



Indicator Matrix

REPUBLIC OF MAURITIUS

Note: Suggestions for improvement

In some cases, although no substantive or material gaps have been identified and so no formal recommendations are included in the assessment of the sub-indicator, the MAPS assessment team has made “suggestions for improvement”. Suggestions for improvement are proposed to help guide the Government of Mauritius in the strategic planning process for future public reform to clarify the vision, goals and time frame to improve the public procurement system.

Suggestions for improvement are included in the Matrix, in the column headed “Recommendations” using paragraphs inserted after the Recommendations (if any) and headed “Suggestions for improvement”, with text in italics.



MAPS assessment in: Republic of Mauritius

Name/organisation:

Date:

Pillar I. Legal, Regulatory, and Policy Framework

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

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

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.</p>	<p><i>Summary: the procurement legal framework is adequately recorded and organised hierarchically: the primary public procurement legislation is the Public Procurement Act 2006 (PPA), an Act of Parliament, which provides for and is supported by secondary legislation in the form of a number of Regulations issued by the relevant Minister, including the Public Procurement Regulations 2008 (PPR). The PPA, PPR and other implementing Regulations are higher level and less detailed instruments which are further supplemented by Directives issued by the Procurement Policy Office. In addition, the Procurement Policy Office issues advisory Circulars and Guidelines as well as an extensive collection of Standard Bidding Documents, use of which is mandatory. International law is not automatically part of domestic law. National legislation is necessary to implement international treaties/agreements into domestic law. Judicial decisions form part of the legal system/jurisprudence in Mauritius.</i></p> <p>Constitution – supreme law: Section 2 of the Constitution of the Republic of Mauritius ¹ (“the Constitution”) establishes the Constitution as the supreme law of Mauritius and provides that if any other law is inconsistent with the Constitution, that other law shall, to the extent of the inconsistency, be void.</p> <p>Primary legislation: s.45(1) of the Constitution vests law-making power to Parliament which “may make laws for the peace, order and good government of Mauritius”. All laws enacted by Parliament are styled “Acts of Parliament” (s.46 of the Constitution). s.46(4) of the Constitution provides that no law made by Parliament shall come into operation until it has been published in the Government Gazette of Mauritius. Executive authority is vested in the President, elected by the National Assembly, whose authority may be exercised either directly or through subordinate officers (s.58 of the Constitution).</p> <p>Assignment of responsibilities to Ministers: s.62 of the Constitution provides that the President, acting in accordance with the advice of the Prime Minister, may, by directions in writing assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of government.</p> <p>International Treaties/ agreements: International law is not automatically part of domestic law. National legislation is necessary to implement international treaties/agreements into domestic law.²</p> <p>Public procurement legal framework – overview The Mauritian legal system is a hybrid legal system derived from both French and British law legacies. The Constitution does not list a hierarchy of laws, but the hierarchy of laws is clear. The primary public procurement legislation, the Public Procurement Act 2006 ³ (“PPA”) is an Act of Parliament. The PPA provides for and is supported by secondary legislation in the form of a number of Regulations issued by the relevant Minister, in particular the Public Procurement Regulations (“PPR”). s.5(6) Interpretation and General Clauses Act 1974 provides that a definition in an Act must be applied to subsidiary legislation.</p>		<p>Criterion met</p>		<p>Suggestion for improvement Improved clarity and greater certainty on status of non-binding issuances: The MAPS Assessment team received comments from some stakeholders during the assessment process expressing uncertainty as to the extent to which Circulars, in particular, are binding on public bodies and which issuances take precedence. The legