurement procedures and deadlines for submitting bids were changed. A requirement to carry out national procurements within the framework of external assistance programs was established, with certain exceptions. The exceptions were with respect to those bidders included in the list of entities not eligible to participate in the procurements of EEU member states (the blacklist) and the implementation of qualification criteria.
- Starting from June 1, 2022 the authority to appeal procurement procedures was vested only in the courts, establishing a special decision-making procedure for such situations. Following these changes, only involved parties are allowed to appeal against the procuring entity's and evaluation committee's actions (or inactions) and decisions. Anyone can appeal against specifications of procurement items, pre-qualification announcements, or invitation requirements. The decision to blacklist a company is reserved for the authorized body, based on the decision of the head of the procuring entity.

Nevertheless, despite the above-mentioned legislative changes in the appeals system aim to ensure institutional efficiency, the idea of fully refusing an out-of-court appeals system may carry certain risks.

According to these changes, the decision to blacklist a bidder is reserved for the head of procuring entity and can be appealed against only in court. It appears that the process can be carried out only under justified reasons presented by only one of the parties, which limits the rights of the participants and may originate corruption risks. In addition, the fees for submission of appeals in courts are higher than the previous fee and can unnecessarily hinder the opportunity of appealing. This decision can be appealed against only in court.

3. ASSESSMENT

This section of the main report discusses the findings of the assessment in relation to each of the pillars and indicators based on the qualitative review of the system and the application of quantitative indicators as defined in the MAPS methodology. It describes the main strengths and weaknesses and identifies the areas that show material or substantive gaps and require action to improve the quality and performance of the system. Substantial gaps are classified into categories by the risk they may pose to the system and actions are recommended to address these weaknesses. All back-up materials and documentation in support of this analysis are given in the annexes to this main report. The assessment team has used the guidance and assessment criteria given in the Methodology for Assessing Procurement Systems (MAPS 2018).

3.1. Pillar I - Legal, Regulatory and Policy Framework

Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also consider international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

Summary of findings under Pillar I - Legal, Regulatory and Policy Framework

The regulatory framework of public procurement in Armenia is comprised of the PL adopted on December 12, 2016, Civil Code, as well as several items of secondary legislation, which are meant to guide contracting authorities throughout the procurement process and to regulate several public procurement issues. The key secondary legislation is the GoA Decree No. 526-N of May 4, 2017. The main items of secondary legislation cover the public procurement process (also listing the items to be procured by closed periodic tenders), e-procurement in general, and e-auctions in particular (also listing the items to be procured using e-auctions), etc.

The framework is organized in adequate hierarchical order and is comprehensive in identifying formal procurement rules and procedures. All legal acts, directly related to public procurement (PL, government decrees, decisions of the Prime Minister, orders of the Minister of Finance and official clarifications), as well as other documents forming the framework such as manuals, technical instructions, user guides and templates of documents are posted on the procurement bulletin, which is the site for the publication of information prescribed by PL. All these documents are easily accessible to the public at no cost.

The PL regulates the relations pertaining to the process of acquisition of goods, works and services by contracting authorities and defines principal rights and obligations of parties to these relations.

Overall, PL is compliant with international standards and good practices. It provides for a comprehensive coverage of application of the law in respect of areas of economic activities concerning public interest, including state-owned enterprises, utilities, and natural monopolies, as well as the non-classified area of the defense sector. Almost all kinds of procurement

contracts are covered by the law and only few types of transactions that the law does not apply to are defined. Peculiarities for acquisition of consulting services are defined in a separate Section 5 of PL. Following the amendments to PL and adoption of a new law, Law on Public Private Partnership (PPP) Law in 2021, several changes were introduced and PPP award procedures were separated from the procurement law framework and embedded in the PPP law.

Procurement is open to any economic operator that meets the qualification criteria, including foreign participants and the law aims to ensure equality of rights for every person to participate in the procurement process, irrespective of the fact of being a foreign natural person, an organization, or a stateless person (Point 3 of Part 2 of Article 3 of PL). PL clearly defines the conditions and activities, based on which suppliers can be excluded from participation in public procurement, which include also the ineligibility because of conviction of specified criminal or corrupt activities and ineligibility based on debarment list (black list). As Armenia is member of EEU, this list is an integral part of that Union's debarment list ²⁰.

PL defines procurement methods (e-auction, tender (open and closed), price quotations, single source) and conditions under which each method should be applied. Tendering is stated to be the preferable method of procurement and exemptions from competitive procedures are clearly stated in procurement legislation. Procurement of defense- and security-related items is required to be done by restricted tendering (closed tender). E-auctions is a separate, specific procedure and the list of items to be procured by this method are clearly defined in secondary procurement legislation.

More detailed conditions for using procurement methods are defined in GoA Decree No. 526-N on Approving the Regulation on Organizing the Procurement Procedure, including the list of items that may be obtained through single-source procurement, based on reasons of "special or exclusive rights". In addition, GoA Decree No. 534-N of 18 May 2017 defines the details for applying e-auction procedure and the list of goods, works, and services that could be acquired through e-auctions.

For the application of various provisions and procedures, PL defines monetary thresholds as multiples of a "procurement base unit", currently set at AMD 1 million. For example, for contracts with a value below the base unit, contracting authorities can proceed with single-source procurement. However, relevant documentation must be kept available.

Key procurement data are published, regularly updated on-line and are free of charge, however most of data are not in machine-readable format. In accordance with the requirements of PL, contracting authorities publish all information on procurement processes on the official procurement website²¹. This includes the following information:

- procurement plans;
- announcements of procurement procedures, invitations, clarification, and changes of invitation;
- minutes of the evaluation committee sessions;
- absence of conflict of interests;
- decision to conclude a contract, conclusion of a contract, change made in the concluded contract

²⁰ The ineligibility based on exclusion lists of EEU is not applied on procurements performed at the expense of the funds provided by international agreements.

²¹ RA Ministry of Finance, Procurement System, www.procurement.minfin.am or www.gnumner.minfin.am

- and the final contract price;
- declaration of failed procurement procedure;
- information on the actual owners of the participants in the procurement process;
- appeals and the results of their review;
- information on contract implementation.

The contracting authorities are obliged to submit reports to the authorized body (MoF) for the purpose of drawing up the annual procurement report, which is being published in the official procurement webpage by May 1 of the following year.

The procurement legislation defines the minimum content required to be included in the procurement documents (invitation) and states that the requirements for specifications should include neutral descriptions, refer to international norms when possible, and provide for the use of functional specifications where appropriate. It also states that the description of the technical specifications must be clear and comprehensive, should contain procurement and payment conditions, ruling out alternative interpretation. However, in practice, the application of law in this regard is not implemented properly.

Overall, the legislation requires that bid/proposal evaluation are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents. Even though legislation provides for the use of award criteria based on both price and non-price criteria, there is no mention of using life cycle cost or other methods and no guidance on how these methods can be applied to ensure objective and value-for-money decisions.

Overall, the procurement legislation contains detailed information regarding the process of submission, receipt and opening of tenders.

In general, e-procurement system is functional and encompasses all procurement processes. GoA Decree No. 386-N on Electronic Procurement System of April 6, 2017 defines main concepts and details on the procedure for carrying out procurement by electronic means. Currently, procurement procedures must be carried out through ARMEPS²², which consists of integrated PPCM and e-Auction modules.

Article 46 of PL defines the rights and procedure of appealing the procurement process. According to it every interested person shall have the right to appeal against the actions (inaction) and decisions of the contracting authority and the evaluation commission through judicial procedure.

Thus, the authority to appeal procurement procedures was vested only with the courts. The fact of fully refusing an administrative review appeals system may carry certain risks, one of which is that the fees for submission of appeals in court are higher than the previous fee and can unnecessarily hinder the opportunity for appealing. In addition, despite the legal requirements, the practice shows that the process for admitting or examining complaints is often prolonged and can unduly delay the procurement process.

There is no policy on sustainable procurement and the existing laws do not have any provisions or procedures defined for sustainable procurement.

²² RA Ministry of Finance, Armenian Electronic Procurement System (ARMEPS), www.armeps.am

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

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

Summary of gaps and recommendations for Indicator 1

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|---|--|---------------------|---|
| 1(f) Evaluation and award criteria The legal framework mandates that: | (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. | While the framework permits use of non-price attributes for award criteria, there is no mention of using life cycle cost or other methods and no guidance as to how to apply them to ensure objective and value-for-money decisions. This opens the risk of abuse. | | Provide guidance as to the use of non-price attributes in award criteria. |
| (h) Right to challenge and appeal The legal framework provides for the following: | (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 establish the right for judicial review. | The authority to appeal procurement procedures was vested only with the courts. The fact of fully refusing an administrative review appeals system may carry certain risks, one of which is that the fees for submission of appeals in court are higher than the previous fee and can unnecessarily hinder the opportunity for appealing. In addition, despite the legal requirements, the practice shows that the process for | Medium | Study the best practices and choose alternative solution for appeal system in addition to the judicial review system. |

| | | | | |
|--|--|--|--|--|
| | | admitting or examining complaints is often prolonged and can unduly delay the procurement process. | | |
|--|--|--|--|--|

Sub-indicator 1(a) – Scope of application and coverage of the legal and regulatory framework

The purpose of this sub-indicator is to determine: i) the structure of the regulatory framework governing public procurement; ii) the extent of its coverage; and iii) the public access to the laws and regulations.

The hierarchy of legal norms is a constitutional provision in Armenia (Article 5 (Hierarchy of Legal Norms) of Armenian Constitution). Part 1 of that Article states that “The Constitution has the highest legal force”, and, according to its Part 2, “Laws must comply with constitutional laws, and sub-legislative normative legal acts with constitutional laws and laws.” (Constitutional laws are derived from Constitution.).

In addition, Point 1 of Part 1 of Article 40 of the Armenian Law on Normative Legal Acts provides that in the case of legal conflicts (collisions) the norm of normative legal act, having higher hierarchy (legal force) shall apply. These provisions are applicable for all, without exception legal acts, including those regulating public procurement.

Object of regulation of the law stated in Article 1 of PL provides that the law shall regulate the relations pertaining to the process of acquisition of goods, works and services by contracting authorities, define principal rights and obligations of parties to these relations.

The law covers all types of procurement and Part 4 of Article 3 of PL defines those transactions that it does not apply to, which are:

- employment contracts;
- acquisition of services rendered by certain persons provided for by the decisions of officials carrying out criminal, administrative or judicial proceedings in cases provided for by law;
- transactions related to trust management of securities;
- public-private partnership (PPP), including concession transactions that are regulated according to the Law on Public-Private Partnership;
- transactions for the provision of audit services for the purpose of the mandatory audit of annual reports of the parties stipulated by the RA Constitutional Law on Parties and the Law on Corruption Prevention Commission.

Peculiarities for acquisition of consulting services are defined in a separate Section 5 of Articles 43 to 45 of PL.

PPPs, including concessions are not regulated by PL and are mainly regulated by the Law on Public-Private Partnership (adopted on June 28, 2019, entered into force on January 1, 2020). Following the adoption of the named Law, on June 30, 2021 National

Assembly (NA) adopted the Law on Changes and Amendments in PL (entered into force on July 13, 2021), which eliminated those provisions from PL.

According to Part 1 of Article 25 of the RA Law on Normative Legal Acts, normative legal acts (such as laws, sub-legislative acts, including those on regulations and policies) shall be officially published on the unified site of publication of normative legal acts managed by the Ministry of Justice. Since July 1, 2020 the Armenian Legal Information System (ARLIS)²³, which currently is a unified electronic information platform, is the only official source of legal information. It is managed by the “Official Bulletin” CJS of the Ministry of Justice and is easily accessible to the public at no cost. In addition, all legal acts, directly related to public procurement (PL, government decrees, decisions of Prime Minister, orders of the Minister of Finance and official clarifications) are posted on the procurement bulletin²⁴, which, according to Point 14 of Part 1 of Article 2 of PL, is the site for the publication of information prescribed by PL.

Sub-indicator 1(b) – Procurement methods

This sub-indicator assesses whether the legal framework includes: i) a clear definition of the permissible procurement methods; and ii) the circumstances under which each method is appropriate. The legal framework should provide an appropriate range of procurement methods comprising competitive and less competitive procedures, when appropriate.

Procurement legislation covers all procurement methods defined by PL with their conditions under which each method may be used. It fully details all procurement methods and clearly defines when each should be used under Section 3 Articles 18 to 24 and Section 4 Articles 40 to 42.

In addition, more detailed conditions for using procurement methods are defined in May 4, 2017 GoA Decree No. 526-N.

Armenian PL implies that procurement cannot be carried out separately at the authorities' different hierarchical levels (for example, separately by the departments and/or sections of the ministry).

Overall, the procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that can ensure value for money, fairness, transparency, proportionality, and integrity.

PL Article 18 defines four procurement methods, which are electronic auction/e-auction, tender, price quotation and single source procurement. It also defines two types of tenders - open and closed, which in its turn could be targeted or periodic. According to Part 5 of Article 18 of PL, the preferable form of procurement shall be the tender, where the subject matter of procurement of the tender is not included in the list of goods, works and services acquired through e-auction and in case of procurement containing state secret, in the list of goods, works and services acquired in closed periodic tenders. Formally, fractioning of contracts is not explicitly provided by PL. At the same time, Point 1 of Part 1 of Article 25 of PL prohibits splitting (fractioning) a subject matter of procurement into separate lots to avoid using a

²³ Armenian Legal Information System (ARLIS), <https://www.arlis.am/>

²⁴ RA Ministry of Finance, Procurement System, <https://procurement.minfin.am/>

competitive procurement form. Consequently, prohibition of fractioning of contracts will stem from the prohibition of fractioning the procurement of single item into separate fractions.

Articles 19-22 and Articles 40 of PL specify appropriate standards for different competitive procedures, including limited competitive ones. Specifically, Article 19 specifies prerequisites for the application of two-stage tender, Article 20 – for application of open tender, Article 21 – for application of closed tender, Article 22 – for application of price quotation, and Article 40 – for application of e-auction.

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

This sub-indicator assesses whether: i) the legal framework includes requirements to publish procurement opportunities as a matter of public interest and to promote transparency; ii) there is wide and easily accessible publication of business opportunities; and iii) there is adequate time provided between publication of opportunities and the submission date, consistent with the method and complexity of the procurement, to prepare and submit proposals.

The legal framework requires that procurement opportunities are publicly advertised, unless there is restriction defined by legislation (e.g. in the event of subject matter of procurement containing state secret the invitation shall not be published in the bulletin).

According to Article 27 of PL, for the purpose of involving bidders to carry out procurement through an open tender, notice and invitation to tender shall be published in the official bulletin.

Like provisions of Article 27, Article 40 requires publishing of invitation and notice for e-auction procedures. Article 22 implies publication of notice and invitation for price quotation procedures. Finally, Clause 1a of Point 71 of GoA Decree No. 526-N provides publication of notice and invitation to single source procedure, if it is applied for the case of urgent need.

Publication requirements and time frames for submission of bids/proposals are defined in provisions detailing conditions and rules for applying each type of procurement method in Articles 20, 22 and 40 of PL and in GoA Decree No. 526-N.

Article 20 of PL defines the conditions for applying open tender, in which except for some contracting authorities, the time limit for submission of bids shall be at least 40 calendar days for paper-based procurement and 30 days for e-procurement. For organizations with more than 50% of state or community shares and foundations established or associations (unions) formed by the state or community, or state or community non-commercial organization, or organizations with more than 50% of state or community shares, the time limit for submission of bids shall be at least 15 calendar days, where the procurement price does not exceed two-hundred-fold of the procurement base unit (AMD 200 mln). For urgent open tenders time limit shall be at least ten calendar days.

Article 22 of PL contains conditions for applying price quotation, in which the time limit envisaged for submission of bids shall be at least seven calendar days, which is calculated from the day of publishing the notice and the invitation of procurement in the bulletin, and in case of procurement containing state secret — from the day of sending the invitation to prequalified bidders.

Article 40 of PL defines the conditions for holding e-auction, in the deadline for submission of bids to participate in the e-auction shall be set at least 15 calendar days following the day of publishing the notice and the invitation in the bulletin. Where the procurement price does not exceed the eighty-fold of the procurement base unit, the time limit for submission of bids shall be set for at least ten calendar days.

Clause 1b of Point 71 of the GoA Decree No. 526-N provides that in case of single source procedure applied for urgent need, time limit for submission of bids shall be set not earlier than two and not later than five working days from the date of sending the invitation.

Overall, these conditions provide reasonable time, consistent with the method, nature, and complexity of procurement (considering also paper-based procurement), for potential bidders to obtain documents and respond to the advertisement.

There is no differentiation of time frames for local and international biddings and as far as most of procurement is done electronically, the need for time extension is not so essential.

Publication of open tenders is mandated on, at least in procurement bulletin²⁵ and can be done also in the mass media outlets, including via other online platforms. Procurement bulletin is easily accessible at no cost and does not involve barriers. When the procurement procedure is organized in paper-based mode, the invitation should also be published in the bulletin in the manner specified by the Order of RA Minister of Finance.

The content of published announcements (notice and invitation of procurement) is specified in the Article 27 (Procurement Notice and Invitation) and 28 (Content of Invitation) of PL and includes enough information to allow potential bidders to determine whether they can submit a bid and are interested in submitting one.

Sub-indicator 1(d) – Rules on participation

This sub-indicator assesses the policies that regulate participation and selection, to ensure that they are non-discriminatory.

Overall, the qualification requirements for participation defined in PL are fair and based on qualification and in accordance with rules on eligibility and exclusions (Articles 6 (Right to Participation in Procurement and Qualification Criteria) and 7 (Equality in the Participation in Procurement) of PL).

Article 6 of PL clearly defines the conditions and activities, based on which suppliers can be excluded for participation in public procurement. It mentions that no criteria related to eligibility and qualification of the bidder for participation in the procurement may be prescribed, where such criteria:

- are discriminatory and restrict competition — unduly complicate or simplify possible participation in the procurement process;
- are inadequate, i.e. do not directly derive from the necessity to fulfil the obligations provided for by the contract.

In addition, Article 7 of PL ensures equal participation in the procurement process of any person, irrespective of the fact of being a foreign natural person, an organization, or a stateless person.

²⁵ Ibid, <https://procurement.minfin.am/>

The only restrictions can be applied by the decision of the GoA, where it is necessary to ensure the national security and defense of the RA (Part 2 of Article 7).

Part 1 of Article 6 of PL clearly defines the conditions and activities, which exclude suppliers for participation in public procurement. The ineligibility because of conviction of specified criminal or corrupt activities is defined under Points 3 and 4 of Part 1 of Article 6. In particular, it states that those who have been convicted or a representative of the executive body whereof has been convicted — within 5 years prior to submission of the bid — for financing of terrorism, child exploitation or a crime involving human trafficking, creation of a criminal association or participation therein, receiving a bribe, giving a bribe or mediation in bribery and crimes against economic activity provided for by law, except for cases when the conviction is cancelled or expired as prescribed by law, are not eligible to participate in procurement.

In addition, the Article provides for exclusions in case an unappealable administrative act for anti-competitive agreement or abuse of dominant position in the field of procurement has been adapted in relation to those persons within three years prior to the day of submitting the bid.

Part 5 of Article 7 states that legal persons with shareholding of the contracting authority shall participate in the procurement with equal right with other bidders, and the shareholding of the contracting authority in those organizations may not lead to defining and applying any privilege or any other favorable conditions for such persons. However, neither in PL, nor in the Decree No. 526-N no specific mechanisms are defined to ensure fair competition in such cases.

Part 6 of Article 6 of PL provides that the criteria for the assessment of the bidder's eligibility for a particular procurement process and its qualification are defined in the invitation. Point 4 of Part 1 of Article 28 (Content of Invitation) of the law provides that the invitation shall contain qualification criteria, eligibility requirements and procedure of their assessment.

Sub-indicator 1(e) – Procurement documentation and specifications

The sub-indicator assesses the degree to which the legal framework specifies the content of procurement documents, to enable suppliers to understand clearly what is requested from them and how the procurement process is to be carried out.

Article 28 of PL defines the minimum content required to be included in the procurement documents (invitation), which is relevant and sufficient for suppliers to respond to the requirement.

Article 13 of PL clearly defines the requirements for specifications, which should include neutral descriptions, refer to international norms when possible, and provide for the use of functional specifications where appropriate.

It states that the description of the technical specifications of the procured good, work or service must be clear and comprehensive, should contain procurement and payment conditions, ruling out alternative interpretation.

The descriptions of the subject of procurement:

- must ensure equal conditions of competition for potential bidders;
- must not result in the creation of unjustified obstacles for competition in the procurement process;
- must be objectively justified and proportionate to the need for which the given procurement is carried out;

- shall include the full and relevant description of specifications and technical data of the subject of procurement, and the bill of quantities, timetable for works and other non-price conditions — in case of works.

Depending on the peculiarity of the subject of procurement, the characteristics thereof shall, to the extent possible, include the clear description of the conditions for quality, standard, safety, conventional signs, terminology, packaging, unloading, dimension, designs for goods, works or services to be acquired, and other characteristics related to the subject of procurement based on international standards, and the standard technical documents and standards effective in the RA, while in case of absence thereof — on the temporary technical conditions.

The characteristics of the subject of procurement may also be defined as performance-related or functional descriptions which must be submitted with sufficient accuracy, allowing bidders and the contracting authority to have a precise understanding of the subject of the contract.

Part 5 of Article 13 of PL defines that the characteristics of the subject of procurement shall not contain a requirement for or a reference to any trademark, brand name, license, design or model, country of origin or a specific source or a manufacturer, except for cases when it is impossible to describe the subject of procurement without them. In case of using references, the descriptions of characteristics must contain the words "or equivalent".

According to Article 29 of PL the bidders have the right to request in a written form a clarification of the invitation at least five calendar days prior to expiry of the deadline for submission of bids. The clarification shall be provided to the enquirer in writing within two calendar days following the day of receipt of such an enquiry. The notice on the contents of the enquiry and clarifications shall be published in the bulletin on the day of providing the clarification to the enquirer without disclosing the data on the enquirer, while in case of a closed tender the clarification on the contents of the enquiry and clarifications shall be provided to bidders having received an invitation.

A clarification shall not be provided, where the enquiry has been made with violation of the time limit stipulated by the law, as well as where the enquiry falls beyond the contents of the invitation. Moreover, the bidder shall be notified in writing about the grounds for not providing the clarification within two calendar days following the day of receipt of the enquiry.

Sub-indicator 1(f) – Evaluation and award criteria

This sub-indicator assesses: i) the quality and sufficiency of the legal framework provisions in respect to the objectivity and transparency of the evaluation process; and ii) the degree of confidentiality maintained during the process, to minimize the risk of undue influences or abuse.

Evaluation of bids is clearly defined under Article 34 of PL. In addition, some requirements are defined in the GoA Decree No. 526-N.

Overall, bid/proposal evaluation are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents.

Part 2 of Article 34 of PL provides for the use of award criteria based on both price and non-price criteria, but there is no mention of using life cycle cost or other methods and no guidance on how these methods can be applied to ensure objective and value-for-money decisions.

Particularly, the Article defines that the selection can be done by the method of selecting the bidder, the total sum of coefficients given to the price proposal and the non-price criteria thereof is the highest. The non-price criteria must be interrelated with the subject matter of the contract, and the relative weights thereof shall be presented in the invitation.

Article 44 of PL defines the procedure for determining selected consultant. According to it, the selected consultant shall be determined by the method provided for in the invitation for selection of a proposal from among the submitted bids:

- which is evaluated as the highest as regards non-price conditions provided for by the invitation; or
- which is evaluated as complying with the minimum non-price conditions provided for by the invitation and having proposed the lowest price; or
- which is evaluated as the highest as regards non-price conditions provided for by the invitation within the fixed maximum price limits.

The selected consultant may also be determined through a method of selecting a consultant the total sum of coefficients awarded, under the procedure defined by the invitation, for the proposed price and work experience thereof, staff, proposed procedure for provision of the service or other non-price condition (conditions) defined by the invitation is the highest.

Point 2 of Part 2 of Article 34 of PL defines that the relative weights of non-price criteria shall be presented in the invitation. In addition, Section 8 of the GoA Decree No. 526-N provides more details on eligibility of participation in procurement and conditions of evaluating the qualification criteria. However, after amendments in this GoA Decree (October 10, 2019 GoA Decree No. 1422-N), some provisions containing details on evaluation based on weights were deleted.

Thus, the legislation does not provide clear methodology for weight determination, but it requires that this information should be presented in the invitation.

According to Part 4 of Article 8 of PL, the electronic devices designed for receipt of bids electronically must guarantee the integrity and confidentiality of the received data, ensuring at least the following conditions:

- the exact time and date for receipt of bids may be precisely determined;
- prior to the time limits defined for transmission of data, no one may have access to the transmitted data;
- unauthorized access may be clearly detected where the prohibition on access to the transmitted data has been violated;
- the time limits for opening the data received may be defined or modified only by authorized persons;
- access to the received data in different phases of the procurement procedure is possible only by a simultaneous action of at least two authorized persons (systems) and only after the time limit defined according to this point;
- the data received and opened according to the requirements of this part must remain accessible only to persons authorized to get acquainted with them.

In addition, Part 3 of Article 26 of PL defines that the members and the secretary of the commission shall be obliged to, throughout the entire course of activities of the commission, keep the confidentiality of information submitted in bids.

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

This sub-indicator assesses how the legal framework regulates the reception of tenders and tender opening.

Opening of tenders/bids is regulated and clearly defined in Article 33 of PL, which also states that the day and time of opening the bids must coincide with the deadline for submission thereof.

According to Part 3 Article 33 of PL, after the opening of bids, minutes shall be drawn up and attached to the protocol of the procurement procedure. The minutes shall be signed by the members of the evaluation commission present at the session. It also clearly defines what information the minutes shall contain.

Bidders and the representatives thereof may be present at the sessions of the evaluation commission and may request copies of the minutes of the sessions of the evaluation commission, which are provided within one calendar day.

The minutes of the bid opening session shall be published in the bulletin on the first working day following the end of the day of the bid opening session. In case of carrying out procurement containing state secret, the minutes provided for by this part shall be sent to all bidders having submitted bids on the first working day following the bid opening session.

As was already mentioned, security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts in compliance with Part 4 of Article 8 of PL, which requires that the electronic devices designed for receipt of bids electronically must guarantee the integrity and confidentiality of the received data. In addition, Part 3 of Article 26 of PL requires from the members and the secretary of the commission to keep the confidentiality of information submitted in bids throughout the entire course of activities of the commission. Part 5 of Article 33 of PL states that the contracting authority shall be obliged to ensure the confidentiality of information marked by bidders as confidential and shall be held liable, as prescribed by the law of the RA, for the damage caused to bidders because of disclosing such information, except for the information subject to mandatory disclosure provided for by law.

Article 30 of PL clearly defines the procedure of submitting tenders and receipt by the procuring entity, to avoid unnecessary rejection of tenders.

Sub-indicator 1(h) – Right to challenge and appeal

The purpose of this indicator is to assess whether the legal framework establishes: i) the right to challenge decisions or actions and to appeal; ii) the matters that are subject to review; iii) the time frame for such reviews; and iv) the different stages in the review process.

After recent amendments in PL (January 21, 2022), the authority to appeal procurement procedures was vested only with the courts, establishing a special decision-making procedure for such situations.

Article 46 of PL defines the rights and procedure of appealing the procurement process. According to it every interested person shall have the right to appeal against the actions (inaction) and decisions of the contracting authority and the evaluation commission in

accordance with the procedure established by the RA Civil Procedure Code (adopted by the NA on 9 February 2018).

The decision to blacklist a company is reserved for the authorized body, based on the decision of the head of the procuring entity and can be appealed again only in court.

Timeframes for the submission of appeals to the court are defined under the Parts 1 and 4 of Article 46 of PL.

According to this Article, every person has the right to appeal the characteristics of the subject matter of procurement before the deadline for submission of bids, the requirements of the prequalification notice or invitation.

Appeals against the actions (inaction) and decisions of the contracting authority and the evaluation commission should be submitted within a standstill period specified by PI, which is at least 10 calendar days (Part 3 of Article 10). Meanwhile, for the appeals of decisions to blacklist a company and disputes related to unilateral termination of the contract, this period is 30 calendar days.

Procedures for procurement complaints are defined in Chapter 27.2 of Civil Procedure Code. According to Part 2 of Article 234.5 of this Code, procurement complaints should be reviewed and resolved within 30 days of taking the proceedings of the claim by the court. By the reasoned decision of the court, this period can be extended once by up to 10 calendar days.

Applications for appeal and decisions are published in procurement bulletin²⁶ and on the official page of the judicial information system²⁷. This information is being updated periodically and is in easily accessible places (though not in machine readable format), in line with legislation protecting sensitive information.

It should be mentioned that the fact of fully refusing an administrative review appeals system may carry certain risks, one of which is that the fees for submission of appeals in courts are higher than the fee charged by the extrajudicial body (procurement appeals reviewing persons) and can unnecessarily hinder the opportunity for appealing. In addition, despite the legal requirements, the practice shows that the process for admitting or examining complaints is often prolonged and can unduly delay the procurement process (More analyses in Indicator 13).

Sub-indicator 1(i) – Contract management

The purpose of this sub-indicator is to assess whether the legal framework establishes the following: i) functions and responsibilities for managing contracts; ii) methods to review, issue and publish contract amendments in a timely manner; requirements for timely payment; and iv) dispute resolution procedures that provide for an efficient and fair process to resolve disputes

Functions for undertaking contract management are defined and responsibilities are clearly assigned under Section 17 of the GoA Decree No. 526-N.

Part 4 of Article 36 of PL defines that prior to expiry of the time limit provided by the law (10 to 15 working days), upon the consent of the parties, modifications may be made in the draft

²⁶ Ibid, https://procurement.minfin.am/hy/page/datakan_kargov_boxoqarkumner_2023_am/

²⁷ DataLex Judicial Information System, www.datalex.am

contract; however, such modifications may not lead to modification of descriptions of the subject of procurement, including to an increase in the price proposed by the selected bidder.

In addition, Clause 9 of Point 33 of the GoA Decree No. 526-N states that the contract cannot be amended in consequence of partial non-performance of the obligations of the parties or fully terminated under mutual agreement of the parties, except for cases of deduction of the financial allocations necessary for making the procurement in question in the manner specified by the RA legislation.

In general, dispute resolution procedures are defined in Civil Code of Armenia (adopted by the NA on 5 May 1998) and Civil Procedure Code (adopted by the NA on 9 February 2018). Overall, public procurement disputes can be covered by national arbitration legislation and by international instruments, however this is rarely used in practice.

Part 6 of Article 10 of PL states that relationships of parties pertaining to procurement not regulated by the RA legislation on procurement shall be regulated by the contract.

Clause 3 of Point 33 of the GoA Decree No. 526-N defines that for failure to perform or improper performance of the obligations undertaken by the person who has concluded the contract (contractor), fines and penalties shall be set by the contract. The penalty cannot be less than the 0.5 percent of the total contract price, and the fines - less than 0.05 percent. The fine shall be calculated by calendar days against the price of the non-performed part of the contract.

Sample review of contracts showed that they include dispute resolution procedures. One of provisions from the contract states that disputes related to the contract are subject to examination in the courts of the RA. The other states that the disputes arising out of the contract are settled through negotiations. In case of non-agreement, the disputes are resolved through a judicial procedure. As far as relations pertaining to the procurement are regulated by the legislation regulating civil law relation, this implies that disputes can be settled in Courts of General Jurisdiction, and in case of mutual consent, also through arbitration in Arbitration Courts (which is rarely done).

The outcome of a dispute resolution process is court decision, which is enforceable.

Sub-indicator 1(j) – Electronic procurement (e-Procurement)

This sub-indicator assesses the extent to which the legal framework addresses, permits and/or mandates the use of electronic methods and instruments for public procurement.

The RA currently operates ARMEPS²⁸, with the PPCM and e-Auction modules. ARMEPS includes functionalities such as publishing notices, structuring the tender documents, receiving bids, evaluating, and recording all aspects of the procurement proceedings.

Overall, the e-procurement is widely used, with major contracting authorities connected to the system and other small contracting authorities not connected are expected to join later. Currently, the system is used by state and local government bodies, state or community agencies, organizations with over 50 percent of shares owned by the state, foundations and associations created by the state, and public organizations.

²⁸ RA Ministry of Finance, Armenian Electronic Procurement System (ARMEPS), <https://www.armeps.am/epps/home.do>

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. It defines that the means to be used for electronic communication must be non-discriminatory, generally available for any potential bidder and interoperable with the means of information and communication technologies in general use. It also defines where interested parties should be informed which parts of the processes will be managed electronically.

According to Part 2 of Article 8 of PL, the communication may be carried out electronically; the notice and the invitation may be provided electronically and the bids shall be submitted electronically in cases and in the manner prescribed by the invitation.

Part 4 of the same article defines the rules that should be applied while bid submission electronically.

Sub-indicator 1(k) – Norms for safekeeping of records, documents, and electronic data

The ability to look at implementation performance depends on the availability of information and records that track each procurement action. This information is also important for the functioning of both internal and external control systems, as it provides the basis for review.

Part 1 of Article 8 of PL states that record and storage of procurement-related information shall be ensured by drawing up relevant documents (including electronic documents).

Article 9 of PL contains the provisions describing the protocol of procurement procedure and reports on procurement. It defines that where the procurement price exceeds the procurement base unit (AMD 1 million), the contracting authority shall draw up, within three working days following the day of concluding the contract or declaring the procurement procedure as not having taken place, protocol of the procurement procedure. It clearly details what should be included in this protocol.

Where the procurement price does not exceed the procurement base unit, the contracting authority shall ensure the availability and storage of relevant documents (or electronic documents) on the actions carried out for procurement purposes and on the grounds thereof. The contracting authority shall be obliged to provide the copy of the protocol of the procurement procedure or a document constituting part thereof to any person within five working days after the receipt of such a request, except for procurement containing state secret.

Overall, most of the documents of the e-procurement are published on the e-portal and are publicly available²⁹.

There is no special policy for public procurement documents' retention, however according to Section 4 of the GoA Decree No. 397-N on Defining the List of Archive Documents with Expiration Date (April 4, 2019) the retention period for such documents is 5 years.

Article 75 of the RA Criminal Code states that the period of limitation for investigating and prosecuting cases of fraud and corruption depends on the gravity of the offence. According to the Criminal Code limitation periods applied to the major corruption crimes range from 5 to 15 years, however those concerning public procurement are mainly of medium gravity, hence limitation period is mostly 5 years.

²⁹ RA Ministry of Finance, Procurement System, www.procurement.am, www.gnumner.am

As already mentioned, 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.

Part 4 of Article 8 of PL defines the rules that should be applied while bid submission electronically:

- information on the specifications (including the coding) necessary for submission of bids electronically shall be available for interested bidders;
- the electronic devices designed for receipt of bids electronically must guarantee the integrity and confidentiality of the received data, ensuring at least the following conditions:
 - the exact time and date for receipt of bids may be precisely determined;
 - prior to the time limits defined for transmission of data, no one may have access to the transmitted data;
 - unauthorized access may be clearly detected where the prohibition on access to the transmitted data has been violated;
 - the time limits for opening the data received may be defined or modified only by authorized persons;
 - access to the received data in different phases of the procurement procedure is possible only by a simultaneous action of at least two authorized persons (systems) and only after the time limit defined according to this point;
 - the data received and opened according to the requirements of this part must remain accessible only to persons authorized to get acquainted with them.

Sub-indicator 1(l) – Public procurement principles in specialized legislation

This sub-indicator assesses whether public procurement principles (e.g. competitive procedures, transparency, fairness, value-for-money decisions) and related laws apply across the entire spectrum of public service delivery as appropriate.

Article 52 of PL defines that in case of procurement carried out by public organizations within the territory of the RA, the procurement-related relations shall be regulated by the procurement procedures approved by the given organizations. The procurement procedures, notices on arranging procurement processes, invitations, notices on the concluded contracts exceeding the procurement base unit shall also be published in the bulletin and the appealing shall be carried out as prescribed by PL.

It is required that the procurement procedures approved by these organizations may not contradict the objectives and principles of PL, and in case of procurement exceeding the threshold specified in the GPA³⁰ — also the requirements of the Agreement, and in case of public organizations included in the list approved by the RA Public Services Regulatory Commission— also the requirements specified by the RA Public Services Regulatory Commission which, under the procedure defined thereby, shall oversee (monitor) the implementation of such requirements.

PPPs, including concessions are mainly regulated by the Law on Public-Private Partnership (adopted on June 28, 2019, entered into force on January 1, 2020). Following the adoption of

³⁰ The GPA threshold for goods and services is 130.000, 200.000 or 400,000 SDR (Special Drawing Rights) (about USD 173.000, 266.000 and 532.000) depending on entity, and for construction services is 5.000.000 SDR (USD 6.660.000).

the named Law, on June 30, 2021 NA adopted The Law on Changes and Amendments in PL (entered into force on July 13, 2021), which eliminated those provisions from PL.

Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability, and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. Ideally the higher-level legislation provides the framework of principles and policies that govern public procurement. Lower-level regulations and more detailed instruments supplement the law, make it operational and indicate how to apply the law to specific circumstances.

Summary of gaps and recommendations for Indicator 2

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | 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. | Model procurement documents (templates of documents) need further improvement and standardization. | | Take measures to improve and standardize model procurement documents. |
| 2 (d) User's guide or manual for procuring entities | (a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws. | There is no official comprehensive public procurement manual detailing all procedures for the correct implementation of procurement regulations and laws. | | Develop a unified, official, comprehensive Public Procurement Manual detailing all procedures for the correct implementation of procurement regulations and laws. |
| | (b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly. | | | |

Sub-indicator 2(a) – Implementing regulations to define processes and procedures

This sub-indicator aims at verifying the existence, clarity, accessibility, and comprehensiveness of regulations to the law that further detail and clarify its application.

There are regulations that supplement and detail the provisions of the procurement law and they mainly do not contradict the law. These regulations are provided by sub-legislative acts. One of the most important sub-legislative acts is the GoA Decree No. 526-N, which is being periodically updated to be in line with the amendments in PL.

The regulations are clear, comprehensive, and consolidated as a set of regulations readily available in a single accessible place.

The official procurement webpage³¹ has a separate section of Legislation, which contains all information/documents regarding procurement legislation (including amendments), such as laws and international contracts, decrees, orders etc.

Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.

Article 16 of PL defines that the regulation and co-ordination of the procurement process shall be performed by the authorized body (MoF), for which the authorized body shall co-ordinate the elaboration of draft legal acts on procurement and shall adopt or submit them to the GoA for approval.

Sub-indicator 2(b) – Model procurement documents for goods, works and services

This sub-indicator covers the existence and contents of model procurement documents or, if not complete, standard elements and templates that may serve similar purposes.

There are model procurement documents (templates of documents) for acquisition of goods, services and works for some of the procurement methods. These template documents are publicly available at 'Legislation' section of the procurement bulletin webpage³². However, these documents need further improvement and standardization.

There is a standard set of clauses that reflect the legal framework, which are used in documents prepared for competitive tendering/bidding.

Overall, the procurement legislation does not contain clear mention regarding assignment for preparation and updating of model procurement documents. However, Article 16 of PL defines the responsibilities of the authorized body (MoF), in which the maintenance and co-ordination of the e-procurement system, as well as the approval of the standard forms of documents used during the procurement process is assigned to this body.

Sub-indicator 2(c) – Standard contract conditions

This sub-indicator focuses on the basic provisions that must be included in a contract with the government.

³¹ Ibid, www.procurement.am, www.gnumner.am

³² Ibid, https://gnumner.minfin.am/hy/page/gnumneri_gortsyntacnerum_kirarvogh_pastatghteri_orinakeli_dzever/

There are standard contract conditions for the most common types of contracts, and their use is mandatory. These conditions are an integral part of the procurement documents and are available to participants in procurement. They are presented in template documents, which are publicly available at 'Legislation' section of the official procurement webpage.

Point 33 of the GoA Decree No. 526-N defines several conditions which should be enshrined by the draft contract that is an integral part of the procurement documents.

The content of the standard contract conditions is generally consistent with internationally accepted practice.

Sub-indicator 2(d) – User's guide or manual for procuring entities

This sub-indicator covers the existence of a user's guide or manual for procuring entities.

There are several guidelines, manuals and methodological instructions developed and published at the official procurement webpage, which detail different procurement procedures and processes, however there is no official comprehensive public procurement manual detailing all procedures for the correct implementation of procurement regulations and laws.

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

This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, etc., and obligations deriving from international agreements, are consistently and coherently reflected in the legal framework, i.e. whether the legal framework is coherent with the higher policy objectives of the country.

Summary of gaps and recommendations for Indicator 3

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|--|---|----------------------------|---|
| 3(a) Sustainable Public Procurement (SPP) | (a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives. | There is no policy/strategy covering sustainable procurement. | Medium | Develop policy/strategy to implement SPP. Include provisions on sustainability (economic, environmental, and social criteria) in procurement legislation. |
| | (b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalize, facilitate and monitor the | There is no SPP implementation plan. | Medium | |

| | | | | |
|--|---|---|--------|--|
| | application of SPP. | | | |
| | (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. | There are no references to SPP in legal and regulatory framework. | | |
| | (d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money. | | Medium | |

Sub-indicator 3(a) – Sustainable Public Procurement (SPP)

Following up on more general information gathered in the analysis of the country context (Section II), this sub-indicator assesses whether (i) the country has adopted a policy and an implementation plan to implement Sustainable Public Procurement (SPP) in support of national policy objectives and (ii) the legal and regulatory framework includes provisions on the inclusion of sustainability criteria in public procurement.

Currently, there is no policy/strategy covering sustainable procurement.

Though the legislation of the country does not prohibit introduction of additional economic, environmental, and social criteria in bidding documents, there are no references to sustainable public procurement in legal and regulatory framework.

Sub-indicator 3(b) – Obligations deriving from international agreements

Based on the general information for the country context chapter, this indicator assesses (i) the existence of procurement-related provisions in binding international agreements and (ii) the consistent reflection of those obligations in national procurement laws and regulations.

Public procurement-related obligations deriving from binding international agreements are not clearly established in the law although there are some references to the issue in PL.

Article 6 of PL mentions that persons who have been included in the list of bidders, ineligible to participate in the procurement process, published according to the legislation of EEU

member states on procurement, as of the day of submitting the bid, shall not be eligible to participate in procurement³³.

Article 27 defines that the procurement notice shall contain a note that the provisions of the GPA apply to the given procurement process, where the procurement price exceeds the thresholds specified by the GPA.

According to assessments by international organizations, PL is generally in line with international experience and requirements deriving from binding international agreements. The main exception was the complaints/appeals system which was later changed based on these recommendations and international obligations. This shows that public procurement-related obligations deriving from binding international agreements are being taken into consideration and consistently adopted in laws and regulations.

3.2. Pillar II - Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector. It evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions are in place in charge of necessary functions; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

Summary of findings under Pillar II: Institutional Framework and Management Capacity

Overall, the provisions of the primary and secondary procurement legislation regarding planning of public procurement mostly regulate financial matters, concentrating on ensuring that no contract becomes effective without sufficient financing.

The contracting authorities are required to prepare and publish their procurement plans including the modifications in the bulletin except for the procurement plan containing a state secret.

According to PL procurement plans for the acquisition of items (goods, services and works) carried out at the expense of state budget funds shall be approved by the administrative and functional classifications of budget expenditures.

Financial means for acquisition are provided by the relevant lines of the economic classification of budget expenditures for acquisition of goods, works and services.

In addition, Part 6 of Article 15 of PL states that before earmarking financial resources, a contract may be concluded as prescribed by this Law, if procurement may be carried out within the framework of the mentioned contract in case necessary financial resources are earmarked. The contract concluded according to this part shall be rescinded, where no financial resources for execution of the contract are earmarked during the period of six months following the day of concluding a contract.

³³ The ineligibility based on exclusion lists of EEU is not applied on procurements performed at the expense of the funds provided by international agreements.

Overall, budget funds are committed based on the procurement plans. However, there are sometimes delays in the process.

A feedback mechanism reporting on budget execution is in place regarding the completion of major contracts.

The GoA Decree No. 526-N defines the process of acceptance of contract performance results and procurement financing.

The specific payment terms for each procurement are included on the e-portal in the bid documents.

However, in practice, payment to suppliers is sometimes late.

The e-portal contains information regarding invoices (though these documents are not in machine-readable format), however this is being updated not consistently and there is no clear data when the invoices are being paid.

Taking into consideration the above-mentioned constraints, it was not possible to calculate the quantitative indicator to substantiate assessment of sub-indicator 4(b) (invoices for procurement of goods, works and services paid on time (in % of total number of invoices)).

The normative/regulatory body is the MoF which is responsible for development and implementation of the public procurement policy (Article 2 of PL). It regulates and coordinates the procurement process, but is not responsible for direct procurement operations, except for procurement for its own needs (Article 16), which however can create conflict of interest situations.

The MoF has general competence to supervise public procurement and, complementing the data accessible in the e-procurement system, contracting authorities are required to provide inputs for an annual report, which regularly addresses a few strategic issues in public procurement. However, in the absence of any explicit strategy and action plan, there is no corresponding monitoring.

The MoF and its departments have gone through some structural changes in recent years. However, despite these changes, overall, the current staffing level of it (including Procurement Policy Department) is inconsistent with its responsibilities.

Procurement legislation clearly defines procuring entities/contracting authorities, their responsibilities, competencies, as well as decision-making authority and accountability for decisions.

It allows the use of centralized manner in procurement and provides some details for organizing the process, which shall be carried out by a body or a legal person authorized by the Government. Currently, the practice of centralized procurement is applied mainly for state and municipal non-commercial organizations, but there is no centralized procurement body in Armenia.

According to procurement legislation the authorized body (the MoF's Public Procurement Department) is obliged to provide training and to certify the qualifications of public procurement experts (staff in a contracting authority's public procurement unit, individual procurement officials or external experts engaged by contracting authority). The department organizes regular training events, including examinations for certification purposes, but only to the

minimum extent required by the law: procurement coordinators are obliged to retrain at least every three years.

It should be mentioned that training programs do not contain topics related to integrity.

Overall, there is no evidence that routine evaluation and periodic adjustment of training programs based on feedback and need is taking place.

There is no defined career path for procurement, with job descriptions at different levels and requisite qualifications and competencies specified. In addition, in small procuring entities (mainly, small municipalities or municipal non-commercial organizations) other specialists, usually accountants, work also as procurement coordinators after passing the mentioned qualification and trainings. There is no clear evidence that staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.

These issues are recognized by authorities and, thus, capacity development of key actors in public procurement is prioritized in the Concept of Development of the Procurement System and its Action Plan.

There is a system for collecting and disseminating procurement information, including invitation for bids/proposals, requests for expression of interest, bid/proposals, and contract award information.

The most relevant and up-to-date procurement information, such as procurement plans, procurement opportunities, contract award notices and other relevant notices and documents are published in the Procurement Bulletin³⁴, as well as some information is published in ARMEPS system.

The information is relevant and timely; yet, it cannot be considered as complete since not all procuring entities are involved and some of the data at the e-portal is published in non-machine-readable format. Thus, it is not possible for the interested parties to access data and monitor public procurement outcomes, results, and performance easily and fully.

The country has not established or applied a performance management system to review the performance of the public procurement system quantitatively and qualitatively beyond compliance spot checks.

Overall, the e-procurement is widely used, with major contracting authorities connected to the system and others are expected to join later. The system includes functionalities such as publishing notices, structuring the tender documents, receiving bids, evaluating, and recording all aspects of the procurement proceedings. The module has filtering functions and allows to export data in machine readable format for monitoring purposes.

Nevertheless, the system needs further improvements, which is recognized and included in the Concept of Development of the Procurement System and its Action Plan (digitalization/development of a new e-procurement system).

³⁴ Ibid, <https://procurement.minfin.am/hy/>

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

This indicator focuses on how well integrated the procurement system is with the PFM system given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.

Summary of gaps and recommendations for Indicator 4

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|---|---|---------------------|---|
| <p>4(a) Procurement planning and the budget cycle</p> <p>The legal and regulatory framework, financial procedures and systems provide for the following:</p> | <p>(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> | <p>Article 15 of PL shall explicitly include provision, which requires preparation of procurement plans for the acquisition of items carried out at the expense of all municipal budget funds. Regarding preparation of multi-annual procurement plans, their preparation will become possible, if the approach to the development of MTPEPs will be revised to include also activities of 3-year budgetary programs. However, this is out of scope of procurement legislation.</p> | | <p>In the Article 15 of PL extend the provision requiring preparation of procurement plans for the acquisition of items carried out at the expense of municipal budget funds.</p> |
| | <p>(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at</p> | <p>Budget funds are committed based on procurement plans. However, there are delays in the process.</p> | | |

| | | | | |
|--|--|---|--|--|
| | least the amount necessary to cover the portion of the contract performed within the budget period). | | | |
| 4(b) Financial procedures and the procurement cycle The legal and regulatory framework, financial procedures and systems should ensure that: | (a) No solicitation of tenders/proposals takes place without certification of the availability of funds. | Procurement legislation allows solicitation of tenders/proposals and conclusion of contracts before earmarking financial resources. | | Do not allow the initiation of procurement procedures without availability of funds. |

Sub-indicator 4(a) – Procurement planning and the budget cycle

This sub-indicator covers the preparation and use of procurement plans and their links with budgeting and expenditure management.

According to Part 1 of Article 15 of PL, procurement plans for the acquisition of items (goods, services and works) carried out at the expense of state budget funds shall be approved by the administrative and functional classifications of budget expenditures.

Starting from 2019 Armenian state budget is program-based and acquisition of goods, services and works is viewed as a necessary activity for implementing the budgetary programs consisting of budgetary measures (activities) necessary for the implementation of the programs and achievement of the programmatic goals. Among these measures there are also measures on the acquisitions of items necessary for the implementation of the programs, in which these acquisition measures (activities) are included. Obviously, acquisition measures are included in the state budget only after corresponding annual procurement plans are approved. For example, one of the measures (activities) of NA (Parliament) 2023 budgetary program (Securing the execution of the National Assembly's powers – Program 2024) is the measure (activity) "Acquisition of administrative equipment to improve the working conditions of the National Assembly staff" (Activity 31001). Implementation of this measure means procurement of administrative equipment, which is based on the annual procurement plan, prepared for it.

Following the requirements of the Law on Budgetary System of the RA, simultaneously with the development of the state budget draft of the particular year, it is developed also the 3-year Mid-term Public Expenditure Program (MTPEP), which includes that year as the first year of

that Program and two consecutive years (for example, in 2023 together with the development of the draft of 2024 state budget, also 2024-2026 MTPEP was prepared). However, unlike the state budget for the particular year, MTPEP includes only budgetary programs without including the activities of these programs. Hence, no multi-year procurement plans are prepared in Armenia.

Also, the mentioned Part 1 of Article 15 of PL does not require preparation of procurement plans for the acquisition of items carried out by the municipal procuring entities, except those items, which are procured using the funds received by the municipalities from the state budget in the form of subsidies and subventions, while PL regulations cover all procurement of municipal procuring entities. This implies that those entities shall prepare procurement plans also for those items, which are acquired at the expense of municipal budget funds.

Overall, budget funds are committed based on the procurement plans. However, there are delays in the process.

As it was already mentioned, budgetary programs include also measures (activities) on the acquisitions of items necessary for the implementation of those programs. Thus, committing or appropriating of budget funds for the execution of acquisition measures (activities) means funding of budgetary programs, which is regulated by the Law on Budgetary System of the RA. In practice, committing or appropriating of budget funds is done in a timely manner. At the same time, the named Law allows, under certain conditions, re-allocation of state budget funds (through issuing government decrees), which, GoA, in practice uses too frequently. In those cases, frequently the initially appropriated funds for acquisition of procurement items are diverted for covering other expenses. This problem, however, is out of the scope of procurement legislation.

A feedback mechanism reporting on budget execution is in place regarding the completion of major contracts.

The RA Law on Budgetary System requires preparation of annual budget execution reports (Year-End Reports). They are submitted to the NA for approval by May 1 of the year, following the budget year³⁵. This report includes the data on the execution of all budgetary programs with all their measures (activities), including above-mentioned measures (activities) on the acquisition of procurement items by state procuring entities³⁶. In particular, the part of that report related to the measure on the acquisition of procurement items present all procurement items acquired within the framework of that measure together with the amount of funds used for their acquisition.

Regarding information on the completion of procurement contracts, all contracts for items procured electronically (and all state bodies are required to procure electronically) can be found on the website on the reports on e-procurement procedures³⁷.

Sub-indicator 4(b) – Financial procedures and the procurement cycle

³⁵ In Armenia budget year coincides with calendar year.

³⁶ 2022 state budget execution report,

https://minfin.am/hy/page/petakan_byujei_hashvetvutyun_2022_t_tarekan

³⁷ RA Ministry of Finance, Armenian Electronic Procurement System (ARMEPS), <https://armeps.am/ppcm/public/reports>

This sub-indicator assesses whether budget laws and financial procedures adequately support the procurement process, i.e., the preparation and timely solicitation and award of contracts, contract execution and timely payments.

According to Part 8 of Article 15 of PL, financial means for acquisition are provided by the relevant lines of the economic classification of budget expenditures for acquisition of goods, works and services.

In addition, Part 6 of Article 15 of PL states that before earmarking financial resources, a contract may be concluded as prescribed by this Law, if procurement may be carried out within the framework of the mentioned contract in case necessary financial resources are earmarked. The contract concluded according to this part shall be rescinded, where no financial resources for execution of the contract are earmarked during the period of six months following the day of concluding a contract.

Thus, procurement legislation allows solicitation of tenders/proposals and conclusion of contracts before earmarking financial resources.

The GoA Decree No. 526-N defines the process of acceptance of contract performance results and procurement financing under Parts 108 to 116.

In addition, the contract templates available at the official procurement webpage, include provisions on terms and conditions for delivery-acceptance of the output and payment mechanism.

As defined in sample contracts, the procuring entity should transfer online payment to contractor's/supplier's account. The transfer should be made based on delivery-acceptance protocol following the conditions specified in the payment schedule. If the protocol is drawn up after the 20th day of that month, the payment is made within 30 working days, but not later than December 20 of the given year.

The specific payment terms for each procurement are included on the e-portal in the bid documents.

However, in practice, payment to suppliers is sometimes late.

The e-portal contains information regarding invoices (though these documents are not in machine-readable format), however this is being updated not consistently and there is no clear data when the invoices are being paid.

Taking into consideration the above-mentioned constraints, it was not possible to calculate the quantitative indicator to substantiate assessment of sub-indicator 4(b) (invoices for procurement of goods, works and services paid on time (in % of total number of invoices)).

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

This indicator refers to the normative/regulatory function in the public sector and its proper discharge and co-ordination. The assessment of the indicator focuses on the existence, independence and effectiveness of these functions and the degree of co-ordination between responsible organisations. Depending on the institutional set-up chosen by a country, one institution may oversee all normative and regulatory functions. In other contexts, key functions

may have been assigned to several agencies, e.g. one institution might be responsible for policy, while another might oversee training or statistics. As a rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-co-ordinated joint effort.

Summary of gaps and recommendations for Indicator 5

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|--|---|---------------------|--|
| 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: | (d) monitoring public procurement | The authorized body does not perform public procurement monitoring function. | Medium | Include public procurement monitoring within the functions of the authorized body |
| | (f) managing statistical databases | Also, statistics on paper-based procurement processes shall be collected. | | There should be created machine-readable, open data- and open code-based statistical databases on procurement data. |
| | (i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement | Training programs do not contain topics related to integrity. | | Organize integrity trainings also for invited persons, who work as procurement coordinators. |
| 5(c) Organization, funding, staffing, and level of independence and authority | (c) The institution's internal organization, authority and staffing are sufficient and consistent with its responsibilities. | The current staffing level of the institution is inconsistent with its responsibilities | | Conduct a more detailed institutional analysis of the body and prepare recommendations on staffing levels and functions. |

| | | | | |
|------------------------------------|--|--|--|--|
| 5(d) Avoiding conflict of interest | (a) The normative/regulatory institution has a system in place to avoid conflicts of interest. | Acting of the MoF as procuring entity for its own procurement, can create conflict of interest situations. | | It should be considered in PL assigning to other unit of the Government the functions of procuring entity for the procurement of the MoF. The most relevant candidate for that role could be the Office of the Prime Minister. |
|------------------------------------|--|--|--|--|

Sub-indicator 5(a) – Status and legal basis of the normative/regulatory function

This sub-indicator examines the regulatory framework that governs the assignment of key public procurement functions to various agencies.

Part 1 of Article 16 of PL states that the regulation and co-ordination of the procurement process shall be performed by the authorized body (MoF) and clearly defines its functions and responsibilities.

It regulates and coordinates the procurement process, but is not responsible for direct procurement operations, except for procurement for its own needs (Article 16.1, 16.2).

The MoF has general competence to supervise public procurement and, complementing the data accessible in the e-procurement system, contracting authorities are required to provide inputs for an annual report, which regularly addresses several strategic issues in public procurement. However, in the absence of any explicit strategy and action plan, there is no corresponding monitoring.

Overall, the MoF has the necessary authority and decision-making power to: 1) prepare regulations; 2) advise on their application; 3) issue standard documents; 4) take charge of capacity building and quality assurance; 5) maintain and co-ordinate the e-procurement system; 6) publish notices; 7) monitor public procurement; and 8) prepare an annual report.

Sub-indicator 5(b) – Responsibilities of the normative/regulatory function

This sub-indicator examines the key public procurement functions and their actual distribution between agencies, identifying any gaps or overlaps.

Point 2 of Part 2 of Article 16 of PL defines that the authorized body shall provide methodical assistance to the contracting authorities in arranging the procurement activities. Point 1 of Part 2 of the same article defines that the authorized body shall co-ordinate the drafting of legal acts on procurement and shall adopt or submit them to the GoA for approval.

The authorized body (MoF) does not submit directly the drafts of laws to the NA. Submission of the draft of laws to the NA is carried out by the GoA. After receiving the draft of the law from

the Ministry, it first circulates it within the government bodies for their comments and suggestions, then it is discussed and approved at the Government regular meeting (held every week on Thursdays), and, finally, submits to NA (Article 10 of Law on the Structure and Activities of the Government,).

Point 12 of Part 2 of Article 16 of PL defines that the authorized body shall ensure the availability of a procurement support service (hotline) for the purpose of responding to alerts and quickly responding to questions on procurement.

Article 16 of PL defines that the authorized body shall arrange publication of the bulletin (Procurement Bulletin³⁸), maintain and co-ordinate the e-procurement system.

In addition, Point 7 of Part 2 of Article 16 of PL defines that the authorized body shall publish the annual public procurement report, which provides exhaustive information on procurement. Such reports are published by May 1 of the year, following the reporting year.

Point 11 of Part 2 of Article 16 of PL defines that the authorized body shall maintain and co-ordinate the e-procurement system³⁹. The named system's PPCM module⁴⁰ displays procurement statistics, which, in narrow sense, cannot be classified as statistical databases. However, not all procurement in Armenia is conducted electronically, and, hence, statistical databases on paper-based procurement processes are not available.

Point 3 of Part 2 Article 16 of PL defines that the authorized body shall ensure the qualification certification of procurement coordinators and the existence of a system for continuous professional training thereof. At the same time, the content of training programs⁴¹ reveals that these programs do not contain topics related to integrity. This can be explained by the fact that procurement coordinators, as public servants shall undergo ethics and integrity trainings based on the requirements of the Law on Public Service (PSL) and such trainings take place apart of the specific, procurement-related trainings. The only problem here is that PL allows invited persons also to serve as procurement coordinators (see Part 4 of Article 16 of PL) and, as such persons are not public servants, they do not undergo ethics and integrity trainings.

Part 2 of Article 16 of PL states that for the purpose of regulating and coordinating the procurement process, the authorized body shall provide methodical assistance to the contracting authorities in arranging the procurement activities and ensure the qualification certification of procurement coordinators and the existence of a system for continuous professional training.

The authorized body does not perform public procurement monitoring function.

Sub-indicator 5(c) – Organization, funding, staffing, and level of independence and authority

This sub-indicator covers the standing, independence and resources of the agency or agencies in charge of key public procurement functions, especially the normative/regulatory ones.

³⁸ RA Ministry of Finance, Procurement System, <https://procurement.minfin.am/hy/>

³⁹ RA Ministry of Finance, Armenian Electronic Procurement System (ARMEPS), <https://armeps.am/epps/home.do>

⁴⁰ Ibid, <https://armeps.am/ppcm/public/reports>

⁴¹ RA Ministry of Finance, Procurement System, https://procurement.minfin.am/hy/page/verapatrastman_tsrager/

The authorized body for public procurement, as it has been already mentioned, is the MoF, with its head. The MoF is part of the Government and thus have a high-level and authoritative standing in it, and, as such, it cannot be independent.

The institution's internal organization and authority are sufficient and consistent with its responsibilities.

Currently, MoF has 18 basic professional structural divisions from which the main function of public procurement regulation and coordination is done by the Procurement Policy Department.

The department has the necessary authority and decision-making power to prepare regulations; advise on their application; issue standard documents; take charge of capacity building and quality assurance; maintain and co-ordinate the e-procurement system; publish notices; prepare an annual report etc.

The Ministry and its departments have gone through some structural changes in recent years and overall, the current staffing level of it (including Procurement Policy Department) is inconsistent with its responsibilities.

Sub-indicator 5(d) – Avoiding conflict of interest

This sub-indicator reviews the measures to address possible conflicts of interest or roles in the exercise of key public procurement functions, especially the normative/regulatory ones. It is thus related to sub-indicator 14(a).

There is no special system for avoiding conflict of interest at institutional level, as far as these issues are regulated under the PSL (adopted by NA on 23 March 2018). Article 29 of this Law defines that public servants are not allowed to receive gifts related to implementation of their official duties and clearly describes what should be considered as a gift and which gifts are allowed for acceptance. Article 33 defines what should be considered as conflict of interest and how to deal with it.

In addition, according to Part 1 of Article 16 of PL, the authorized body (MoF) cannot be involved in procurement processes or be party of a procurement contract, except the cases, when it acts as procuring entity for its own procurement. The first part of this provision can be viewed as an additional provision aimed at avoiding conflict of interest situations with the MoF's involvement. At the same time, the second part of the mentioned provision, namely, acting the MoF as procuring entity for its own procurement, can create conflict of interest situations.

Indicator 6. Procuring entities and their mandates are clearly defined

This indicator assesses: i) whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; ii) whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and iii) whether a centralised procuring entity exists.

Summary of gaps and recommendations for Indicator 6

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--------------------------------------|--|---|---------------------|--|
| 6(b) Centralized procurement body | (a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement. | The practice of centralized procurement has very limited application. | | Try to expand the use/application of centralized procurement |

Sub-indicator 6 (a) – Definition, responsibilities, and formal powers of procuring entities

This sub-indicator examines how contracting authorities, and their roles and responsibilities are defined and regulated.

Article 2 of PL clearly defines a procuring entity (or contracting authority) as:

- public administration and local self-government bodies, state or community institutions provided for by the RA Constitution and laws;
- RA Central Bank;
- state or community non-commercial organizations;
- organizations with more than 50% of state or community shares;
- foundations established or associations (unions) formed by the state or community, or state or community non-commercial organization, or organizations with more than 50% of state or community shares;
- legal persons having received means in the form of donation or grant from the state or community, or from state or community non-commercial organizations, or organizations with more than 50% of state or community shares — as regards procurement carried out at the expense of means received in the form of donation or grant;
- foundations restructured through reorganization of state or community non-commercial organizations or organizations with more than 50% of state or community shares;
- public organizations.

Responsibilities and competencies of procuring entities are clearly defined in PL (Part 3 of Article 16) and the GoA Decree No. 526-N (Section 3, Parts 5-15).

Part 3 of Article 16 of PL defines that procurement coordinator shall be responsible for the organization and coordination of the procurement process of the contracting authority; give an opinion on documents approved by the contracting authority within the framework of procurement; exercise powers of the secretary of the evaluation commission (not being a

member of this commission); draw up the protocol of the given procurement procedure and the procurement contract and submit them to the head of the contracting authority for approval.

Part 4 of the same Article states that a procurement coordinator may be a relevant subdivision of the contracting authority; an official or officials; or an invited person — consultant or consultants. The employees of the subdivision coordinating procurement, officials and invited persons must be included in the list of qualified procurement coordinators, published by the authorized body (MoF). Part 5 of the same Article provides that the persons referred to in the list shall be included in the list after being evaluated as satisfactory based on the results of the procedure for procurement coordinators qualification, organized by MoF.

Point 7 of the GoA Decree No. 526-N states that the head of the contracting authority shall define the procurement coordinator; the responsible subdivision and the evaluation commission. Point 13 states that the roles and responsibilities of the responsible subdivision may not be assigned to the procurement coordinator. The person (persons) from the responsible subdivision who is involved in designing the procurement notice must have the professional competence to specify the subject matter of procurement which is determined based on the type of the subject matter of procurement. Point 15 defines that the member of the evaluation commission should have the professional competence to assess the bidders' qualification and proposals. Moreover, if the representatives of the contracting authority's staff lack the professional competence, corresponding expert (specialist) shall be invited to the commission.

Decision making authority is fully defined and delegated to the procurement department and the tender committee regardless of risk/value of specific procurements.

The contracting authority shall bear the responsibility of including the main terms in the invitation and contract, as well as complying with the requirements established for contracting authorities as per the RA procurement legislation (see Part 3 of Article 16 of PL).

Point 7 of Part 2 of Article 26 of PL provides that the secretary of the evaluation commission shall bear responsibility for compliance of the activities of the commission with the requirements of the RA legislation on procurement.

Sub-indicator 6 (b) – Centralized procurement body

This sub-indicator covers the existence, regulation, and organization of centralized procurement.

Centralized procurement body in Armenia – State Agency for Procurement – was existing in Armenia from August 2000, when the first PL entered into force, until January 1, 2011, when the second PL lost its effect.

Article 17 of PL defines that procurement for needs of contracting authorities or separate groups thereof may be carried out in a centralized manner as prescribed by the GoA and it shall be carried out by a body or a legal person authorized by the GoA.

Section 15 of the GoA Decree No. 526-N defines the details for organizing the centralized procurement process for the needs of the state and municipal non-commercial organizations (Points 101-104). According to Part 103 of the named Decree, such centralized procurement shall be carried out by the authorized body (called supreme contracting authority) carrying out the general management of those state and municipal non-commercial organizations.

Thus, currently, the practice of centralized procurement has very limited application and is applied mainly for state and municipal non-commercial organizations, but there is no centralized procurement body in Armenia.

Indicator 7. Public procurement is embedded in an effective information system

The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

Summary of gaps and recommendations for Indicator 7

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|--|---|----------------------------|--|
| 7(a) Publication of public procurement information supported by information technology The country has a system that meets the following requirements: | (a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results, and performance. | It is not possible to monitor procurement outcomes, results, and performance due easily and fully to the incompleteness of published information and often its non-machine-readable format. | | Take adequate steps for implementation of the objectives defined in the Concept of Development of the Procurement System and its Action Plan, which stipulates modernizing the e-procurement system and expanding the circle of procuring entities operating the system. |
| | (e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format). | Not all information is published in an open and structured machine-readable format. | Medium | Consider the publication of data in open and structured machine-readable format in the context of modernizing the e-procurement system |

| | | | | |
|---------------------------|---|--|--|--|
| 7(b) Use of e-Procurement | (a) E-procurement is widely used or progressively implemented in the country at all levels of government. | Not all contracting authorities are doing procurement through the e-procurement system. | | Take adequate steps for implementation of the objectives defined in the Concept of Development of the Procurement System and its Action Plan, which stipulates modernizing the e-procurement system and expanding the circle of procuring entities operating the system. |
| | (b) Government officials have the capacity to plan, develop and manage e-Procurement systems. | The authorized body (MoF) does not have sufficient resources to implement required improvements to the e-portal | | Develop a roadmap for the development of the e-Procurement systems and include sustainability issues in the plan. |
| | (c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems. | There are still cases of missing documentation and incorrect data entries in e-procurement system, which affects the accuracy of statistics. | | Decrease the use of manual operations in the new e-procurement system and improve the skills of procurement staff to meet the requirements of digital technology. |
| | (d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market. | Suppliers are not classified in the e-portal according to size, so it is not possible to quantify the number of bids submitted by MSMEs. | | Establish a public record-keeping system on SME participation in public procurement, maintain and publish statistics. |

| | | | | |
|---|--|--|--|---|
| | increasingly dominated by digital technology. | | | |
| 7(c) Strategies to manage procurement data | (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. | Some of data are published in non-machine-readable format, custom-designed reports for specific use by the public, CSOs, and other interested entities cannot be easily generated. | | Publish all data in machine readable format. |
| | (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. | The full procurement cycle is not currently reflected in the e-portal, which sets some limitations on data monitoring and analysis. Beyond spot checks on compliance, there is no systematic monitoring of data related to procurement performance and compliance. | | Expand the report function to have the facility to design and generate reports for specific requirements. |

Sub-indicator 7(a) – Publication of public procurement information supported by information technology

The objective of this sub-indicator is to determine:

1. *the existence and capacity of the procurement information system in the country*
2. *the accessibility of the information system*
3. *the coverage of the information system*

4. *whether the system provides one-stop-service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes.*

The most relevant and up-to-date procurement information, such as procurement plans, procurement opportunities, contract award notices and other relevant notices and documents, is published in the procurement bulletin⁴². In addition, there is an e-Procurement System⁴³ with its PPCM module⁴⁴, where all the most important data concerning state-budget funded e-procurement is being recorded and published.

Information is relevant and timely; yet, it cannot be considered as complete since not all procuring entities are involved and some of the data at the e-portal is published in non-machine-readable format. Thus, it is not possible for the interested parties to access data and monitor public procurement outcomes, results, and performance easily and fully.

This issue was taken into consideration by the authorities and, as a result, one of the priorities of the PFM Reform Strategy for 2019-2023 was to modernize the e-procurement system by expanding access to more procuring entities and introducing online monitoring of supply of goods and services within the specified time, quality, and order. However, this target was not fulfilled within the specified period.

On August 25, 2022, by the Decision of the Prime Minister No. 977-L, the Concept of Development of the Procurement System and its Action Plan were approved. One of directions for development of the procurement system is the digitalization/development of a new e-procurement system, which also includes the above-mentioned targets.

The current e-procurement system includes functionalities such as publishing notices, structuring the tender documents, receiving bids, evaluating, and recording all aspects of the procurement proceedings. The module has filtering functions and allows to export data in machine readable format for monitoring purposes.

Nevertheless, the system needs further improvements.

It is required that all procurement plans are published on the e-portal, and it is not possible to commence a procurement action unless the procurement is included in the procurement plan (there are only some exceptions for publication related to national security, defense, protection of state secrets, etc.). Procurement plans, information related to specific procurements, 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 procurement information are published on the official procurement webpage and e-procurement system (including PPCM module).

Full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework) are published for all procurement processes with contract values above procurement base unit.

⁴² Ibid, www.procurement.am, www.gnumner.am

⁴³ RA Ministry of Finance, Armenian Electronic Procurement System (ARMEPS), <https://armeps.am/epps/home.do>

⁴⁴ Ibid, <https://www.armeps.am/ppcm/public/reports>

Not all information is published in an open and structured machine-readable format on the e-procurement system and PPCM module. Regarding information containing on the website of the procurement bulletin, it is not machine-readable, making paper-based procurement processes even less informative.

According to Part 2 of Article 16 of PL the responsibility for maintaining and coordinating the information on procurement system is assigned to the authorized body (MoF) (Point 4 of the named Part – for the procurement bulletin, and Point 11 for – e-procurement system).

Sub-indicator 7(b) – Use of e-procurement

This sub-indicator assesses:

1. *the extent to which e-procurement is currently used in the country's public sector,*
2. *the capacity of government officials to manage and use e-procurement systems, and/or*
3. *the existence of a country strategy to implement e-procurement.*

As it was already mentioned, the e-procurement is widely used, with major contracting authorities connected to the system and other small contracting authorities not connected are expected to join later.

The authorized body (MoF) has some capacity to manage the e-Procurement systems. However, these resources are not sufficient to plan and develop the system, thus support from different partners, including international ones, is required for its improvement.

Procurement staff in all procuring entities must attend procurement training run by the MoF. Practical training on use of the portal is one of the focus areas of the training. Moreover, the e-portal has an extensive FAQ section, as well as a Help Desk.

Suppliers, including MSMEs, participate in public procurement on the e-portal. However, it is not possible to draw statistics for MSMEs, as far as suppliers are not classified in the e-portal according to their size.

Sub-indicator 7(c) – Strategies to manage procurement data

This sub-indicator examines the collection, quality, and use of public procurement data.

Reports can be generated from the e-portal. The types of reports are standard, though it is possible to adjust the search parameters.

Some of data are published in non-machine-readable format, which makes it very difficult and time consuming to analyze them.

Currently the system is not being used to systematically analyze trends, levels of participation, efficiency and economy of procurement, and compliance with requirements, except for spot checks.

Since most of the procurement process is conducted within the e-portal, and the data available is in real time, the reliability of the information on e-procurement currently is high.

Overall, analysis of information is routinely carried out and published. In particular, the MoF publishes an annual report with an analysis of procurement data for previous year.

According to official sources, in 2022 total number of completed procedures was 113.054 and total value of contracts was about 390,6 bln AMD. Public procurement accounted about 26,5% of government expenditure and 7% of GDP.

Total value of contracts awarded through competitive methods in 2022 was about 224,7 bln AMD or 57,5% of total contracts signed.

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

This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. Three aspects should be considered: i) whether strategies and programmes are in place to develop the capacity of procurement staff and other key actors involved in public procurement; ii) whether procurement is recognised as a profession in the country's public service; iii) whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

Summary of gaps and recommendations for Indicator 8

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|--|---|---------------------|--|
| 8(a) Training, advice, and assistance There are systems in place that provide for: | (a) substantive permanent training programs of suitable quality and content for the needs of the system. | The level of procurement training is very basic and limited to ensure procurement staff have appropriate knowledge, skills, and competencies. | | Analyze the public procurement skills of contracting authorities and economic operators, identify their training needs and prepare a training strategy to meet them. |
| | (b) routine evaluation and periodic adjustment of training programs based on feedback and need. | There is a lack of resources to routinely evaluate and adjust training programs. | | Include the issue of sustainability of training materials as part of the strategy for professional development of procurement specialists and other stakeholders involved in public procurement. Update the online training courses. |
| | (d) a strategy well-integrated with other | There is no overall strategy for developing | | Take steps to implement the targets regarding |

| | | | | |
|--|--|---|------|---|
| | measures for developing the capacity of key actors involved in public procurement. | the capacity of key actors involved in public procurement. | | capacity development in the Concept of Development of the Procurement System and its Action Plan. Analyze the public procurement skills of contracting authorities and economic operators, identify their training needs and prepare a training strategy to meet them. |
| 8(b) Recognition of procurement as a profession The country's public service recognizes procurement as a profession: | (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. | There is no defined career path for procurement with job descriptions at different levels and requisite qualifications and competencies specified. | | The strategy for professional development recommended in 8(a) should include the defined career path for procurement with job descriptions at different levels and requisite qualifications and competencies specified. |
| | (c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided. | The level of procurement training is insufficient and there is no clear evidence that staff performance is evaluated on a regular and consistent basis. | | Covered under sub-indicator 8(a). Analyze the public procurement skills of contracting authorities and economic operators, identify their training needs and prepare a training strategy to meet them. |
| 8(c) Monitoring performance | (a) The country has established and consistently applies a | There is no performance measurement system that | High | Conduct a study of international good practice relating to performance |

| | | | | |
|-----------------------|---|--|--|--|
| to improve the system | performance measurement system that focuses on both quantitative and qualitative aspects. | consistently measures the public procurement system on both quantitative and qualitative aspects. | | measurement of public procurement systems and develop and implement recommendations. |
| | (c) Strategic plans, including results frameworks, are in place and used to improve the system. | Lack of monitoring and reporting system for implementation of the Action Plan of the Concept of Development of the Procurement System. | | Develop a monitoring and reporting system for implementation of the Action Plan of the Concept of Development of the Procurement System. |
| | (d) Responsibilities are clearly defined. | Responsibilities are not clearly defined in the Action Plan of the Concept of Development of the Procurement System. | | Review and clearly define responsibilities in the Action Plan of the Concept of Development of the Procurement System. |

Sub-indicator 8(a) – Training, advice, and assistance

The purpose of this sub-indicator is to verify existence of permanent and relevant training programs for new and existing staff in government procurement. See also the following sub-indicators: 8(b) Professionalization of the procurement function; 10(a) Programs to build capacity in the private sector;

According to Point 3 of Part 2 of Article 16 of PL, the authorized body (the MoF's Public Procurement Department) is obliged to provide training and to certify the qualifications of public procurement experts (staff in a contracting authority's public procurement unit, individual procurement officials or external experts engaged by a contracting authority).

The department organizes regular training events, including examinations for certification purposes, but only to the minimum extent required by the law: procurement coordinators are obliged to retrain at least every three years.

There is no evidence that routine evaluation and periodic adjustment of training programs based on feedback and need is taking place.

Curricula are set out in decrees issued by the MoF (7 March, 2018 Decree No. 85-A "On Approval of Continuous Professional Training Programs and Syllabus in 2018 for Procurement

Coordinators" of and 1 August, 2017 Decree No. 395-A "On Approving Programs and Themes of Continuous Professional Trainings of Procurement Coordinators").

The MoF has a help desk reachable by telephone that is open to all to answer questions about policies, procedures, and documents. The MoF also provides explanations on several issues regularly raised by contracting authorities and economic operators.

Overall, there is no strategy for developing the capacity of key actors involved in public procurement.

Sub-indicator 8(b) – Recognition of procurement as a profession

The purpose of this sub-indicator is to determine whether procurement is recognized as a profession in the country's public service.

Insofar as PL stipulates that each procuring entity must have a designated procurement coordinator, which can be either a department (whose staff consists of procurement specialists), official(s) or invited person(s), then it can be argued that procurement is recognized as a specific function. However, there is no requirement for a procurement coordinator, other than having procurement qualification through passing the exam and participating in continuous professional trainings for procurement coordinators once every three years.

There is no defined career path for procurement, with job descriptions at different levels and requisite qualifications and competencies specified. Also, it should be added that in small procuring entities (mainly, small municipalities or municipal non-commercial organizations) other specialists, usually accountants, work as procurement coordinators after passing the mentioned qualification and trainings.

According to Part 5 of Article 16 of PL, employees of the subdivision coordinating procurement, officials and invited persons must be included in the list of qualified procurement coordinators, published by the authorized body. These persons are included in the list after successfully passing the exam for procurement coordinators qualification, organized by the MoF. This implies that at least appointments are competitive and based on qualifications and professional certification.

There is no clear evidence that staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.

Sub-indicator 8(c) – Monitoring performance to improve the system

This sub-indicator examines the extent to which the performance of the public procurement system is measured, and measures are taken to improve it.

The country has not established or applied a performance management system to review the performance of the public procurement system quantitatively and qualitatively beyond compliance spot checks.

Despite the existence of the Concept of Development of the Procurement System and its Action Plan (August 25, 2022), so far there are no reports regarding its implementation. In addition, responsibilities are not clearly defined and almost all the deadlines for implementation mentioned in the Action Plan have expired.

3.3. Pillar III - Public Procurement Operations and Market Practices

This Pillar looks at the operational efficiency, transparency, and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.

Summary of findings under Pillar III: Public Procurement Operations and Market Practices

The provisions of procurement legislation regarding planning of public procurement mainly regulate financial matters. Needs assessment and other preparations are not regulated by PL or secondary legislation, but the GoA has issued separate guidelines for use by contracting authorities. However, the level of detail and specificity of these documents is limited and cannot be considered as satisfactory. In addition, irrespective of the quality and scope of these guidelines, there is often lack of knowledge, skills, and experience among procurement specialists to use them properly and to carry out procurement efficiently.

There is no evidence of strategic approach to procurement planning based on needs analysis and market research.

While there may be individual procuring entities that conduct needs analysis and market research toward developing procurement strategies, there is no evidence that this is a regular occurrence.

The requirements of PL are that the requirement definition should include a detailed description of the subject matter of procurement, requirements for technical and/or quality characteristics, including technical specifications, design specifications. Thus, the focus is on technical/performance specifications, rather than output/outcome-based requirement definition (functional specifications). While there may be individual procuring entities that practice this, there is no evidence that this is a regular occurrence.

There is no evidence of the use of sustainability criteria in planning. Overall, very few procurement documents and contracts can be found that contain sustainability provisions in them.

Though the procurement legislation allows the use of non-price criteria together with price, there are no clear techniques for application of these criteria, thus they are rarely used by procuring entities.

Indicator 9. Public procurement practices achieve stated objectives.

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

Summary of gaps and recommendations for Indicator 9

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|-----------------------------------|--|---|---------------------|---|
| 9(a) Planning | (a) Needs analysis and market research guide a proactive identification of optimal procurement strategies. | There is no evidence of strategic approach to procurement planning based on needs analysis and market research. | High | Develop training materials and conduct training on procurement strategy development including needs analysis and market research. |
| | (b) The requirements and desired outcomes of contracts are clearly defined. | There is no evidence that output/outcome-based requirement definition is regularly practiced. | | Develop procurement manual and include guidance on procurement strategy development such as needs analysis and market research in it. |
| | (c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money. | There is no evidence of the use of sustainability criteria. | High | Develop training materials and conduct training on requirement definition using output/ outcome-based (functional) specifications. |
| 9(b) Selection and contracting | (b) Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation | Documents need further standardization | | Take steps for standardization of procurement documents |

| | | | | |
|--------------------------|--|---|--|--|
| | from potential competitors. | | | |
| | (h) Contract clauses include sustainability considerations, where appropriate. | There are no sustainability clauses included in contracts. | | Review international good practice on sustainable procurement and develop and implement recommendations. |
| | (i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance. | While penalty clauses are included in contracts, incentive clauses are not. | | Review international good practice on incentive clauses and develop and implement recommendations. |
| 9(c) Contract management | (a) Contracts are implemented in a timely manner | The data are not in machine readable format and there is little information regarding the implementation status (only invoices and delivery-acceptance acts are published) | | When developing new e-procurement system, consider the mandatory requirement for publication of data regarding contract implementation in machine readable format. |
| | (b) Inspection, quality control, supervision of work and final acceptance of products is carried out. | Though invoices and delivery-acceptance acts are published in the e-portal, the data are in non-machine-readable format and it is not clear how the inspection, quality control and supervision of work was done. | | |

| | | | | |
|--|---|---|--|--|
| | (c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. | Payment of invoices is sometimes delayed | | When developing new e-procurement portal, explore how linkages with other systems can be improved to facilitate invoice payment and avoid delay in it. |
| | (d) Contract amendments are reviewed, issued, and published in a timely manner. | Information is published in non-machine-readable format. | | Consider the mandatory requirement for publication of data regarding contracts in machine readable format. |
| | (e) Procurement statistics are available and a system is in place to measure and improve procurement practices. | There is no clear system in place which will measure and improve procurement practices. | | Development of a modern electronic system that meets all the requirements to improve procurement practices |
| | g) The records are complete and accurate, and easily accessible in a single file | The records are not kept in a single file | | When developing new e-procurement portal, take into consideration the accessibility and completeness of records. |

Sub-indicator 9(a) – Planning

Sub-indicator 9(a) assesses whether a thorough needs analysis has been conducted, followed by market research, to inform the development of optimal procurement strategies (for major procurement). It evaluates whether the desired results have been defined and if this entailed economic and/or environmental or social impacts aligned with national policy objectives.

No guidance is issued about conducting needs analysis, market research or about developing procurement strategies. While there may be individual procuring entities that conduct needs analysis and market research toward developing procurement strategies, there is no evidence that this is a regular occurrence.

The requirements of PL are that the definition of need should include a detailed description of the subject matter of procurement, requirements for technical and/or quality characteristics, including technical specifications, design specifications. Thus, the focus is on technical/performance specifications, rather than output/outcome-based definition of need (functional specifications). While there may be individual procuring entities that practice this, there is no evidence that this is a regular occurrence.

There is no evidence of the use of sustainability criteria in planning. Overall, very few procurement documents and contracts can be found that contain sustainability provisions in them.

Sub-indicator 9(b) – Selection and contracting

This sub-indicator focuses on the objective of achieving value for money through appropriate determination of procurement methods and approaches, competition, transparency, and fairness in selecting suppliers, including the quality of procurement documents, and process efficiency.

The conditions for applying two-stage tender are covered under Article 19 of PL, which defines that the tender may be carried out in two stages, where:

- the contracting authority is not able to accurately (objectively) define the descriptions of the subject of procurement in accordance with the requirements of this Law
- the contracting authority gives the bidders an opportunity to submit alternative proposals on the possible descriptions of the subject of procurement
- there is a necessity to negotiate with the bidders for the purpose of clarifying certain peculiarities of the descriptions of the subject of procurement.

In case of applying the procedure of a two-stage tender, a prequalification procedure shall be arranged. Any bidder shall be eligible to participate in the prequalification procedure. The contracting authority shall deliver an invitation to the prequalified bidders only and invite them for negotiations. The aim of the negotiations shall be to develop one or more alternative options for descriptions of the subject of procurement that will meet the requirements of the contracting authority. As a result of the negotiations, the contracting authority shall issue a final invitation to prequalified bidders.

Overall, integrated procurement documents are used to encourage broad participation from potential competitors. However, these documents need further standardization, which is also highlighted in the Concept of Development of the Procurement System.

Article 9 of PL states that where the procurement price exceeds the procurement base unit (AMD 1mln), the contracting authority shall draw up, within three working days following the day of concluding the contract or declaring the procurement procedure as not having taken place, protocol of the procurement procedure. Along with other requirements, the protocol of the procurement procedure shall also contain information regarding the need for procurement and the justification for selection of the procurement form.

According to Part 5 of Article 33 of PL, bidders and the representatives thereof are allowed to be present at the sessions of the evaluation commission. Bidders or the representatives thereof may request copies of the minutes of the sessions of the evaluation commission, which are

provided within one calendar day and are also published in the bulletin. As it can be seen, this provision does not explicitly mention civil society.

Overall, confidentiality is ensured throughout the bid evaluation and award process.

Part 3 of Article 26 of PL provides that “The (bid evaluation) committee members and its secretary are obliged to maintain the confidentiality of the information submitted in the applications during the entire activity of the committee.”

In addition, Part 5 of Article 33 of PL states that the contracting authority shall be obliged to ensure the confidentiality of information marked by bidders as confidential and shall be held liable, as prescribed by the RA law for the damage caused to bidders because of disclosing such information, except for the information subject to mandatory disclosure provided for by law.

According to Part 2 of Article 34 of PL, the bidder ranked the first shall be determined:

- from among the bidders having submitted bids evaluated as satisfactory by the principle of giving preference to the bidder having submitted the lowest price proposal; or
- by the method of selecting the bidder, the total sum of coefficients given to the price proposal and the non-price criteria thereof is the highest. In case of using this method while evaluating the bids in cases and as prescribed in the invitation, other non-price criteria, in addition to the proposed price, shall be considered. The non-price criteria must be interrelated with the subject matter of the contract, and the relative weights thereof shall be presented in the invitation.

Though the procurement legislation allows the use of also non-price criteria, there are no clear techniques for application of these criteria, thus they are rarely used by procuring entities.

Contract awards are announced as prescribed, as far as they are published in official bulletin, as stipulated in PL (see Parts 1 and 2 of Article 10 of PL).

Mostly, there are no sustainability clauses included in contracts.

There are no incentive clauses in any of the sample contracts for the procurement procedures, and there are mainly penalty clauses.

In general, the selection and award process are carried out effectively, efficiently, and in a transparent way.

Quantitative assessment results of the analysis of procurement procedures and contracts can be found in Annex 2.

The analysis of published documents for selected 54 procurement procedures show that all procurement methods were chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework.

According to the analyzed data, the standstill period prior to contract conclusion was respected for all the procedures. However, in case of two procurement procedures the notices on the concluded contract could not be found in the bulletin, while the notices regarding the decision on conclusion of a contract were published.

No contract analyzed contained sustainability clauses.

The average time for the purchase of goods, works and services for analyzed procedures can be presented as follows:

| Procurement procedure | 2021 | 2022 | Total |
|-----------------------|---------|---------|---------|
| Open tender | 90 days | 78 days | 84 days |
| Price quotation | 35 days | 32 days | 33 days |
| E-auction | 58 days | 33 days | 46 days |

Overall, the indicator for average number of bids did not differ much within procurement methods/forms. For 2021 and 2022 this indicator was accordingly 5,6 and 6 for open tender, 5 and 6 for price quotation and 4 and 5 for e-auction.

The situation was different regarding the responsiveness of the bids.

Overall, there were two procedures for which the information was not fully published at the Procurement bulletin.

Among 54 procurement procedures analyzed 5 failed (9%), because all the bids submitted were rejected. The remaining 49 procedures were successfully awarded (91%).

Sub-indicator 9(c) – Contract management in practice

This sub-indicator assesses the extent to which goods, works or services, including consulting services procured, are delivered according to the contract agreement in terms of time, quality, cost, and other conditions stated in the contract, for the efficient and effective delivery of public services.

Though contracts and their amendments are published in the e-portal⁴⁵, however the data are not in machine readable format and there is little information regarding the implementation status (only invoices and delivery-acceptance acts are published, which are in non-machine-readable format). In addition, there is no information on the inspection, quality control and supervision of work. Thus, it was impossible to conduct quantitative analysis for this indicator. The GoA Decree No. 526-N defines the process of inspection, quality control, supervision of work and final acceptance of the output of contract implementation and procurement financing under Parts 108 to 116.

In addition, the contract templates available at the official bulletin, include provisions on terms and conditions for delivery-acceptance of the output and payment mechanism. However, as was already mentioned, the data are in non-machine-readable format and it is not clear how the inspection, quality control and supervision of work was done.

As defined in sample contract documents, the procuring entity should transfer online payment to contractor's/supplier's account. The transfer should be made based on delivery-acceptance protocol following the conditions specified in the payment schedule. If the protocol is drawn up after the 20th day of that month, the payment is made within 30 working days, but not later than December 20 of the given year.

Though invoices and delivery-acceptance acts are published in the e-portal, it is not possible to determine whether invoices are paid on time. However, different surveys show that payment of invoices is sometimes delayed.

⁴⁵ Ibid, <https://www.armeps.am/ppcm/public/reports>

Information on contract amendments is issued and published in official bulletin and the documents (contracts) are being published in e-portal in a timely manner. However, this information also is published in non-machine-readable format, thus it is very difficult to conduct analyzes on them.

Overall, some procurement statistics are available, however there is no clear system in place which will measure and improve procurement practices.

New amendments to PL in 2021 introduced public monitoring within the framework of contract implementation and management. For procurements that do not contain state secrets, participating bidders, non-governmental organizations, and media can participate in the monitoring of the contract execution (Article 5.1). The official procurement webpage has a separate section for publishing the information and documents regarding public monitoring and its outcomes⁴⁶. However, since the implementation of this mechanism, only 7-8 cases of public monitoring were published in this webpage.

Overall, contracts and contract management documents are complete and accurate, however there are some issues regarding their accessibility, since the records are not kept in a single file and should be searched separately.

Indicator 10. The public procurement market is fully functional

The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a good, reliable client, the kind of goods or services being demanded, etc.

Summary of gaps and recommendations for Indicator 10

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|---|---|----------------------------|---|
| 10(a) Dialogue and partnerships between public and private sector | (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 | There are no institutionalized mechanisms for cooperation and consultation with private sector/business associations in public procurement. | | Make frequent use of institutionalized mechanisms for cooperation and consultation with private sector, such as advisory boards and working groups. |

⁴⁶ RA Ministry of Finance, Procurement System, https://gnumner.minfin.am/hy/page/2023_tvakan_hanrayin_hskoxutyany_veraberox_nyuter/

| | | | | |
|--|--|--|--------|---|
| | consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government. | | | |
| | (b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace. | There is no regular capacity building for suppliers on participating in public procurement. | Medium | Develop government programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement market. |
| 10(b) Private sector's organization and access to the public procurement market | (a) The private sector is competitive, well-organized, willing, and able to participate in the competition for public procurement contracts. | Many suppliers are reluctant to participate in public procurement. | | Dialogue with business associations and develop action plan to improve perceptions and address constraints. |
| | (b) There are no major systemic constraints inhibiting private sector access to the public procurement market. | Perceptions of unfair competition, not appropriate technical specifications, award criteria mostly based on prices and the limited possibilities to compete on quality and | | Raise contracting authorities' skills in preparing and carrying out procurement with greater focus on value for money, using simple and practical approaches tailored |

| | | | | |
|---|---|---|-----|--|
| | | performance create disincentives for many private companies for participating in public procurement. | | to the supply market in question. |
| 10(c) Key sectors and sector strategies | (a) Key sectors associated with the public procurement market are identified by the government. | Key sectors associated with the public procurement market have not currently been identified. | Low | When developing a strategy for centralized/ collaborative procurement, consider identifying key sectors. |
| | (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. | Risks associated with certain sectors and opportunities to influence sector markets are not currently assessed by the government and sector strategies are not developed. | Low | |

Sub-indicator 10(a) – Dialogue and partnerships between public and private sector

This sub-indicator reviews whether there are forums for dialogue between the government and the private sector.

The government sometimes organizes discussions with private sector and CSOs regarding different issues within the scope of OGP initiative action plans' implementation and in the process of developing different strategies.

In addition, dialogue with the private sector, primarily on legislative issues of mutual interest, can be initiated through the online platform for publication of legal acts drafts⁴⁷ All interested parties, including representatives of private sector, can be engaged in public discussions on those drafts, make comments on them and propose suggestions on their improvement. Such suggestions

⁴⁷ Unified Website for Publication of Legal Acts' Drafts www.e-draft.am

then shall be summarized by the government bodies, who developed the draft, and they are required to respond publicly to them.

Nevertheless, even though the government and, especially MoF, tries to show an openness to the public, there are no institutionalized mechanisms for cooperation and consultation with private sector/business associations, such as advisory boards or working groups in public procurement.

Overall, private sector does not always have the necessary capacities to follow legislative changes, make and submit recommendations to public authorities.

Unfortunately, currently, there are no government programs to help build capacity among private companies, including for small businesses, and trainings to help new entries into the public procurement marketplace.

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

This sub-indicator looks at the capacity within the private sector to respond to public procurement in the country.

The results of the survey conducted within several representatives of the business community reported that many suppliers are reluctant to participate in public procurement due to long and complex bidding processes and prolonged payments, as well as the perception that bids are rigged.

Overall, perceptions of unfair competition, both for objective reasons and based on unproven presumptions, not appropriate technical specifications, award criteria mostly based on prices and the limited possibilities to compete on quality and performance create disincentives for many private companies for participating in public procurement.

According to information provided by the MoF, the number of suppliers registered in the e-procurement system (ARMEPS) is 21120, which is about 23% of total registered suppliers in Armenia (89964 in 2022, www.armstat.am).

A contract was awarded to 21.1% of the participants registered in the e-procurement system (ARMEPS).

The value of contracts signed with foreign companies amounted about 5% of the total signed contracts.

Sub-indicator 10(c) – Key sectors and sector strategies

This sub-indicator reviews to what extent the Government examines the country’s supply market from a public procurement point of view.

It is not currently the practice to analyze the public procurement market in terms of key sectors and risks associated with them, as well as to develop sector strategies.

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

Pillar IV includes four indicators that are considered necessary for a system to operate with integrity, that has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and that has appropriate measures in

place to address the potential for corruption in the system. It also covers important aspects of the procurement system, which include stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

Summary of findings under Pillar IV: Accountability, Integrity, and Transparency of the Public Procurement System

Overall, a transparent and consultative process is followed when formulating important changes to the public procurement system.

The government sometimes organizes discussions with private sector and CSOs regarding different issues (recently the discussions were organized regarding procurement legislation reforms and private sector and CSOs were encouraged to present their suggestions on this issue). Also, the online platform for publication of legal acts drafts (www.e-draft.am) can be used for consultative process.

Currently, there are no official government programs in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement. However, some non-governmental organizations do conduct trainings.

The laws, regulations and policies governing public procurement are published on the e-portal and are easily and freely accessible to the public. The procurement process is conducted within the e-portal, and all information (except for confidential information protected by law) is freely available to the public. However not all data is currently machine-readable.

There is no provision for citizens to participate through consultations in procurement planning. However, the procurement plans are being published online and sometimes discussions are being held in media regarding them, which means that citizens, CSOs and private sector can somehow influence the decision-making process, since it is allowed to make changes in procurement plans.

Regarding other phases of the procurement process, the legal/regulatory and policy framework allows citizens to participate only in contract management phase. For other phases of procurement there are no clear provisions allowing persons other than bidders and their representatives to be present at the meetings of the evaluation committee.

Following recent amendments in PL (March 3, 2021), participating bidders, non-governmental organizations and media can participate in the monitoring of the contract execution for procurements that exceed the procurement base unit (AMD 1mln) and do not contain state secrets.

The system in the country provides for laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits, and oversight by legal bodies.

All state and local self-government bodies, along with institutions funded from state and community budgets are subject to internal and external audit. The AC is the main agency, mandated to carry out external audits, including procurement audits. In addition, a department of the MoF and the State Control Service have oversight function, which is also implemented on procurement procedures.

Overall, the procurement legislation does not have explicit provisions on internal and external control/audit, but these issues are covered by other relevant legislation.

Key procuring entities have internal audit divisions, those that do not have should outsource the function of internal audit.

The procurement legislation does not have provisions on internal control/audit mechanisms and functions that ensure appropriate oversight of procurement.

However, procurement audit issues are mentioned in the Minister of Finance Order No. 143-N on Approving guidelines for development of public sector internal audit manuals and regulation (17 February, 2012).

The Supreme Audit Institution is the Audit Chamber (AC) of the RA.

Even though AC is implementing external auditing, including procurement audits, the Law on Audit Chamber does not have any provisions specifically regarding procurement audit. External audit of procurement processes is part of the external audit of budget programs executed by state entities.

The AC is empowered to carry out financial, compliance and performance audits. It reports to the NA twice a year, presenting its Annual Performance Report and the annual opinion on the execution of the state budget one month after the submission of the Government's report on the same.

Internal auditors (IA) are guided in their work by a detailed IA manual that requires risk-based planning and encourages systems-based auditing. There are written standards and procedures for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.

The mechanisms for ensuring the follow-up on the respective findings of audit are defined in the Law on Audit Chamber.

Auditors of public sector are required to pass qualification examination, which is done electronically through testing and is organized by the authorized body (MoF). After successful completion of the examination, the auditors are included in the list of qualified auditors and the qualification remains active in case each year they successfully pass continuing professional training programs.

In general, auditors are required to participate in continuing professional training programs each year and their qualification remains active in case these programs are passed successfully. They also participate in training programs for procurement specialists and the frequency of participation in these trainings depends on the needs and special requirements for auditing particular procurement.

After the abolition of the extrajudicial component of the procurement appeals system (starting from June 1, 2022), appeals are reviewed only by courts, specifically, by the first instance civil courts of general jurisdiction.

Overall, in practice, decisions are rendered based on available evidence submitted by the parties.

The decision to blacklist a company is reserved for the authorized body, based on the decision of the head of the procuring entity and can be appealed against only in court.

While the timeframes for the submission and review of appeals are realistic, the process is often prolonged and can unduly delay the procurement process.

Although the legal amendment has significantly shortened the time for examination of cases in court, there are still a few cases where the process for admitting or examining complaints has been prolonged, which has led to the delay in issuing final decisions and consequently also procurement process, as far as the decision of taking the proceedings of the claim by the court automatically suspends the procurement process until the issuing of the final decision by the court.

The fees for submitting appeals in courts especially for high value procurements are higher, than the fees charged by the former extrajudicial body (procurement appeals reviewing persons) previously, when such body was existing. This can unnecessarily hinder the opportunity for appealing.

In general, Armenian courts are overloaded with cases (too much cases per one judge). However, because of limited number of procurement appeals, the process of appeals reviewing, so far, is conducted without substantial delays. It is anticipated to designate and train several judges for reviewing only cases related to procurement.

There are no definitions of fraud and corruption in the regulatory framework for procurement. Meanwhile, there are some provisions in other laws, which define issues related to corruption and conflict of interest. Regarding the fraud, both the old and new Criminal Codes penalize it as a crime. In the new Code it is Article 255.

Besides that, the new PSL adopted on 23 March 2018 has Article 29, which defines that public servants are not allowed to receive gifts related to implementation of their official duties and clearly describes what should be considered as a gift and which gifts are allowed for acceptance. Another its Article, Article 33, defines what should be considered as conflict of interest and how to deal with it.

Conflict of interest related to bid evaluation commission members and secretary, as well as their affiliated persons, are covered under the PL Article 33 (Part 6 and 7).

According to Point 2.b of Part 2 of Article 28 of PL, the bidders are required to disclose the beneficial owners of a company in their bid.

In addition, the concept of affiliated persons is defined in GoA Decree No. 526-N on approving the regulation on organizing the procurement procedure under Section 20 Parts 119 to 121.

Post-employment restriction (cooling-off period for former public officials) is outlined in the PSL under Point 7 of Part 1 of Article 32.1.7, which states that public officials within one year following the release from their offices are prohibited to be admitted to work with the employer or become the employee of the organization over which they have exercised immediate supervision in the last year of their tenure.

The procurement legislation includes requirements for procuring agencies to include references on prohibited practices and conflict of interest in procurement documents. Standard procurement documents contain fraud and corruption provisions.

In general, allegations of fraud, corruption, and other prohibited practices, including in procurement, can be reported also through applying whistle-blower mechanism, which is provided by the Law on Whistleblowing System.

Several important legislative changes were made regarding anti-corruption issues, namely adoption of new Law on Civil Service (CSL) and PSL (23 March 2018), Law on the Commission for the Prevention of Corruption to replace the Ethics Commission for High-Ranking Officials (CEHRO), Law on Anti-corruption Committee, Law on the Confiscation of Property Having Illegal Origin (Law on Asset Recovery) and the adoption of the Law on Whistleblowing. Despite this fact there is still no mechanism in place and used for systematically identifying corruption risks and for mitigating these risks specifically in the public procurement cycle.

There are no special integrity training programs offered to the procurement workforce, and the trainings for procurement specialists had no special module focused on integrity issues.

Overall, there are only a small number of civil society organizations and activists that have procurement in their area of focus. There are also some independent media agencies that are active in investigating and publishing stories in this area. One reason for the low level of civil society engagement seems to be the difficulty for CSOs to mobilize resources for their work, partially, because of low interest of potential donors to the topic of procurement.

The government organizes discussions with the CSOs regarding different issues such as procurement legislation reforms. However, as regards the effectiveness, it seems that more active and open participation by civil society should be encouraged.

There is no clear evidence that suppliers and business associations actively support integrity and ethical behavior in public procurement.

In general, public officials follow the general ethics rules in place for all public and civil servants, which are defined by PSL and CSL. The legislation envisages three different codes of conduct for public officials, for civil servants and a model code of conduct for special categories of public servants, such as members of Parliament, judges, prosecutors, and investigators.

Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fairer, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: i) disclosure of information and ii) direct engagement of civil society through participation, monitoring, and oversight.

Summary of gaps and recommendations for Indicator 11

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | 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 are no official programs and activities to develop the capacity of relevant stakeholders to understand, monitor, and improve public procurement. | Medium | The authorized body should engage with relevant stakeholders to implement mechanisms to develop the capacity of them for understanding, monitoring, and improving public procurement. |
| | (c) There is ample evidence that the government considers the input, comments and feedback received from civil society. | Consultative discussions with civil society are held not frequently and feedback is mostly taken into account partially. | | Be more proactive in seeking input, comments, and feedback from civil society. |
| 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: <ul style="list-style-type: none"> • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, | There is no provision for citizens to participate in the phases of a procurement process, except for contract execution and management phase. | | Include provisions in legislation, which will allow the engagement of civil society in procurement planning process through consultations, participation in bid opening, evaluation, and contract award process when appropriate. |

| | | | | |
|--|--|---|--|---|
| | according to local law • contract management and completion (monitoring). | | | |
| | (b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation, and monitoring. | There is poor participation of citizens in public monitoring. | | Improve regulations and practices regarding the participation of citizens and civil society in public monitoring, in addition to further improvement of data publication in e-procurement system. |

Sub-indicator 11(a) – An enabling environment for public consultation and monitoring

This indicator assesses the following:

1. *whether a transparent and consultative process is followed when changes are formulated to the public procurement system,*
2. *whether programs are in place to build the capacity of civil society organizations to support participatory public procurement, and*
3. *whether effective feedback and redress mechanisms are in place for matters related to public procurement.*

Overall, a transparent and consultative process is followed when formulating important changes to the public procurement system.

The government sometimes organizes discussions with private sector and CSOs regarding different issues (recently the discussions were organized regarding procurement legislation reforms and private sector and CSOs were encouraged to present their suggestions on this issue).

Also, the online platform for publication of legal acts drafts⁴⁸ can be used for consultative process (see more about the platform in the qualitative analysis of sub-indicator 10(a)).

Currently, there are no official government programs in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement. However, other non-governmental organizations do conduct trainings.

⁴⁸ Ibid, www.e-draft.am

There is evidence that the government considers the input, comments and feedback received from civil society. One of such evidences was the fact that the procurement legislation was changed following negative reactions from the public (CSOs) and private sector.

On October 10, 2019, the GoA adopted Decree No. 1422-N, which introduced a new institute for qualification criteria, accompanied by stricter application requirements. Most worrying was the requirement to provide a bank guarantee for 100 percent of the bid price, which created serious obstacles for private sector and especially for SMEs. Following negative reactions from the public, changes were made and the requirement was reduced from 100 percent to 15 percent (for contracts of up to AMD 80 million) or 30 percent (for contracts above AMD 80 million). Moreover, except for construction projects, the requirement for a bank guarantee was removed for procurement lots under AMD 25 million.

Nevertheless, consultative discussions with civil society are held not frequently and feedback is mostly considered partially.

Sub-indicator 11(b) – Adequate and timely access to information by the public

This sub-indicator covers the right of the public to access information. Complementary aspects have been highlighted in the following sub-indicators:

- *The laws, regulations, and policies governing public procurement are published and easily accessible to the public at no cost (sub-indicator 1(a));*
- *All stakeholders have adequate and timely access to information in each phase of the public procurement process related to specific procurements (in accordance with legal provisions protecting specific sensitive information) and access to other information that is relevant to promote competition and transparency (sub-indicator 7(a));*
- *Free access to this information is preferably provided through a centralized online portal and open data standards (sub-indicator 7(a)).*

The laws, regulations and policies governing public procurement are published on the e-portal and are easily and freely accessible to the public.

The procurement process is conducted within the e-portal, and all information (except for confidential information protected by law) is freely available to the public.

Free access to this information is provided on the centralized online portal. However not all data is currently machine-readable.

Sub-indicator 11(c) – Direct engagement of civil society

This sub-indicator assesses the extent to which (i) the laws, regulations, and policies enable the participation of citizens in terms of consultation, observation, and monitoring and (ii) whether the government promotes and creates opportunities for public consultation and monitoring of public contracting.

There is no provision for citizens to participate through consultations in procurement planning. However, the procurement plans are being published online and sometimes discussions are being held in media regarding them, which means that citizens can somehow influence the decision-making process, since it is allowed to make changes in procurement plans.

As regards the other phases of a procurement process, the legal/regulatory and policy framework allows citizens to participate only in contract management phase. In other phases

of procurement only bidders and their representatives are allowed to be present at the meetings of the evaluation committee (Part 5 of Article 33 of PL).

Following recent amendments in PL (March 3, 2021), public monitoring within the framework of contract execution and management was introduced. According to Article 5.1 of PL participating bidders, non-governmental organizations and media are allowed to participate in the monitoring of the contract execution for procurements that exceed the procurement base unit (AMD 1mln) and do not contain state secrets. Point 2 of Part 1 of the same article states that in case of procurements containing state secret only participating bidders are allowed to be included in public monitoring.

However, according to the information that is being published in the official procurement webpage's separate section (Materials related to public monitoring)⁴⁹, since the implementation of this mechanism in 2021, only 7 to 8 cases of public monitoring have been implemented.

Indicator 12. The country has effective control and audit systems

The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For this indicator, "effectiveness" means the expediency and thoroughness of the implementation of auditors' recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.

Summary of gaps and recommendations for Indicator 12

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|---|--|----------------------------|--|
| 12(c) Enforcement and follow-up on findings and 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 | Data is not available in the case of internal audit. No gap for external audit. [For external audit – impossible, as timeframes are not defined in the assessment criteria.] | | Make publicly available the recommendations stemming from the findings of internal audit |

⁴⁹ RA Ministry of Finance, Procurement System, https://gnumner.minfin.am/hy/page/2021_tvakan_hanrayin_hskoxutyany_veraberox_nyuter/

| | | | | |
|--|---|---|--|---|
| | implemented within the time frames established in the law (in %). | | | |
| | (b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations. | The mechanisms of responsibility of the officials who do not implement the recommendations of the AC are not effective and functional | | Strengthen/establish the new mechanisms of responsibility of the officials who do not implement the audit recommendations. This could be linked to budgeting process. |
| 12(d) Qualification and training to conduct procurement audits | (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 | There is no established program for auditors to ensure that they are qualified to conduct high-quality procurement audits | | Maintaining a continuous training process for auditors in the field of public procurement. Strengthen the skills to perform performance audits in the field of public procurement |
| | (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. | | | |

Sub-indicator 12(a) – Legal framework, organization, and procedures of the control system

This sub-indicator assesses

- *whether the country's laws and regulations provide for a comprehensive control framework,*
- *whether the institutions, policies and procedures as defined in the law are in place and operational, and*
- *whether the existing control framework adequately covers public procurement operations.*

The system in the country provides for laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits, and oversight by legal bodies.

All state and local self-government bodies, along with institutions funded from state and community budgets are subject to internal and external audit. The AC, internal audit units in state and municipal bodies, and the State Control Service are agencies mandated to carry out internal audits, external audits, and oversight, including those related to procurement processes.

Key procuring entities have internal audit divisions, those that do not have shall outsource the function.

Overall, the procurement legislation does not have clear provisions on internal and external control/audit, as well as mechanisms and functions that ensure appropriate oversight of procurement, as far as these issues are covered by other relevant legislation.

However, procurement audit issues are mentioned in the Minister of Finance Order No. 143-N on Approving guidelines for development of public sector internal audit manuals and regulation (17 February, 2012), which defines two types of audit compliance and performance.

According to Article 7 of the Law on Internal Audit (adopted on 22 December, 2010) and Point 37 of the Minister of Finance Order No. 143-N, internal auditors have access to all the information and records of the organization (also electronic), including the confidential information required for the audit, in accordance with the regulation on access to the confidential data provided by the RA legislation.

The procurement record for auditing includes all the documents within the procurement process, as well as contract performance. As a minimum, these records include the public notices of procurement opportunities, the procurement documents and any amendments, bid/proposal opening records, copies of bid/proposals, evaluation reports, signed contract documents and amendments, any complaints and dispute resolutions and contract variations.

Internal auditors are guided in their work by a detailed IA manual that requires risk-based planning and encourages systems-based auditing. It includes extensive template documents such as audit charters, audit plans and audit working papers to guide staff through their work.

The Supreme Audit Institution (SAI) in Armenia is the RA Audit Chamber (AC).

According to Article 2 of the Law on Audit Chamber (adopted on 16 January, 2018), it is an independent state body conducting the external public audit. Article 3 of this Law defines the purpose of the activities of the AC.

According to Article 32 of the Law, the AC shall have online access to electronic databases belonging to auditees/ public entities containing data on State Budget and community budget funds, loans and credits received, the use of state- and community-owned property, except to the information deemed by law to be secret. If the information belonging to the auditees related to the State Budget and community budget funds, loans and credits received, the use of state- and community-owned property cannot be provided online, it shall be provided to the AC at its request, either electronically or in hard copy, unless otherwise provided for by law, within a period of 30 days upon receiving the request, which may be prolonged by another 15 days if circumstances considered substantial need be established.

Even though AC is implementing external auditing, including procurement audits, the Law on Audit Chamber does not have any provisions specifically regarding procurement audit.

The AC is empowered to carry out financial, compliance and performance audits. It reports to the NA twice a year, presenting its Annual Performance Report and the annual opinion on the execution of the state budget one month after the submission of the Government's report on the same. From 1 January 2020 the AC is required to express an opinion on the execution of the state budget and compliance audit, and submit to the NA opinions on the budget execution of the state budget for every quarter.

According to Part 4 of Article 5 of the Law on Audit Chamber, AC shall submit to NA annual statement about its activities, conclusion on the annual report on the state budget execution and current conclusions for the cases prescribed by the same Law. The Law on National Assembly Procedures stipulates conducting debates/discussions on all three mentioned documents (for current conclusions - only by NA relevant standing committee, who, if deems necessary, can invite also other standing committees to take part in the discussion). The annual financial statement of the AC is subject to annual audit by an external audit organization selected on a competitive basis.

Part 6 of Article 26 (Current Conclusion of the AC) of the Law on Audit Chamber provides that AC, within 3 working days after the approval of the current conclusion (by its Board), shall send to the head of the organization - object of audit, the named conclusion. The object of audit, within 30 days after receiving the conclusion, shall provide information to AC about its steps to be taken to address the revealed inconsistencies, implementation of the proposed by AC recommendations and other information in a written form. The response of the object of audit shall be included in the current conclusion and presented to NA and GoA (see Part 7 of the same Article). In practice, these requirements are followed by AC. Regarding the objects of audit, as it was revealed through checking several current conclusions, they often ignore responding to AC on the steps taken by them stemming from the current conclusions. In such cases AC simply states that fact in the corresponding section of the current conclusion.

Sub-indicator 12(b) – Co-ordination of controls and audits of public procurement

This sub-indicator assesses whether internal controls, internal audits and external audits are well defined, coordinated, sufficiently resourced, and integrated to ensure the consistent application of procurement laws, regulations and policies and the monitoring of performance of the public procurement system, and that they are conducted with sufficient frequency.

As was already mentioned, internal auditors are guided in their work by a detailed IA manual that requires risk-based planning and encourages systems-based auditing. The manual is utilized through an automated information system (AIS), which has been developed locally.

The software contains a register of the audit universe and risk scores are brought into the system. The audit plan, the audit work program, the audit working papers and the audit report are all linked together through the AIS. It gives the PFM Methodology Department the opportunity to monitor IA activities throughout all public institutions.

In addition, in 2017 a handbook for systems-based auditing was developed with donor support.

It should be mentioned that internal auditors should follow the mandatory MoF certification program. An increasing number of internal auditors are qualified, with 88% holding national or international certificates.

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.

Procurement audit issues are mentioned in the Minister of Finance Order No. 143-N on Approving guidelines for development of public sector internal audit manuals and regulation (17 February, 2012). According to Point 23.1 of this Order, an audit task assigned for assurance services is implemented by a systematic approach through compliance audit and performance audit or the combination of these two types. In case of procurement audit, within the scope of control for procurement made during the given year, through the assurance services, audit is conducted for at least 30% of procurement, where the price is not exceeding twenty-fold of the procurement base unit (AMD 1mln) (AMD 20 mln or USD 50,000) and procurement containing state and banking secrecy carried out through the procedures outlined in Article 21 of PL (closed tender), as well as for all procurement exceeding twenty-fold of the procurement base unit.

Based on the results of the audit, the head of the organization is presented a written audit report on the audit:

- 1) regarding the procurement procedure within two months from the date of approval of the procurement procedure protocol. The procurement procedure audit is carried out through evaluating the procurement procedures protocols (documents) and the information contained therein;
- 2) regarding contract performance within four months of the date of the execution of the contract. Contract performance audit is carried out through evaluating the contractual commitments of the parties in accordance with the contract.

Point 56 of the same Order states that within the framework of the organization and implementation of internal audit functions, the head of the organization's internal audit department shall develop and submit internal audit regulations, strategic and annual plans, and changes to them for discussion by the head of the organization and the internal audit committee.

Part 1 of Article 5 of the Law on Audit Chamber defines the objects of external audit. Those are state and municipal bodies and organizations receiving funding from state and municipal budgets. This means that specific procurement audits are not conducted, but rather among other functions, also the procurement audit is carried out by the mentioned entities is conducted.

Part 2 of Article 25 of the same Law states that action plan of the AC should be comprised of public audit of the three-month, six-month, nine-month and annual execution of the State Budget. Though there is no separate mention of procurement in this law, but the published reports include also procurement audit.

Part 3 of Article 28 of the same Law defines that the AC shall, by 1 June of each year, submit to the NA the annual communication on its activities in the previous year.

All the above-mentioned reports issued by the AC are published at the official page of the body⁵⁰.

The AC cooperates with relevant oversight bodies, Office of the Prosecutor General of the RA, and law enforcement agencies. The Annual Report of the AC provides detailed information of the number of cases that have been referred to law enforcement agencies, including the number of subsequent convictions.

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

The purpose of this indicator is to review the extent to which internal and external audit recommendations are implemented within a reasonable time.

The AC oversees the implementation of external audit recommendations and monitors how government agencies and organizations address the issues raised in audits.

However, the mechanisms of responsibility of the authorities/officials who do not implement the recommendations of the AC are not effective/poorly functional.

Sub-indicator 12 (d) – Qualification and training to conduct procurement audits

The objective of this indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits are adequate to the task.

As it was already mentioned, procurement audit is not foreseen by law, and, hence, there are no special procurement auditors.

Public auditors are required to pass qualification examination, which is done electronically through testing and is organized by the authorized body (MoF). After successful completion of the examination, the auditors are included in the list of qualified auditors and the qualification remains active in case each year they successfully pass continuing professional training programs.

They also participate in training programs for procurement specialists and the frequency of participation in these trainings depends on the needs and special requirements for auditing particular procurement.

Article 17 of the Law on Audit Chamber sets out the qualification and experience requirement to get elected as a member of the AC, including to the position of the Chairperson of the Chamber. Members of the AC, including the Chairperson are not allowed to hold any office not related to their status in other state or local self-government bodies, any office in commercial organizations, to engage in entrepreneurial activities or perform other paid work except for scientific, educational, and creative work.

⁵⁰ Audit Chamber of the RA, <https://armsai.am/hy/current-conclusions>

The AC is functionally independent from bodies and organizations subject to public audit during the exercise of its powers and the expenditures of the AC are a constituent part of the expenditures of the State Budget.

Indicator 13. Procurement appeals mechanisms are effective and efficient

Indicator 13 covers aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

Summary of gaps and recommendations for Indicator 13

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|---|---|----------------------------|---|
| 13(a) Process for challenges and appeals | (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. | The process is often prolonged and can unduly delay the procurement process. | | Implement mechanisms that will effectively neutralize delays in admission and examination of complaints in courts for various reasons, including intentional ones |
| 13(b) Independence and capacity of the appeals body The appeals body: | (b) does not charge fees that inhibit access by concerned parties | The fees for submission of appeals in courts are higher than the previous fee and can unnecessarily hinder the opportunity for appealing. | | Review the amount of fees for submission of appeals in order not to unnecessarily hinder the opportunity for appealing. |
| | (c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available | Most of the appeals are either unresolved within the specified timeframe or were resolved exceeding | | Implement mechanisms that will effectively neutralize delays in admission and examination of complaints in courts for various reasons, |

| | | | | |
|--|---|---|--|----------------------------|
| | | timeframe specified in the law. | | including intentional ones |
| | (e) issues decisions within the time frame specified in the law/regulations | The process of issuing the decisions often exceeds the timeframes specified in the law/regulations. | | |

Sub-indicator 13(a) – Process for challenges and appeals

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

Following amendments in procurement system, namely, the abolition of the extrajudicial component of the procurement appeals system (starting from June 1, 2022) appeals are reviewed only by courts, specifically, by the first instance civil courts of general jurisdiction.

Part 2 of Article 46 of PL provides that “Regulations related to procurement are not administrative relations, and they are regulated by the legislation regulating civil-law relations of the RA”. This means that the first review of the evidence shall be carried out by the first instance civil courts of general jurisdiction, which is the lowest instance of the Armenian court system.

As with all other cases reviewed by the mentioned courts, procurement appeals review is regulated by Civil Procedure Code. According to the named Code, judicial acts (court decisions) shall be justified (Article 8) and reasoned (Article 9), meaning that they shall be based on available evidence and the decisions shall reflect the course of the court's judgments and the resulting conclusions related to the assessment of the evidence. In addition, Chapter 8 (Articles 57-92) of the Code regulates in detail the use of evidence during the trial.

Overall, in practice, decisions are rendered based on available evidence submitted by the parties.

As was already mentioned, the decision to blacklist a company is reserved for the authorized body, based on the decision of the head of the procuring entity and can be appealed against only in court.

According to Armenian Judicial Code, the body or authority (appeals body) in charge of reviewing decisions of the first instance court, which is now the first review body, is the Civil Review Court (see Article 27 of the Judicial Code).

According to Part 5 of Article 10 of PL, the contracting authority shall conclude the contract, where no bidder appeals against the decision on conclusion of a contract within a standstill period specified by the law, which should be at least 10 calendar days (Part 3 of the same article).

As was already mentioned, Civil Procedure Code, defines that procurement complaints are reviewed and resolved within 30 days of taking the proceedings of the claim by the court and this period can be extended once by up to 10 calendar days.

Although the legal amendment has significantly shortened the time for submission and examination of cases in court, and they are quite realistic, there are still several cases where the process for admitting or examining complaints has been prolonged. This has led to the delay in issuing final decisions and consequently also procurement process, as far as the decision of taking the proceedings of the claim by the court automatically suspends the procurement process until the issuing of the final decision by the court (Article 234.11 of Civil Procedure Code).

According to data published in official sources⁵¹, in 2022 during the period from June 1 to December 31, 72 complaints were submitted to the court of general jurisdiction of Yerevan against the actions (inaction) and decisions of the procuring entities and the evaluation committees, of which a final decision was issued in 40 cases. During the mentioned period 6 cases were appealed in the Civil Review Court, from which only for one case the review was completed and final decision was issued (rejected).

Sub-indicator 13(b) – Independence and capacity of the appeals body

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

As far as the appeals body is court, it is not involved in any capacity in procurement transactions or in the process leading to contract award decisions.

It should be mentioned that the fees for submitting appeals in courts especially for high value procurements are higher, than the fees charged by the extrajudicial body (procurement appeals reviewing persons) previously, when such body was existing. This can unnecessarily hinder the opportunity for appealing.

Overall, the appeal body (court) is obliged to follow procedures for submission and resolution of complaints that are clearly defined and publicly available.

Procedures for procurement complaints are defined in Chapter 27.2 of Civil Procedure Code.

As already mentioned, according to Part 2 of Article 234.5 of this code, procurement complaints should be reviewed and resolved within 30 days of taking the proceedings of the claim by the court with extension of up to 10 calendar days.

Part 1 of Article 234.6 of the Code states that the court should resolve the issue of accepting the claim for proceedings within three days after it is presented.

Despite the legal requirements, the practice shows that this process is often prolonged much. One of the reasons is that the applicants are not adequately following the basic rules/requirements for submission of the appeals, and thus they are being returned for improvement and are being resubmitted again.

⁵¹ DataLex Judicial Information System, www.datalex.am, RA Ministry of Finance, Procurement System, www.gnumner.am

More concerning is the fact that there are often cases when the complaints are being returned several times, which leads not only to the delay of the examination process, but also to the failure to resubmit a new complaint, which subsequently leads to the closure of the given cases.

As was already mentioned, in 2022 during the period from June 1 to December 31, out of 72 complaints submitted to the court only for 40 cases (55%) the final decision was issued.

Taking into consideration the legal requirement for reviewing and resolving procurement complaints, the maximum timeframe for this process should take 40 working days.

Analysis of published data show that at least 15 cases (38% of 40 completed cases) were resolved exceeding maximum timeframe specified in the law. At least 27 cases (68% of 40) were resolved exceeding 30 working day period specified in the law.

Overall, decisions issued by the civil court are binding on all parties and the appeal body can exercise its legal authority to suspend procurement proceedings and impose remedies.

Part 1 of Article 234.11 of Civil Procedure Code defines that the appeal of the actions (inaction) of procuring entities and evaluation committees shall automatically suspend the procurement process from the date of publishing the decision of taking the proceedings of the claim by the court at the official procurement webpage until the date of entry into force of the final judicial act issued by the court of first instance based on the results of the investigation of the dispute. According to Part 2 of the same article, in cases where, due to the interests of public or defense and national security, it is necessary to continue the procurement process, the court, based on the written petition of the heads of the bodies, can issue a decision to lift the suspension of the procurement process.

In general, Armenian courts are overloaded with cases (too much cases per one judge). However, because of limited number of procurement appeals, the process of appeals reviewing, so far, is conducted without substantial delays.

Sub-indicator 13(c) – Decisions of the appeals body

This sub-indicator examines the decisions of the review body and what happens once they have been taken.

Based on Civil Procedure Code regulations, decisions are made based on the documentation provided by the complainant and the procurement case file. The decisions and the reasons are included in the decision protocol, which is fully accessible to the public⁵².

Part 2 of Article 13 of Civil Procedure Code states that the court conducts the trial, maintaining independence and impartiality, if necessary, during the investigation of the case in accordance with the procedure established by the Code, it clarifies the rights and responsibilities of the persons participating in the case, warns about the consequences of performing or not performing judicial actions, creates conditions for clarifying the factual circumstances of the case, examining the evidence comprehensively, fully and objectively.

The decision protocol for each complaint specifies the remedy applied and the reason. This is published in the procurement bulletin⁵³. Overall, all decisions of the appeal body are published

⁵² DataLex Judicial Information System, <https://datalex.am/>

⁵³ RA Ministry of Finance, Procurement System, www.procurement.am, www.gnumner.am

in the section of Judicial appeal on the procurement bulletin webpage⁵⁴ and in the centralized judicial information system⁵⁵.

The analyses show that all appeals decisions were posted at the procurement bulletin webpage within timelines specified in the law.

In 2022 during the period from June 1 to December 31, out of 72 complaints submitted to the court, 11 were satisfied, including partially, (15% of all submitted cases, decision in favor of applicant/supplier), 29 were rejected (40% of all submitted cases, decision in favor of procuring entity), and in case of the rest the claim was returned or the review was not completed.

As was already mentioned, during the mentioned period 6 cases were appealed in the Civil Review Court, from which only for one case the review was completed and final decision was issued (rejected).

Quantitative analysis to substantiate assessment of this indicator can be found in Annex 3.

Indicator 14. The country has ethics and anti-corruption measures in place

This indicator assesses i) the nature and scope of anti-corruption provisions in the procurement system and ii) how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

Summary of gaps and recommendations for Indicator 14

| Sub-indicator | Assessment criteria | Substantive gap | Risk classification | Recommendations |
|--|--|--|----------------------------|---|
| 14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties: The legal/regulatory framework provides for the following: | (a) definitions of fraud, corruption, and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements. | None of the Articles included in the list of corruption crimes of the current Criminal Code has provisions, which are specific to the manifestations of corruption (including fraud) in procurement. | | Introduce in PL provisions, which will specifically define the actions of corruption (including fraud) for which its perpetrators will bear criminal liability. |
| | (b) definitions of the | In the absence of provisions | | After introducing in PL provisions, which will |

⁵⁴ Ibid, https://gnumner.minfin.am/hy/page/datakan_kargov_boxoqarkumner_2023_am/

⁵⁵ DataLex Judicial Information System, <http://www.datalex.am>

| | | | | |
|-------------------------------|---|---|--|--|
| | 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. | specific to the manifestations of corruption (including fraud) in procurement, obviously, there could not be 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 (see also the gap analysis of assessment criterion 14(a)(a)). | | define specific actions of corruption, including fraud, 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 could also be introduced in PL. Currently, in PL there is only a declarative in nature provision stating that "Illegal actions of the procuring entity and supplier within the framework of the procurement process shall cause liability defined by law." (see Part 1 of Article 12 of PL). |
| | (c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials. | For companies, involved in single-source procurement procedure there is no explicit requirement of beneficial owners' disclosure. Definitions of affiliated persons is broader in sub-legislation (GoA Decree No. 526-N) than in PL, which can create contradictions. | | Extend the obligation of disclosure of beneficial owners also on companies, who are awarded contracts through single-source procurement procedure. Synchronize the definition of affiliated persons in PL and sub-legislation to avoid contradictions. |
| 14(c) Effective sanctions and | (b) There is evidence that this system is | There is no any legal act in Armenian | | After implementing the recommendation brought for assessment |

| | | | | |
|--|---|--|------|--|
| enforcement systems | systematically applied and reports are consistently followed up by law enforcement authorities. | legislation, which specifically defines manifestations of corruption (including fraud) in public procurement and penalties for their commitment. | | criterion 14(a)(a), oblige the Office of the Prosecutor General of the RA and MoF (as the authorized body for public procurement) to collect and present statistics on corruption (including fraud) in public procurement and investigation of those crimes. |
| | (c) There is a system for suspension/debarment that ensures due process and is consistently applied. | PL mentions only about "crimes against economic activity". However, corruption crimes occur not only in "economic activity." | | Extend the effect of provision of Point 3 of Part 1 of Article 6 to cover all corruption crimes defined in the list of corruption crimes in Appendix 1 of the Criminal Code. |
| | (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. | There is no legal act in Armenian legislation, which specifically defines manifestations of corruption (including fraud) in public procurement and penalties for their commitment. | | See Recommendation for criterion 14(c)(b) |
| 14(d) Anti-corruption framework and integrity training | (b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating | There is no mechanism in place and used for systematically identifying corruption risks and for mitigating these risks specifically in the public procurement cycle. | High | Pay increased attention by anti-corruption institutions regarding cases of corruption and fraud in public procurement, with the publication of statistical data on such cases. |

| | | | | |
|---|---|--|-----|---|
| | these risks in the public procurement cycle. | | | |
| | (c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually. | Corruption crimes in procurement are not specified, and, thus, there is no statistics on corruption-related legal proceedings and convictions. | | See Recommendation for criterion 14(c)(b) |
| | (d) Special measures are in place for the detection and prevention of corruption associated with procurement. | There are no special measures in place for the detection and prevention of corruption associated with procurement, as far as corruption in procurement is not specified. | | Develop and implement special measures for the detection and prevention of corruption specifically in public procurement. |
| | (e) Special integrity training programs are offered and the procurement workforce regularly participates in this training. | There is no special integrity training in place for procurement specialists. | Low | Training modules on integrity for procurement specialists should be developed and included in the certification process. |
| 14(e) Stakeholder support to strengthen integrity in procurement | (a) There are strong and credible civil society organizations that exercise | There are few CSOs operating in procurement and/or social audit and control, however there | | The government should be working toward a more active enabling environment for civil society engagement and feedback. |

| | | | | |
|---|---|--|--|---|
| | social audit and control. | are a few that are quite active. | | |
| | (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. | More active and open participation by civil society should be encouraged. | | |
| | (d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures. | There is no clear evidence that suppliers and business associations actively support integrity and ethical behavior in public procurement. | | Take measures to encourage suppliers and business associations support integrity and ethical behavior in public procurement |
| 14(g) Codes of conduct/codes of ethics and financial disclosure rules | (a) There is a code of conduct or ethics for government officials, with provisions for those involved in public financial | It was not possible to determine share of procuring entities that have a mandatory code of conduct or ethics, with provisions for those involved in public financial | | Develop and enforce sectoral code of conduct for those involved in public financial management, including procurement. |

| | | | | |
|--|--|--|--|--|
| | management, including procurement. | management, including procurement. | | |
| | (b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements. | It was not possible to determine share of officials involved in public procurement that have filed financial disclosure forms required by law. | | Maintain and publish statistics (also sectoral) on the fulfillment of the financial disclosure requirements stipulated by the legislation. |
| | (c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal. | The regulations do not define administrative or criminal liabilities as the consequences of failure to comply to the code of conduct or law. | | In addition to disciplinary sanctions, include administrative or criminal liabilities for non-compliance to several rules. |
| | (d) Regular training programs are offered to ensure sustained awareness and implementation of measures. | The scope of trainings is limited and more comprehensive approach is needed. | | Include ethics training as part of the certification training program for procurement specialists |
| | (e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, | There is no evidence on how the conflict-of-interest statements, financial disclosure forms and information on beneficial ownership is utilized by | | Maintain separate statistics specially for procurement officials regarding declarations or on beneficial ownership for companies acting as suppliers in procurement procedures. Maintain and publish statistics on monitoring |

| | | | | |
|--|---|---|--|--|
| | accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle. | decision-makers. There is no separate statistics specially for procurement officials regarding declarations or on beneficial ownership for companies acting as suppliers in procurement procedures. | | and investigation of conflict-of-interest statements and disclosure information. |
|--|---|---|--|--|

Sub-indicator 14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities, and penalties

This indicator assesses the existence of legal provisions that define fraudulent, corrupt, and other prohibited practices and set out the responsibilities and sanctions for government employees, individuals or firms indulging in such practices.

There are no definitions of fraud and corruption in the regulatory framework for procurement. Meanwhile, there are some provisions in other laws, which define issues related to corruption and conflict of interest.

On May 5, 2021 the NA adopted the new Criminal Code (entered into force on July 1, 2022), which replaced the old one adopted in 1998. Though, like the previous Code, the new one also does not contain the definition of corruption, however, unlike the previous Code, it includes the list of those articles, which are qualified as corruption crimes (see the list of corruption crimes in Appendix 1 of the Code).

Regarding the fraud, both the old and new Criminal Codes penalize it as a crime. In the new Code it is Article 255 (Fraud). Also, that Article is included in the above-mentioned list of corruption crimes, making fraud as one of the manifestations of corruption.

In addition, new PSL adopted on 23 March 2018 has Article 29, which provides that public servants are not allowed to receive gifts related to implementation of their official duties and clearly describes what should be considered as a gift and which gifts are allowed for acceptance. Article 33 of that Law defines what should be considered as conflict of interest and how to deal with it.

According to Point 2.b of Part 2 of Article 28 of PL, the bidders are required to disclose the beneficial owners of a company in their bid. The information provided by the selected bidder is published in Procurement Bulletin (see https://procurement.minfin.am/hy/page/shaheri_bakhman_bacakayutyun/ on conflict of interest related to tender evaluation commission members and secretary, as well as their affiliated persons, and https://procurement.minfin.am/hy/page/irakan_shaharuneri_tvyalner/ for the beneficial owners of a bidding companies). This provision mainly applies in the case of tenders, price quotation and e-auction procurement procedures. For companies, involved in

single-source procurement procedure there is no explicit requirement of beneficial owners' disclosure.

Conflict of interest related to bid evaluation commission members and secretary, as well as their affiliated persons, are covered under PL Article 33 (Part 6 and 7).

In addition, the concept of affiliated persons is defined in GoA Decree No. 526-N on approving the regulation on organizing the procurement procedure under Section 20 Points 119 and 120.

However, it should be mentioned that above mentioned definitions of affiliated persons can create contradictions, as far as the definition of affiliated person is broader in Decree than in PL.

In particular, Part 6 of Article 33 states that a member or the secretary of the evaluation commission may not participate in the activities of the evaluation commission, where at the bid opening session it appears that the organization founded thereby or the organization wherein he or she holds a share, or the person with whom they are linked by kinship or in-law relationships (parent, spouse, child, brother, sister as well as parent-in-law, spouse's child, spouse's brother and spouse's sister), or the organization founded by that person or the organization wherein that person holds a share has submitted a bid to participate in the procedure concerned.

Meanwhile, Point 119 of GoA Decree No. 526-N states that:

1) natural persons shall be deemed affiliated, if they are members of the same family or run a common house or a joint business activity or act in accord based on common economic interest;

2) natural persons and legal entities shall be deemed affiliated, if they have acted in concord based on common economic interests or if the natural person concerned or the member of his/her family is a holder in the legal entity concerned disposing more than ten percent of the shares; a person who can predetermine the decisions of the legal entity in other ways not prohibited by the RA legislation; is the chair of the board, the vice-chair of the board, member of the board, chief executive officer, his/her deputy, chair, member of the collegial body performing functions of an executive body in the legal entity concerned; and such employee of the legal entity who works under immediate supervision of the chief executive officer or has material influence in decision-making by the governance bodies of the legal person.

Definition of family members is presented in Point 120 of Decree and is alike PL (father, mother, spouse, spouse's parents, grandfather, grandmother, sister, brother, children, spouse or children of the sister or brother).

Post-employment restriction (cooling-off period for former public officials) is outlined in the PSL under Point 7 of Part 1 of Article 32.1.7, which states that public officials within one year following the release from their offices are prohibited to be admitted to work with the employer or become the employee of the organization over which they have exercised immediate supervision in the last year of their tenure.

Sub-indicator 14(b) – Provisions on prohibited practices in procurement documents

This sub-indicator assesses the extent to which the law and the regulations compel procuring agencies to include references on fraud, corruption and other prohibited practices, conflict

of interest and unethical behavior, as defined in the law in the procurement and contract documents.

The procurement legislation includes requirements for procuring agencies to include references on prohibited practices and conflict of interest in procurement documents (Part 1 of Article 6).

There is legal requirement for bidders to issue a self-declaration assuring that the bidder has not engaged in prohibited practices (Point 2.a of Part 2 of Article 28 of PL).

Standard procurement documents contain fraud and corruption provisions. The invitation of procurement contains provisions (Section 2.1), which are directly taken from Part 1 of Article 6 of PL on eligibility for participation in procurement. The provision states that those persons who have been convicted for financing of terrorism, child exploitation or a crime involving human trafficking, creation of a criminal association or participation therein, receiving a bribe, giving a bribe or mediation in bribery and crimes against economic activity are not eligible to participate in procurement.

Point 2.a of Part 2 of Article 28 of PL, the bidder should submit in the bid a statement certified thereby on the absence of abuse of the dominant position and an anti-competitive agreement.

Sub-indicator 14(c) – Effective sanctions and enforcement systems

This indicator concerns the enforcement of the law and the ability to demonstrate this by actions taken.

Part 2 of Article 12 of PL provides that where an unlawful act within the framework of the procurement process is detected, which is committed by the bidder or a representative of management body thereof, the contracting authority shall, on the day of its emergence, notify law enforcement bodies about that in writing.

In general, allegations of fraud, corruption, and other prohibited practices, including in procurement, can be reported also through applying whistle-blower mechanism, which is provided by the Law on Whistleblowing System.

Finally, the Human Rights Defender has a specialized department in charge of receiving complaints from business sector.

There is no such evidence, as in the annual statements on corruption crime investigations prepared by the Office of the Prosecutor General of the RA⁵⁶, which presents the most comprehensive statistics on corruption crimes and their investigation in Armenia, these statistics is presented by the Armenian Criminal Code articles for each type of corruption crime, and, as it has been already mentioned (see gap analysis for assessment criterion 14(a)(a)), these articles do not include provisions, which are specific to the manifestations of corruption (including fraud) in public procurement.

PL provision on eligibility for participation in procurement states that those persons who have been convicted for receiving bribe, giving bribe or mediation in bribery and crimes against economic activity are not eligible to participate in procurement (Points 3 and 4 of Part 1 of Article 6) .

⁵⁶ RA Prosecutor's Office See, <https://prosecutor.am/dynamicWebPages/report1>

Debarment based on prohibited practices like fraud and corruption is dealt with by the judicial system under the Criminal Code.

Provisions related to fraud and corruption issues and sanction mechanisms are defined under several articles of the Criminal Code (see the list of corruption crimes in Appendix 1 of the Code).

Sub-indicator 14(d) – Anti-corruption framework and integrity training

This sub-indicator attempts to verify whether an anti-corruption framework is in effect, and if so, its extent and nature and any other special measures in place, such as integrity training programs that can help prevent and/or detect fraud and corruption specifically associated with public procurement.

Armenia adopted the current CSL and PSL on 23 March 2018, changing the system of civil service management, widening the scope of civil service, enhancing the merit-based recruitment, and improving the integrity framework for public servants, including the regulations on conflict of interest, codes of ethics, asset declarations and ethics commissions. These laws constitute a major step forward towards the civil service reform in Armenia in line with the European standards.

Other important changes were the adoption of the Law on the Commission for the Prevention of Corruption to replace the Ethics Commission for High-Ranking Officials, Law on Anti-corruption Committee, Law on the Confiscation of Property Having Illegal Origin (Law on Asset Recovery) and the adoption of the Law on Whistleblowing. Following the adoption of the law on whistleblower protection, an electronic system of reporting was developed and a wide-ranging awareness campaign was launched to boost reporting. Finally, the major outcome of the Anti-corruption Strategy and Its 2019-2022 Action Plan was the creation of the institutional system of specialized anti-corruption state bodies, aimed at the effective implementation of the anti-corruption legislation, as well as prevention and detection of corruption in Armenia. Finally, Armenia being member of the Istanbul Action Plan of OECD Anti-corruption Network and GRECO, undertook commitments to implement anti-corruption recommendations (including those Istanbul Action Plan recommendations, which relate to integrity in procurement) developed by the experts of these organizations for Armenia. Currently, implementation of these recommendations is in process.

There is no mechanism in place and used for systematically identifying corruption risks and for mitigating these risks specifically in the public procurement cycle.

The statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually (see also quantitative analysis for criterion 14(c)).

The assessors did not identify any special measure to detect and prevent corruption associated with procurement.

There are no special integrity training programs offered to the procurement workforce, and the trainings for procurement specialists had no special module focused on integrity issues.

Sub-indicator 14(e) – Stakeholder support to strengthen integrity in procurement

This indicator assesses the strength of the public and the private sector in maintaining a sound procurement environment. This may be made manifest in the existence of respected and credible civil

There are only a small number of civil society organizations and activists that have procurement in their area of focus. The most active of these include the Armenian chapter of Transparency International (Transparency International Anti-corruption Center NGO) and National Center of Public Policy Research NGO. Different NGOs have their contribution in activities envisaged by OGP Action plan.

There are also some independent media agencies (in particular, <https://hetq.am/hy> run by the Association of Investigative Journalists of Armenia) that are active in investigating and publishing stories in this area.

One reason for the low level of civil society engagement seems to be the difficulty for CSOs to mobilize resources for their work, partially, because of low interest of potential donors to the topic of procurement.

There is evidence that the government wishes to promote engagement with and receive feedback from civil society.

The government organizes discussions with the CSOs regarding different issues such as procurement legislation reforms. They are encouraged to present their suggestions on this issue.

However, as regards the effectiveness, it seems that more active and open participation by civil society should be encouraged.

As also mentioned under sub-indicator 11(a), there is evidence that in the procurement area, civil society does contribute to improved integrity in procurement, for example through their suggestions and findings.

There is no clear evidence that suppliers and business associations actively support integrity and ethical behavior in public procurement.

Sub-indicator 14(f) – Secure mechanisms for reporting prohibited practices or unethical behavior

This sub-indicator assesses the following: i) whether the country provides, through its legislation and institutional set-up, a system for reporting fraudulent, corrupt, or other prohibited practices or unethical behavior; and ii) whether such legislation and systems provide for confidentiality and the protection of whistle-blowers.

Law on Whistleblowing System provides for two channels of reporting: internal (reporting to his/her immediate supervisor or the supervisor of his/her immediate supervisor) and external (reporting to the corresponding competent state body) (Articles 4, 6 and 7). In addition, anonymous whistleblowing is possible through the unified electronic platform⁵⁷ (Articles 8 and 9).

Additionally, the Human Rights Defender has a specialized department in charge of receiving complaints from business sector.

⁵⁷ Unified Electronic Platform for Whistle-Blowing, www.azdararir.am

The legal framework includes whistle-blower protection for all public servants and principles of conduct and ethics for all public servants (Law on Whistleblowing System, Chapters 5-7).

There is evidence that a functioning system serves to follow up on disclosures. In particular, the statistics presented on the above mentioned unified electronic platform for whistleblowing show that about 55% of reports submitted through this platform were checked by operational-investigative actions and about 17% criminal cases were commenced out of these checked reports.

Sub-indicator 14(g) – Codes of conduct/codes of ethics and financial disclosure rules

This sub-indicator examines the presence and use of codes of conduct and other measures to ensure integrity in public procurement.

In general, public officials follow the general ethics rules in place for all public and civil servants, which are defined by the PSL and CSL. The legislation envisages three different codes of conduct (Parts 4-7 of Article 28 and Part 5 of Article 54 of the PSL) for public officials, for civil servants and a model code of conduct for special categories of public servants, such as members of Parliament, judges, prosecutors, and investigators. If such special codes are not elaborated by relevant bodies, general provisions from the PSL are applied (Part 5 of Article 54 of PSL).

As stipulated by the PSL and Law on Corruption Prevention Commission (adopted in June 9, 2017) Model Code of Conduct for Public Servants was issued by the decision of Corruption Prevention Commission (CPC) (June 17, 2022). Later, in 2023, Guide to the Interpretation of the Model Code of Conduct for Public Servants was developed and published by the CPC⁵⁸, which also contains cases for those involved in public financial management, including procurement.

The model code is the basis for the development of similar codes of conduct for individual types of public service by relevant bodies of public authority based on the specifics of service in those bodies.

To make the process of development and enforcement of sectoral codes of conduct easier, in 2023 the CPC developed the Guidelines on the Development and Implementation of Draft Sectoral Code of Conduct for Public Servants.

Nevertheless, it was not possible to determine share of procuring entities that have a mandatory code of conduct or ethics, with provisions for those involved in public financial management, including procurement. Articles 34-43 of the PSL ensures the obligation for public officials and senior civil servants to disclose the property, income, interests, and expenditures through the declaration of property, income, interests, and expenditures. The obligation to submit declarations applies to persons holding public positions and to senior civil servants, as well as to senior positions in the police, tax, customs, penitentiary and judicial compulsory enforcement services.

According to the report on the activities of CPC for 2023⁵⁹, 8352 public officials have presented declarations, but it is not clear whether it is full number required by law.

⁵⁸ Guide to the Interpretation of the Model Code of Conduct for Public Servants, https://drive.google.com/file/d/1Qxi3E_rAu3Wlf1xM3mHp7FcjouyKeNq1/view

⁵⁹ Report on the activities of CPC for 2023, <http://cpcarmenia.am/files/legislation/1390.pdf>

In addition, it was not possible to determine share of officials involved in public procurement that have filed financial disclosure forms. The PSL also clearly stipulates that the violation of the rules of code of conduct may entail disciplinary sanctions (Part 9 of Article 28). The procedures related to violation of the rules of conduct, incompatibility requirements, other restrictions, conflict of interest and gifts should be conducted by ad hoc ethics commission for civil servants to be formed for each separate case (Articles 33-36 of CSL) and by ethics commissions in public bodies for other public servants (Articles 44-46 of PSL). Integrity officers are mandated to provide advice on the issues of conflict of interest and initiate the creation of ethics commission when there are grounds for disciplinary action.

Thus, the regulations do not define administrative or criminal liabilities as the consequences of any failure to comply to the code of conduct or law.

Article 46 of the LCS states that integrity affairs organizers are responsible for identifying training needs regarding integrity affairs and developing training programs, as well as other programs to observe integrity requirements.

However, it was not possible to determine whether this happens in practice.

According to the report on the activities of CPC for 2023, several trainings were conducted mainly for integrity affairs organizers (in Training of Trainers (ToT) format by CPC in cooperation with Ministry of Justice and Civil Service Office.

Nevertheless, it seems that the scope of trainings is limited and more comprehensive approach is needed.

In practice, declarations on property, income, interests, and expenditures are systematically filed and are accessible to public through the official website of the CPC⁶⁰ who is responsible for the collection and verification of those declarations. Information on beneficial ownership is presented through a special register of the State Register. It is difficult to assess to what extent that information is accurate.

According to the report on the activities of CPC for 2023, some monitoring of declarations is implemented and media publications regarding such issues are considered.

However, there is no evidence on how the mentioned information is utilized by decision-makers. It should also be mentioned that there is no separate statistics specially for procurement officials regarding declarations or on beneficial ownership for companies acting as suppliers in procurement procedures.

⁶⁰ Ibid, <http://cpcarmenia.am/hy/>

4. CONSOLIDATED RECOMMENDATIONS

Pillar I - Legal, Regulatory and Policy Framework

- Provide guidance as to the use of non-price attributes in award criteria.
- Study the best practices and choose alternative solution for appeal system in addition to the judicial review.
- Take measures to improve and standardize model procurement documents.
- Develop a unified, official, comprehensive Public Procurement Manual detailing all procedures for the correct implementation of procurement regulations and laws.
- Develop policy/strategy to implement SPP. Include provisions on sustainability (economic, environmental, and social criteria) in procurement legislation.

Pillar II - Institutional Framework and Management Capacity

- Extend the provision in PL requiring preparation of procurement plans for the acquisition of items carried out at the expense of municipal budget funds.
- Eliminate or limit the opportunity of the initiation of procurement procedures without availability of funds.
- Include public procurement monitoring within the functions of the authorized body
- Create machine-readable, open data- and open code-based statistical databases on procurement data.
- Organize integrity trainings also for invited persons, who work as procurement coordinators.
- Conduct a more detailed institutional analysis of the body and prepare recommendations on staffing levels and functions.
- Consider in PL assigning to other unit of the Government the functions of procuring entity for the procurement of the MoF. The most relevant candidate for that role could be the Office of the Prime Minister.
- Expand the use/application of centralized procurement.
- Take adequate steps for implementation of the objectives defined in the Concept of Development of the Procurement System and its Action Plan, which stipulates modernizing the e-procurement system and expanding the circle of procuring entities operating the system.
- Consider the publication of data in open and structured machine-readable format in the context of modernizing the e-procurement system
- Develop a roadmap for the development of the e-Procurement systems and include sustainability issues in the plan.
- Decrease the use of manual operations in the new e-procurement system and improve the skills of procurement staff to meet the requirements of digital technology.
- Establish a public record-keeping system on SME participation in public procurement, maintain and publish statistics.
- Publish all data in machine readable format.
- Expand the report function to have the facility to design and generate reports for specific requirements.
- Analyze the public procurement skills of contracting authorities and economic operators, identify their training needs and prepare a training strategy to meet them.

- Include the issue of sustainability of training materials as part of the strategy for professional development of procurement specialists and other stakeholders involved in public procurement.
- Update the online training courses.
- Take steps to implement the targets regarding capacity development in the Concept of Development of the Procurement System and its Action Plan.
- Analyze the public procurement skills of contracting authorities and economic operators, identify their training needs and prepare a training strategy to meet them.
- Include in the strategy for professional development the defined career path for procurement with job descriptions at different levels and requisite qualifications and competencies specified.
- Analyze the public procurement skills of contracting authorities and economic operators, identify their training needs and prepare a training strategy to meet them.
- Conduct a study of international good practice relating to performance measurement of public procurement systems and develop and implement recommendations.
- Develop a monitoring and reporting system for implementation of the Action Plan of the Concept of Development of the Procurement System.
- Review and clearly define responsibilities in the Action Plan of the Concept of Development of the Procurement System.

Pillar III - Public Procurement Operations and Market Practices

- Develop training materials and conduct training on procurement strategy development including needs analysis and market research.
- Develop procurement manual and include guidance on procurement strategy development such as needs analysis and market research in it.
- Develop training materials and conduct training on requirement definition using output/ outcome-based (functional) specifications.
- Take steps for standardization of procurement documents
- Review international good practice on sustainable procurement and incentive clauses in contracts, develop and implement recommendations.
- Consider the mandatory requirement for publication of data regarding contract amendments and contract implementation in machine readable format, when developing new e-procurement system. Ensure the completeness and accessibility of records in a single file.
- Explore how linkages with other systems can be improved to facilitate invoice payment and avoid delay in it, when developing new e-procurement portal.
- Develop a modern electronic system that meets all the requirements to measure and improve procurement practices.
- Make frequent use of institutionalized mechanisms for cooperation and consultation with private sector, such as advisory boards and working groups.
- Develop government programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.
- Dialogue with business associations and develop action plan to improve perceptions and address constraints.

- Raise contracting authorities' skills in preparing and carrying out procurement with greater focus on value for money, using simple and practical approaches tailored to the supply market in question.
- Consider identifying key sectors in procurement, when developing a strategy for centralized/collaborative procurement.

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

- Engage with relevant stakeholders to implement mechanisms to develop the capacity of them for understanding, monitoring, and improving public procurement (authorized body). Be more proactive in seeking input, comments, and feedback from civil society.
- Include provisions in legislation, which will allow the engagement of civil society in procurement planning process through consultations, participation in bid opening, evaluation, and contract award process when appropriate.
- Improve regulations and practices regarding the participation of citizens and civil society in public monitoring, in addition to further improvement of data publication in e-procurement system.
- Strengthen/establish the new mechanisms of responsibility of the officials who do not implement the audit recommendations. This could be linked to budgeting process.
- Maintain a continuous training process for auditors in the field of public procurement.
- Strengthen the skills to perform performance audits in the field of public procurement
- Implement mechanisms that will effectively neutralize delays in admission and examination of complaints in courts for various reasons, including intentional ones
- Review the amount of fees for submission of appeals in order not to unnecessarily hinder the opportunity for appealing.
- Implement mechanisms that will effectively neutralize delays in admission and examination of complaints in courts for various reasons, including intentional ones
- Introduce provisions in PL, which will specifically define the actions of corruption (including fraud) for which its perpetrators will bear criminal liability. After it, 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 could also be introduced in PL, as far as currently, there is only a declarative in nature provision stating that "Illegal actions of the procuring entity and supplier within the framework of the procurement process shall cause liability defined by law." (Part 1 of Article 12 of PL).
- Extend the obligation of disclosure of beneficial owners also on companies, who are awarded contracts through single-source procurement procedure. Synchronize the definition of affiliated persons in PL and sub-legislation to avoid contradictions.
- Oblige the Office of the Prosecutor General of the RA and MoF to collect and present statistics on corruption (including fraud) in public procurement and investigation of those crimes, after implementing provisions in PL, which will specifically define the actions of corruption (including fraud) with bearing criminal liability.
- Extend the effect of provision of Point 3 of Part 1 of Article 6 to cover all corruption crimes defined in the list of corruption crimes in Appendix 1 of the Criminal Code.
- Pay increased attention by anti-corruption institutions regarding cases of corruption and fraud in public procurement, with the publication of statistical data on such cases.

- Develop and implement special measures for the detection and prevention of corruption specifically in public procurement.
- Develop and include in the certification process training modules on integrity for procurement specialists.
- Work toward a more active enabling environment for civil society engagement and feedback.
- Take measures to encourage suppliers and business associations support integrity and ethical behavior in public procurement
- Develop and enforce sectoral code of conduct for those involved in public financial management, including procurement.
- Maintain and publish statistics (also sectoral) on the fulfillment of the financial disclosure requirements stipulated by the legislation.
- Include administrative or criminal liabilities for non-compliance to several rules in addition to disciplinary sanctions.
- Include ethics training as part of the certification training program for procurement specialists
- Maintain separate statistics specially for procurement officials regarding declarations or on beneficial ownership for companies acting as suppliers in procurement procedures.
- Maintain and publish statistics on monitoring and investigation of conflict-of-interest statements and disclosure information.

ANNEXES/APPENDICES

Annex 1: Assessment results by indicator, sub-indicator and assessment criteria

Assessment Result Summary

| MAPS Pillar | Criteria | | | | Total |
|---|----------------------|------------------|--------------------------|-------------------|-------|
| | Substantially Met | Partially Met | Substantially Not Met | Not Applicable | |
| Pillar I: Legal, Regulatory, and Policy Framework | 54 | 5 | 4 | 4 | 67 |
| Pillar II: Institutional Framework and Management Capacity | 26 | 22 | 3 | 4 | 55 |
| Pillar III: Public Procurement Operations and Market Practices | 7 | 13 | 5 | 1 | 26 |
| Pillar IV: Accountability, Integrity, and Transparency of the Public Procurement System | 32 | 27 | 3 | - | 62 |
| Total | 119 | 67 | 15 | 9 | 210 |

Color Code:

1. Criterion Substantially Met – Green
2. Criterion Partially Met – Yellow
3. Criterion Substantially Not Met – Red
4. Criterion Not Applicable – Blue

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

| Assessment criteria |
|--|
| (a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established. |
| (b) It covers goods, works, and services, including consulting services for all procurement using public funds. |
| (c) PPPs, including concessions, are regulated. |
| (d) Current laws, regulations and policies are published and easily accessible to the public at no cost. |

1(b) Procurement methods

| Assessment criteria |
|---|
| (a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used. |
| (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. |
| (c) Fractioning of contracts to limit competition is prohibited. |
| (d) Appropriate standards for competitive procedures are specified. |

1(c) Advertising rules and time limits

| Assessment criteria |
|---|
| (a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified. |
| (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. |
| (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). |
| (b) The content published includes enough information to allow potential bidders to determine whether they can submit a bid and are interested in submitting one. |

1(d) Rules on participation

| Assessment criteria |
|--|
| (a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions. |
| (b) It ensures that there are no barriers to participation in the public procurement market. |
| (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. |
| (d) It establishes rules for the participation of state-owned enterprises that 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. |

1(e) Procurement documentation and specifications

| Assessment criteria |
|--|
| (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. |
| (b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate. |
| (c) It requires recognition of standards that are equivalent, when neutral specifications are not available. |
| (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). |

1(f) Evaluation and award criteria

| Assessment criteria |
|--|
| (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 based on the criteria stipulated in the documents. |
| (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. |
| (c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined. |
| (d) The way evaluation criteria are combined, and their relative weight determined should be clearly defined in the procurement documents. |
| (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. |

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

| Assessment criteria |
|--|
| (a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission. |
| (b) Records of proceedings for bid openings are retained and available for review. |
| (c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts. |
| (d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework. |
| (e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders. |

1(h) Right to challenge and appeal

| Assessment criteria |
|--|
| (a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity. |
| (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 establish the right for judicial review. |
| (c) Rules establish the matters that are subject to review. |
| (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. |
| (e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information. |
| (f) Decisions by the independent appeals body can be subject to higher-level review (judicial review). |

1(i) Contract management

| Assessment criteria |
|---|
| (a) Functions for undertaking contract management are defined and responsibilities are clearly assigned. |
| (b) Conditions for contract amendments are defined, ensure economy, and do not arbitrarily limit competition. |
| (c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract. |
| (d) The outcome of a dispute resolution process is enforceable. |

1(j) Electronic Procurement

| Assessment criteria |
|---|
| (a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially. |
| (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. |
| (c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically. |

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

| Assessment criteria |
|--|
| (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. |
| (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. |
| (c) There are established security protocols to protect records (physical and/or electronic). |

1(l) Public procurement principles in specialized legislation

| Assessment criteria |
|---|
| (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. |
| (b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate. |
| (c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned. |

Indicator 2. Implementing regulations and tools support the legal framework

2(a) Implementing regulations to define processes and procedures

| Assessment criteria |
|--|
| (a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law. |
| (b) The regulations are clear, comprehensive, and consolidated as a set of regulations readily available in a single accessible place. |
| (c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly. |

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

| Assessment criteria |
|--|
| (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. |
| (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. |
| (c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned. |

2 (c) Standard contract conditions

| Assessment criteria |
|---|
| (a) There are standard contract conditions for the most common types of contracts, and their use is mandatory. |
| (b) The content of the standard contract conditions is generally consistent with internationally accepted practice. |
| (c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings. |

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

| Assessment criteria |
|---|
| (a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws. |
| (b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly. |

Indicator 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 |
|---|
| (a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives. |
| (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. |
| (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. |
| (d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money. |

3(b) Obligations deriving from international agreements.

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

| Assessment criteria |
|---|
| (a) clearly established |
| (b) consistently adopted in laws and regulations and reflected in procurement policies. |

Pillar II. Institutional Framework and Management Capacity

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

4(a) Procurement planning and the budget cycle

| Assessment criteria |
|---|
| (a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning. |
| (b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period). |
| (c) A feedback mechanism reporting on budget execution is in place, regarding the completion of major contracts. |

4(b) Financial procedures and the procurement cycle

| Assessment criteria |
|---|
| (a) No solicitation of tenders/proposals takes place without certification of the availability of funds. |
| (b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders. |

Indicator 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

| Assessment criteria |
|---|
| (a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities' formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government. |

5(b) Responsibilities of the normative/regulatory function

| Assessment criteria |
|--|
| (a) providing advice to procuring entities |
| (b) drafting procurement policies |
| (c) proposing changes/drafting amendments to the legal and regulatory framework |
| (d) monitoring public procurement |
| (e) providing procurement information |
| (f) managing statistical databases |
| (g) preparing reports on procurement to other parts of government |
| (h) developing and supporting implementation of initiatives for improvements of the public procurement system |
| (i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement |
| (j) supporting the professionalization of the procurement function (e.g. 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 |

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

| Assessment criteria |
|--|
| (a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government. |
| (b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing. |
| (c) The institution's internal organization, authority and staffing are sufficient and consistent with its responsibilities. |

5(d) Avoiding conflict of interest

| Assessment criteria |
|--|
| (a) The normative/regulatory institution has a system in place to avoid conflicts of interest. |

Indicator 6. Procuring entities and their mandates are clearly defined

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

| Assessment criteria |
|---|
| (a) Procuring entities are clearly defined. |
| (b) Responsibilities and competencies of procuring entities are clearly defined. |
| (c) Procuring entities are required to establish a designated, specialized procurement function with the necessary management structure, capacity and capability. |
| (d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved. |
| (e) Accountability for decisions is precisely defined. |

6(b) Centralized procurement body

| Assessment criteria |
|---|
| (a) The country has considered the benefits of establishing a centralized 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. |
| (c) The centralized procurement body's internal organization and staffing are sufficient and consistent with its responsibilities. |

Indicator 7. Public procurement is embedded in an effective information system

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

| Assessment criteria |
|---|
| (a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results, and performance. |
| (b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost. |
| (c) The information system provides for the publication of: <ul style="list-style-type: none">• procurement plans• information related to specific procurements, at a minimum, advertisements /notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments, and appeals decisions• linkages to rules and regulations and other information relevant for promoting competition and transparency. |
| (d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full |

set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).

(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format)

(f) Responsibility for the management and operation of the system is clearly defined.

7(b) Use of e-Procurement

| Assessment criteria |
|--|
| (a) E-procurement is widely used or progressively implemented in the country at all levels of government. |
| (b) Government officials have the capacity to plan, develop and manage e-Procurement systems. |
| (c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems. |
| (d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology. |
| (e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment. |

7(c) Strategies to manage procurement data

| Assessment criteria |
|---|
| (a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology. |
| (b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency, and economy of procurement and compliance with requirements. |
| © The reliability of the information is high (verified by audits). |
| (d) Analysis of information is routinely carried out, published, and fed back into the system. |

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

8(a) Training, advice, and assistance

| Assessment criteria |
|--|
| (a) substantive permanent training programs of suitable quality and content for the needs of the system. |
| (b) routine evaluation and periodic adjustment of training programs based on feedback and need. |
| © advisory service or help desk function to resolve questions by procuring entities, suppliers, and the public. |
| (d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement. |

8(b) Recognition of procurement as a profession

| Assessment criteria |
|--|
| (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. |
| (b) Appointments and promotion are competitive and based on qualifications and professional certification. |
| (c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided. |

8(c) Monitoring performance to improve the system

| Assessment criteria |
|--|
| (a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects. |
| (b) The information is used to support strategic policy making on procurement. |
| (c) Strategic plans, including results frameworks, are in place and used to improve the system. |
| (d) Responsibilities are clearly defined. |

Pillar III. Public Procurement Operations and Market Practices

Indicator 9. Public procurement practices achieve stated objectives

9(a) Planning

| Assessment criteria |
|---|
| (a) Needs analysis and market research guide a proactive identification of optimal procurement strategies. |
| (b) The requirements and desired outcomes of contracts are clearly defined. |
| (c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money. |

9(b) Selection and contracting

| Assessment criteria |
|--|
| (a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process. |
| (b) Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors. |
| (c) Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework. |
| (d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed. |
| (e) Throughout the bid evaluation and award process, confidentiality is ensured. |
| (f) Appropriate techniques are applied, to determine best value for money based on the |

| |
|--|
| criteria stated in the procurement documents and to award the contract. |
| (g) Contract awards are announced as prescribed. |
| (h) Contract clauses include sustainability considerations, where appropriate. |
| (i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance. |
| (j) The selection and award process are carried out effectively, efficiently and in a transparent way. |

9(c) Contract management

| Assessment criteria |
|---|
| (a) Contracts are implemented in a timely manner. |
| (b) Inspection, quality control, supervision of work and final acceptance of products is carried out. |
| (c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. |
| (d) Contract amendments are reviewed, issued, and published in a timely manner. |
| (e) Procurement statistics are available and a system is in place to measure and improve procurement practices. |
| (f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized. |
| (g) The records are complete and accurate, and easily accessible in a single file. |

Indicator 10. The public procurement market is fully functional

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

| Assessment criteria |
|---|
| (a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government. |
| (b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace. |

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

| Assessment criteria |
|--|
| (a) The private sector is competitive, well-organized, willing, and able to participate in the competition for public procurement contracts. |
| (b) There are no major systemic constraints inhibiting private sector access to the public procurement market. |

10(c) Key sectors and sector strategies

| Assessment criteria |
|---|
| (a) Key sectors associated with the public procurement market are identified by the government. |

(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.

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

Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

11(a) Enabling environment for public consultation and monitoring

| Assessment criteria |
|---|
| (a) A transparent and consultative process is followed when formulating changes to the public procurement system. |
| (b) Programs are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement. |
| (c) There is ample evidence that the government considers the input, comments and feedback received from civil society. |

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

| Assessment criteria |
|--|
| (a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation. |

11(c) Direct engagement of civil society

| Assessment criteria |
|---|
| (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). |
| (b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation, and monitoring. |

Indicator 12. The country has effective control and audit systems

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

| Assessment criteria |
|---|
| (a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits, and oversight by legal bodies |
| (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. |
| (c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation. |

| |
|--|
| (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. |
| (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). |
| (f) clear mechanisms to ensure that there is follow-up on the respective findings. |

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

| Assessment criteria |
|--|
| (a) There are written procedures that state requirements for internal controls, ideally in an internal control manual. |
| (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. |
| (c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with. |
| (d) Clear and reliable reporting lines to relevant oversight bodies exist. |

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

| Assessment criteria |
|---|
| (a) Recommendations are responded to and implemented within the time frames established in the law. |
| (b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations. |

12(d) Qualification and training to conduct procurement audits

| Assessment criteria |
|---|
| (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. |
| (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. |
| (c) Auditors are selected in a fair and transparent way and are fully independent. |

Indicator 13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

| Assessment criteria |
|---|
| a) Decisions are rendered based on available evidence submitted by the parties. |
| (b) The first review of the evidence is carried out by the entity specified in the law. |
| (c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. |
| (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. |

13(b) Independence and capacity of the appeals body

| Assessment criteria |
|--|
| (a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions. |
| (b) does not charge fees that inhibit access by concerned parties. |
| (c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available. |
| (d) exercises its legal authority to suspend procurement proceedings and impose remedies. |
| (e) issues decisions within the time frame specified in the law/regulations* |
| (f) issues decisions that are binding on all parties. |
| (g) is adequately resourced and staffed to fulfil its functions. |

13(c) Decisions of the appeals body

| Assessment criteria |
|--|
| (a) based on information relevant to the case. |
| (b) balanced and unbiased in consideration of the relevant information. |
| (c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures. |
| (d) decisions are published on the centralized government online portal within specified timelines and as stipulated in the law. |

Indicator 14. The country has ethics and anti-corruption measures in place

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

| Assessment criteria |
|--|
| (a) definitions of fraud, corruption, and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements. |
| (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. |
| (c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials. |

14(b) Provisions on prohibited practices in procurement documents

| Assessment criteria |
|--|
| (a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents. |
| (b) Procurement and contract documents include provisions on fraud, corruption, and other prohibited practices, as specified in the legal/regulatory framework. |

14(c) Effective sanctions and enforcement systems

| Assessment criteria |
|---|
| (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. |
| (b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities. |
| (c) There is a system for suspension/debarment that ensures due process and is consistently applied. |
| (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. |

14(d) Anti-corruption framework and integrity training

| Assessment criteria |
|--|
| (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. |
| (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. |
| (c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually. |
| (d) Special measures are in place for the detection and prevention of corruption associated with procurement. |
| (e) Special integrity training programs are offered and the procurement workforce regularly participates in this training. |

14(e) Stakeholder support to strengthen integrity in procurement

| Assessment criteria |
|---|
| (a) There are strong and credible civil society organizations that exercise social audit and control. |
| (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. |
| (c) There is evidence that civil society contributes to shape and improve integrity of public procurement. |
| (d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures. |

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

| Assessment criteria |
|---|
| (a) There are secure, accessible, and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior. |
| (b) There are legal provisions to protect whistle-blowers, and these are considered effective. |
| (c) There is a functioning system that serves to follow up on disclosures. |

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

| Assessment criteria |
|--|
| (a) There is a code of conduct or ethics for government officials, with provisions for those |

| |
|---|
| involved in public financial management, including procurement. |
| (b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements. |
| (c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal. |
| (d) Regular training programs are offered to ensure sustained awareness and implementation of measures. |
| (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. |

Annex 2: Findings from review of selected procurement procedures and contract files

Number of procurement procedures analyzed – 54

| Procurement procedure | 2021 | 2022 |
|------------------------------|-------------|-------------|
| Open tender | 9 | 9 |
| Price quotation | 9 | 9 |
| E-auction | 9 | 9 |

Analyses were implemented for two periods (2021 and 2022 years) and the selection of procurement procedures was based on the date of publication of the notice and invitation of procurement at the official procurement webpage (www.gnumner.am).

In total 54 procedures were randomly selected, 27 for each of the periods analyzed. These 27 procedures were selected from three forms of procurement-open tender, price quotation and e-auction (9 procedures for each). Among each form of procurement, procedures were selected for goods, services, and works (3 procedures for each).

Sub-indicator 9 (b) Selection and contracting

Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework

The contracting authorities have the obligation to justify the choice of procurement method/form, indicating the legal norms that identify under what conditions procedures can be applied.

The analysis of published documents for selected procurement procedures show that all procurement methods were chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework.

In case of open tender, the contracting authorities justified the choice by indicating mainly provisions from Article 20 of PL (Conditions for applying open tender). For the choice of the price quotation form, provisions from Article 22 of PL were mentioned (Conditions for applying price quotation). In case of e-auction form the justification of the choice was based on provisions from Article 40 of PL (Conditions for holding electronic auction).

Contract awards are announced as prescribed

According to Article 10 of PL (Part 1 and 2), prior to the conclusion of contract, the contracting authority shall publish in the bulletin a notice regarding the decision on conclusion of a contract no later than the first working day following the adoption of decision on the selected bidder. The decision on conclusion of a contract shall contain brief information on evaluation of bids and reasons justifying the selection of the bidder, and a statement on a standstill period.

For all analyzed procedures the contracting authorities have published the notice regarding the decision on conclusion of a contract following legal requirements.

In addition, Part 5 of Article 10 of PL requires that the contracting authority shall conclude the contract, where no bidder appeals against the decision on conclusion of a contract within a standstill period (10 calendar days).

The contracting authority shall publish a notice on the concluded contract in the bulletin no later than the first working day following conclusion of the contract (Part 1 of Article 11 of PL).

According to the analyzed data, the standstill period prior to contract conclusion was respected for all the procedures. However, in case of two procurement procedures the notices on the concluded contract could not be found in the bulletin, while the notices regarding the decision on conclusion of a contract were published.

Contract clauses include sustainability considerations, where appropriate

No contract analyzed contains any sustainability clauses. Even though legislation allows the use of non-price criteria for determination of winning bidders (Point 2 of Part 2 of Article 34 of PL), sustainability considerations are rarely included in public contracts.

Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance

Most often, there are some general provisions in the contracts, which oblige certain quality requirements to be respected, and in case of violation of contractual conditions occur penalties (at least 0.05% of the total contract price) and fines (at least 0.5% of the total contract price) are prescribed by the contract for non-performance or improper performance of the obligations assumed by the person having concluded the contract (the contractor) (Clause 4 of Point 33 of the GoA Decree No. 526-N).

In addition, the suppliers are required to provide contract security (10% of purchase price) and qualification security (15-30% of purchase price), which is a unilaterally certified statement in the form of penalty or cash or bank guarantee and is being attached to the contract (Point 32 of the GoA Decree No. 526-N).

As the analyses show, in the contracts regarding works, the aspects related to the quality of works are more detailed. These contracts contained precise and detailed provisions regarding performance, quality, checks, responsibilities for all the subjects involved in the execution of the contract.

The selection and award process are carried out effectively, efficiently and in a transparent way

The number of days between placing the notice / request and signing the contract varies for each procurement method used and period analyzed.

2021

As the analysis of selected procedures show, in 2021 open tenders were held between 54 and 136 days (43% between 54 and 70 days), price quotation were carried out in a period of 22 to 51 days (71% between 22 and 37 days) and e-auction in a period of 29 to 98 days (33% between 29 and 41 days)

2022

In 2022 purchases through open tenders ranged between 61 and 119 days (67% between 61 and 77 days), price quotation lasted between 23 and 50 days (89% between 23 and 36 days) and e-auction between 23 and 46 days (86% between 23 and 39 days).

Total

If we consider both periods under review, the most important findings are as follows:

| Procurement procedure | Minimum and maximum number of days, 2021 | Minimum and maximum number of days, 2022 |
|-----------------------|--|--|
| Open tender | 54 and 136 days | 61 and 119 days |
| Price quotation | 22 and 51 days | 23 and 50 days |
| E-auction | 29 and 98 days | 23 and 46 days |

The average time for the purchase of goods, works and services is presented as follows:

| Procurement procedure | 2021 | 2022 | Total |
|-----------------------|---------|---------|---------|
| Open tender | 90 days | 78 days | 84 days |
| Price quotation | 35 days | 32 days | 33 days |
| E-auction | 58 days | 33 days | 46 days |

Average number (and %) of bids that are responsive (for each procurement method used)

Overall, the indicator for average number of bids did not differ much within procurement methods/forms. For 2021 and 2022 this indicator was accordingly 5,6 and 6 for open tender, 5 and 6 for price quotation and 4 and 5 for e-auction.

The situation was different regarding the responsiveness of the bids. For 2021 and 2022 average number of bids that were responsive/compliant was accordingly 3,9 and 3 for open tender, 4 and 1,6 for price quotation and 4 and 5 for e-auction. The low indicator for price quotation in 2022 (1,6) was because for one of the procedures 14 bids were submitted, but only one was compliant and the rest were rejected.

If we consider the results for two periods analyzed, the best result regarding the responsiveness of bids was for e-auction, since 86% of bids were responsive/compliant from total number of bids. For open tender and price quotation accordingly 53% and 42% of bids were responsive from total number of bids.

| Procurement procedure | Average number of bids | | | Average number of bids that are responsive | | | % of bids that are responsive from total number of bids | | |
|-----------------------|------------------------|------|------------|--|------|------------|---|------|------------|
| | 2021 | 2022 | Total | 2021 | 2022 | Total | 2021 | 2022 | Total |
| Open tender | 5,6 | 6 | 6 | 3,9 | 3 | 3,5 | 54% | 53% | 53% |
| Price quotation | 5 | 6 | 5,4 | 4 | 1,6 | 3 | 61% | 26% | 42% |
| E-auction | 4 | 5 | 5 | 4 | 5 | 4 | 93% | 80% | 86% |

Share of processes that have been conducted in full compliance with publication requirements (in %)

Overall, there were two procedures for which the information was not fully published at the Procurement bulletin. Thus, share of processes that have been conducted in full compliance with publication requirements was about 4%.

Number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

Among 54 procurement procedures analyzed 5 failed (9%), because all the bids submitted were rejected. The remaining 49 procedures were successfully awarded (91%).

Sub-indicator 9 (c) Contract management is not possible to measure due to data shortage (information regarding contract management is not publicly available, only delivery and acceptance protocols/acts are being published partially at the official procurement webpage)

Sub-indicator 9 (c) Contract management

Contracts are implemented in a timely manner

Time overruns (in %; and average delay in days)

Inspection, quality control, supervision of work and final acceptance of products is carried out

Quality-control measures and final acceptance are carried out as stipulated in the contract (in %)

Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.

Invoices for procurement of goods, works and services are paid on time (in % of total number of invoices)

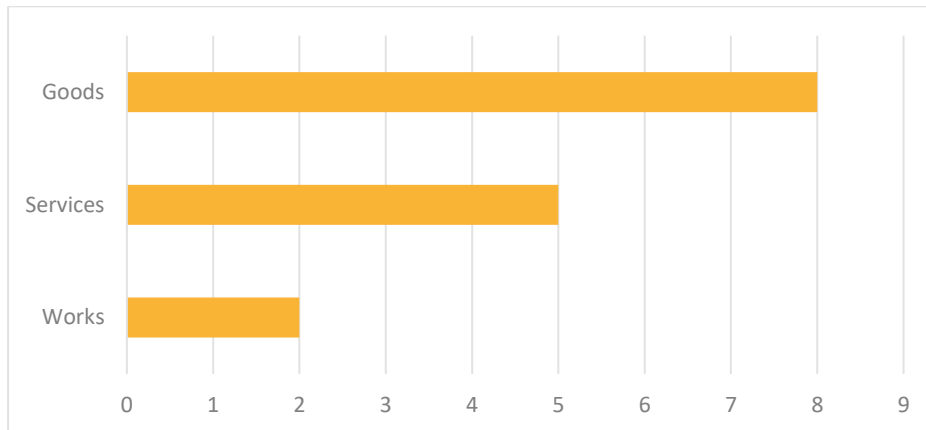
Contract amendments are reviewed, issued, and published in a timely manner.

Contract amendments (in % of total number of contracts; average increase of contract value in %)

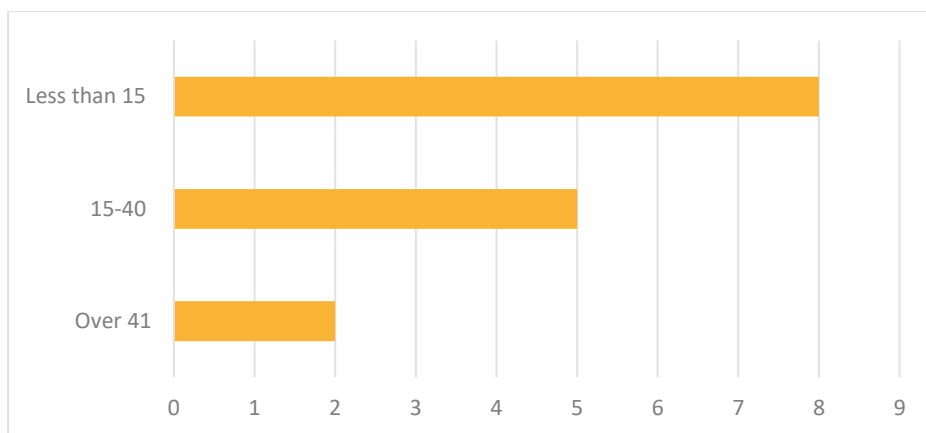
Annex 3: Enterprise survey questionnaire and responses

General information about companies

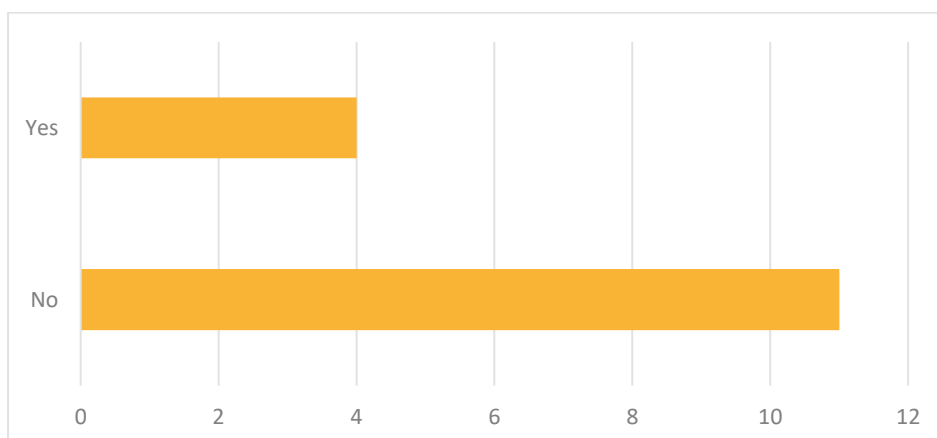
In which procurement field is your company involved?



Number of employees in your company



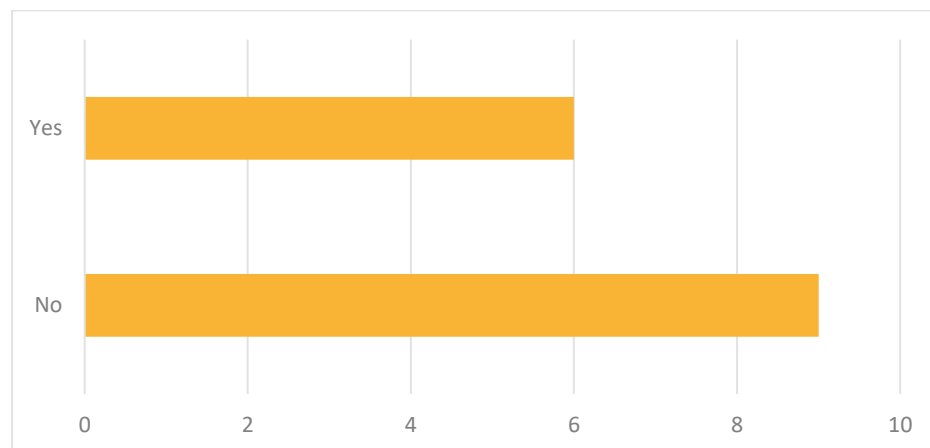
Does your company have a separate division/dedicated team in charge of preparing bids for government contracts?



SUB-INDICATOR 5 (d) Avoiding conflicts of interest

Perception that the normative/regulatory institution is free of conflicts (in % of responses)

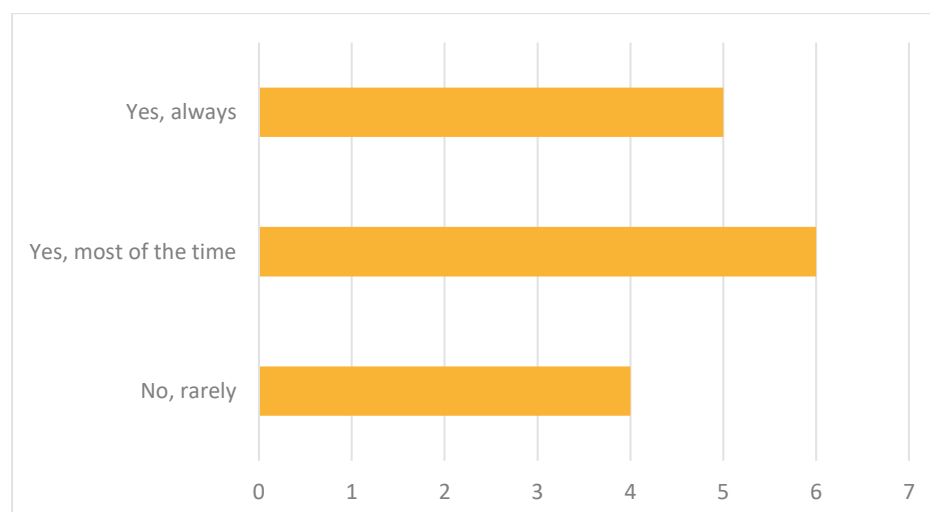
Do you think that the normative/regulatory institution (MoF) is free of conflicts of interest?



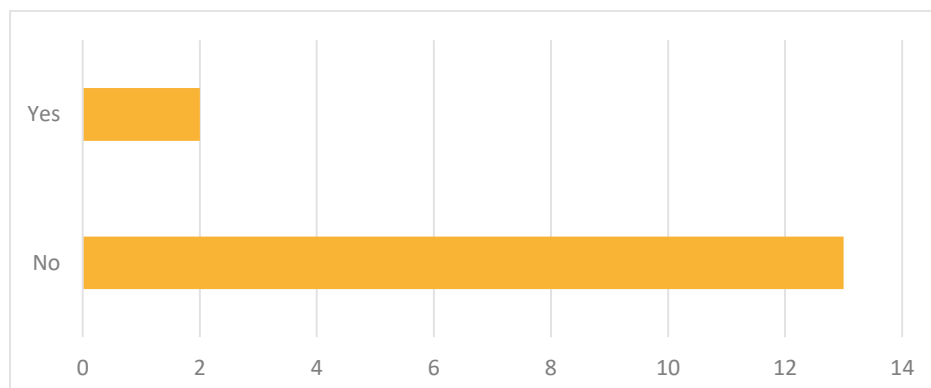
SUB-INDICATOR 10 (a) Dialogue and partnerships between public and private sector

Perception of openness and effectiveness in engaging with the public and private sector (in % of responses)

Do you find that the changes in the legal or institutional framework for public procurement are easy to follow and you have necessary resources?



Have you participated in any capacity building programs or information sessions on public procurement organized for the benefit of the private sector?



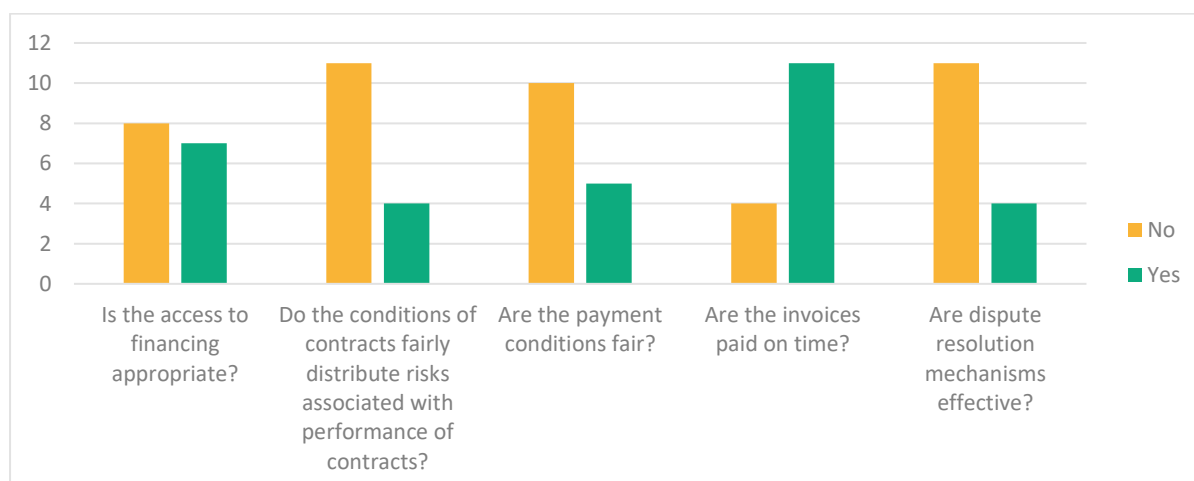
If yes, was it useful? If not, why?

- Not useful, low competence
- Yes, useful

SUB-INDICATOR 10 (b) Private sector organizations and access to the public procurement market

Perception of firms on the appropriateness of conditions in the public procurement market (in % of responses)

Do you think that the following conditions are met in the field of public procurement?



In your opinion, which aspects of public procurement should be improved to facilitate the access of private companies to the public procurement market?

- Do not freeze financial resources/assets
- Not only 'black list', but also 'white list' of suppliers
- Some sector's management is not working properly, complicated, unnecessary bureaucracy

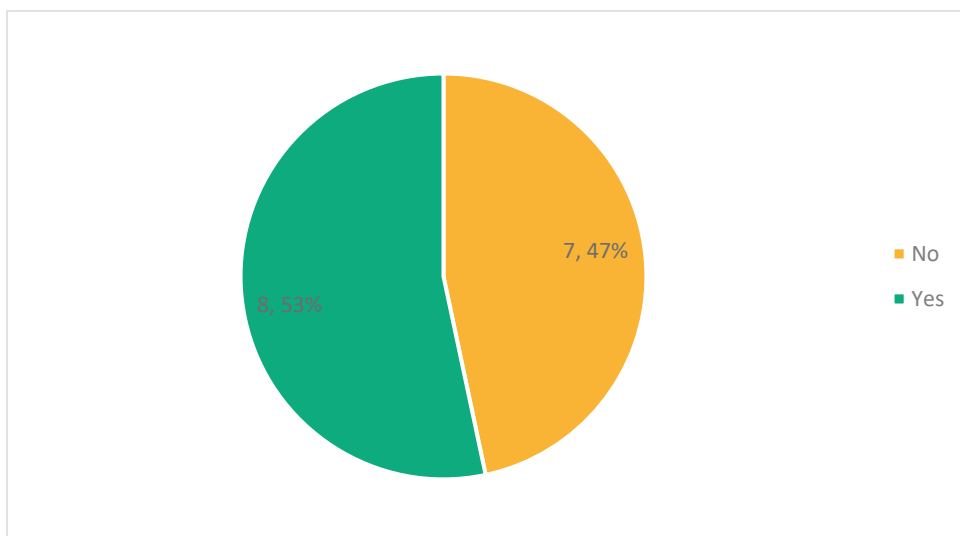
- The security percent should be decreased
- There is no flexibility, security payments are high, especially contract security is returned very late
- To evaluate not only based on price but quality.

SUB-INDICATOR 13 (c) Decisions of the appeals body

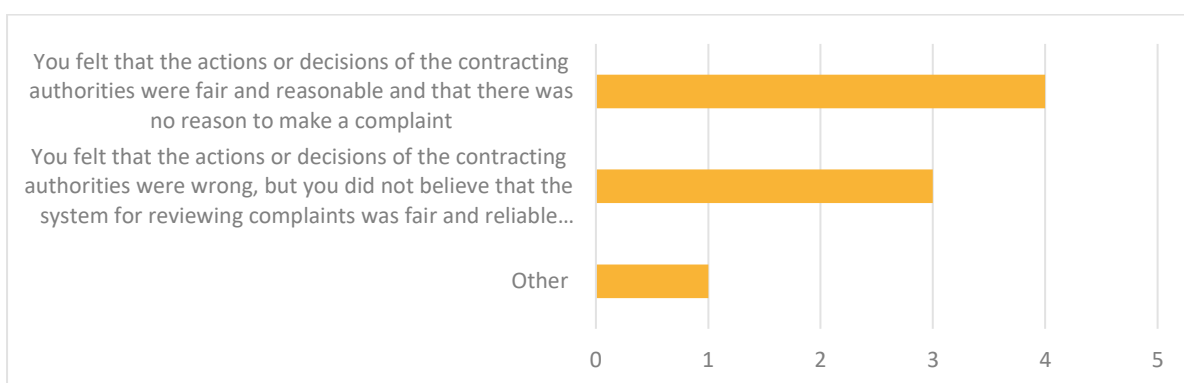
Share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses)

Share of suppliers that perceive appeals decisions as consistent (in % of responses)

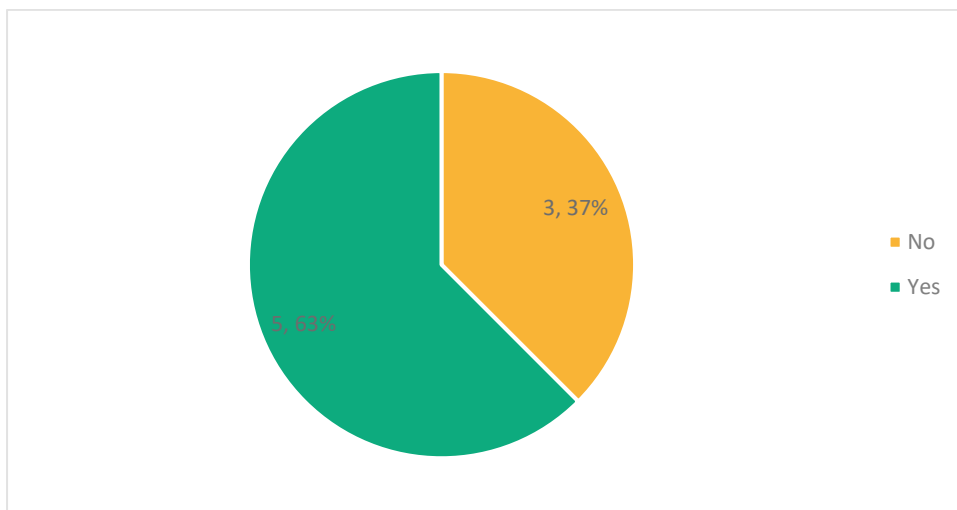
Have you ever made a complaint against a contracting authority decision or action?



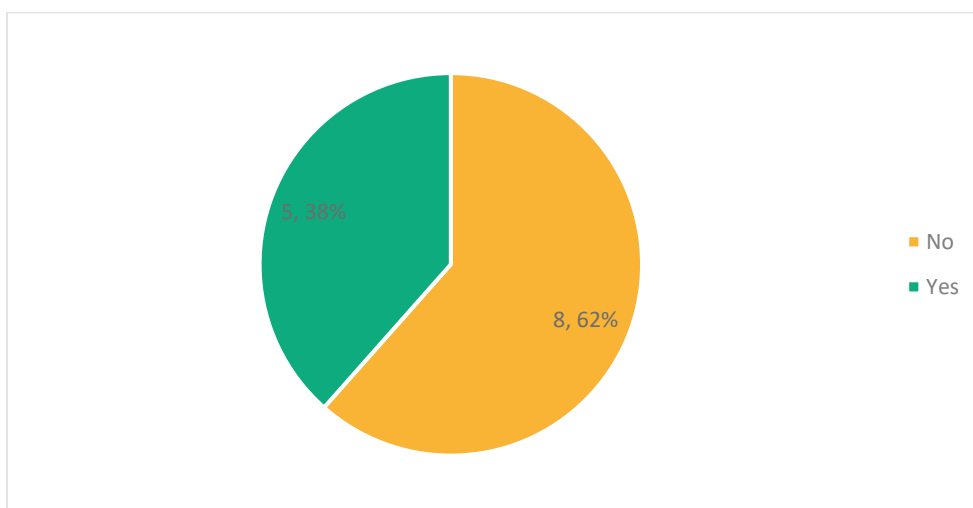
If you have never made a complaint about the actions or decisions of a contracting authority, would it be because of the following reasons:



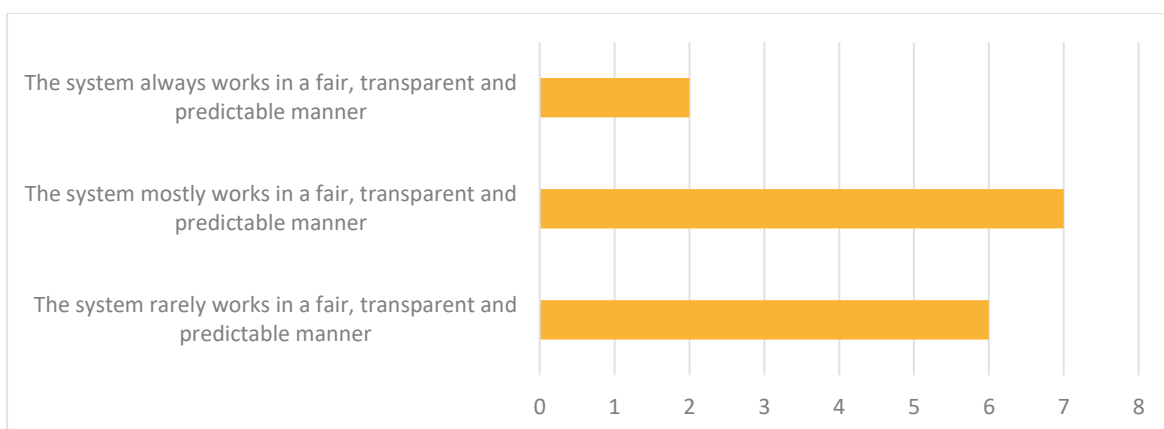
If you have made a complaint, did you find that the decision (by complaint review body or court) was clear and coherent with its other decisions in similar cases?



Do you think that eliminating out-of-court system and leaving the authority to appeal procurement procedures only in the courts (through a special procedure for investigation of complaints) was a positive change for the system?



In general, how would you evaluate the complaints system in public procurement?



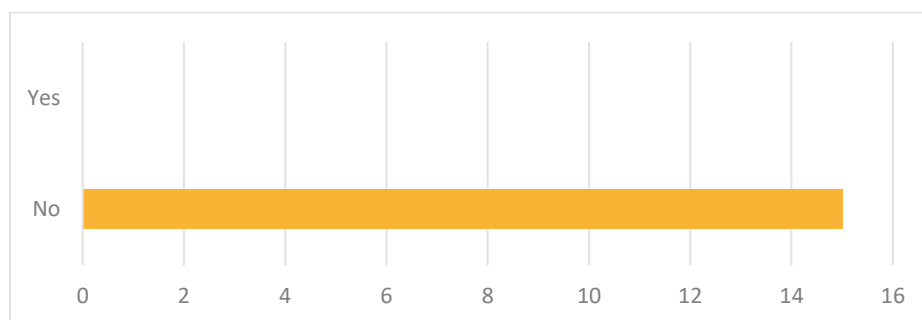
In your opinion, what could be improved regarding the public procurement complaint/appeal system in Armenia?

- Include out of court system
- Out of court system was more convenient
- To simplify administrative procedures

SUB-INDICATOR 14 (c) Effective sanctions and enforcement systems

Gifts to secure public contracts; number of firms admitting to unethical practices, including making gifts (in % of responses)

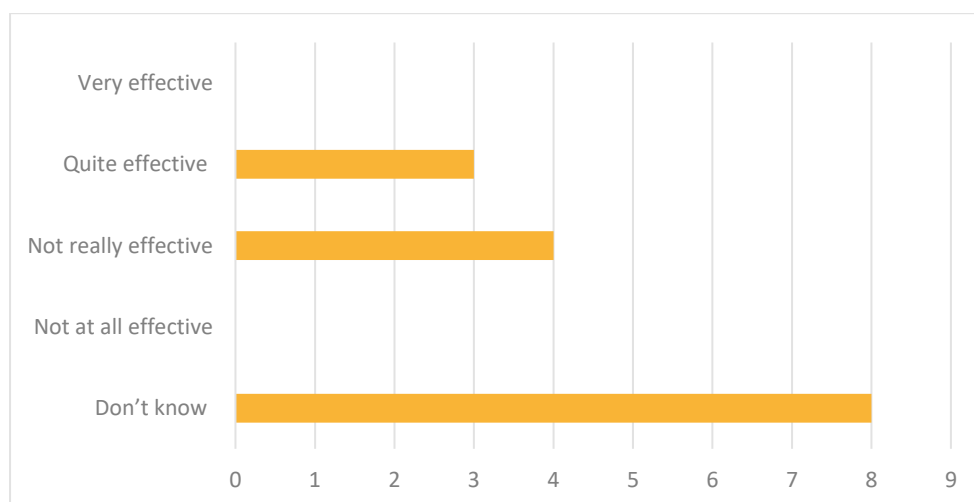
Have you ever offered gift/bribe to an official in charge of procurement or to anyone else to get a public contract?



SUB-INDICATOR 14 (d) Anti-corruption framework and integrity training

Percentage of favorable opinions by the public on the effectiveness of anticorruption measures (in % of responses)

In your opinion, what is the level of effectiveness of anticorruption measures in public procurement (if they are taken)?



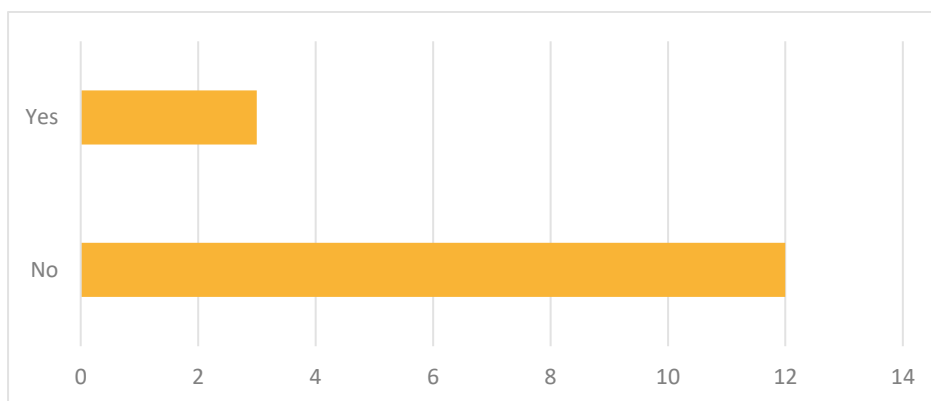
What measures would you propose to take to combat corruption in public procurement?

- Improve E-procurement system
- Increase transparency and supervision in contract management stage
- Mentality should be changed

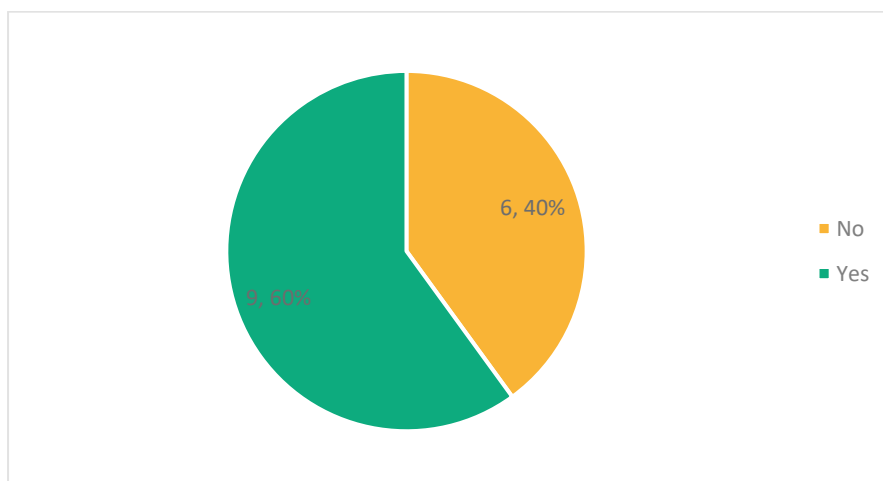
SUB-INDICATOR 14 (e) Stakeholder support to strengthen integrity in procurement

Number of domestic CSOs (including national offices of international CSOs) actively providing oversight and social control in public procurement

Do you or your company know any civil society organization actively contributing to the supervision of public procurements?



Do you think that participation of CSOs in monitoring public procurement could be useful?



Bibliography

Legal Acts

1. RA Government Programme 2021-2026 (Annex to Decision of the Government of the Republic of Armenia 1363-N of 18 August 2021), <https://www.gov.am/files/docs/4586.pdf>
2. RA Government 2021-2026 Program Action Plan (December 25, 2023 RA Decree N 2300-L On the Introduction of Changes in the November 18, 2021 RA Decree N 1902-L), <https://www.gov.am/files/docs/5145.pdf>
3. October 26, 2023 RA Decree N 1871-L On the Approval of the Anti-Corruption Strategy of the Republic of Armenia and Its 2023-2026 Implementation Action Plan, <https://www.arlis.am/DocumentView.aspx?DocID=184674>

Reports, publications

4. Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Armenia: Istanbul Anti-Corruption Action Plan https://www.oecd-ilibrary.org/governance/baseline-report-of-the-fifth-round-of-monitoring-of-anti-corruption-reforms-in-armenia_fb158bf9-en
5. Trading Economics, World Bank, <https://tradingeconomics.com/armenia/full-year-gdp-growth>
6. 2024 Report of Index of Economic Freedom by Heritage Foundation, <https://www.heritage.org/index/>
7. Corruption Perceptions Index 2023, Transparency International, <https://transparency.am/en/cpi>
8. Annual procurement report 2022, MoF, https://gnumner.minfin.am/hy/page/2022_tvakani_hashvetvutyunner/
9. Asian Development Bank, Country Governance Risk Assessment Armenia, Technical Assistance Consultant's Report, 2019, https://www.adb.org/sites/default/files/project-documents/49156/49156-001-tacr-en_1.pdf
10. IMF Staff Country Reports, Republic of Armenia: Technical Assistance Report-Public Investment Management Assessment, January 2019, <https://www.imf.org/en/Publications/CR/Issues/2019/01/30/Republic-of-Armenia-Technical-Assistance-Report-Public-Investment-Management-Assessment-46565>
11. Baseline Measurement Report: The Principles of Public Administration, Armenia March 2019, <https://sigmaweb.org/publications/Baseline-Measurement-Armenia-2019.pdf>
12. Republic of Armenia National Statistical Committee: Armenia SDGs indicators, <https://armstat.am/en/?nid=759>
13. Sustainable Development Report 2023, <https://s3.amazonaws.com/sustainabledevelopment.report/2023/sustainable-development-report-2023.pdf>
14. Guide to the Interpretation of the Model Code of Conduct for Public Servants, https://drive.google.com/file/d/1Qxi3E_rAu3Wlf1xM3mHp7FcjouyKeNq1/view
15. Report on the activities of CPC for 2023, <http://cpcarmenia.am/files/legislation/1390.pdf>

Official Websites of State Bodies, Electronic Bulletins and Platforms

16. Armenian Electronic Procurement System (ARMEPS), RA Ministry of Finance, <https://www.armeps.am/>
17. Armenia National SDG Innovation Lab, <https://www.sdqlab.am/en>

18. Procurement System: RA Ministry of Finance, www.procurement.minfin.am
www.gnumner.minfin.am
19. Armenian Legal Information System (ARLIS), <https://www.arlis.am/>
20. DataLex Judicial Information System, www.datalex.am
21. Unified Website for Publication of Legal Acts' Drafts, www.e-draft.am
22. Audit Chamber of the RA, <https://armsai.am/hy/current-conclusions>
23. RA Prosecutor's Office, <https://prosecutor.am/dynamicWebPages/report1>
24. Unified Electronic Platform for Whistle-Blowing, www.azdararir.am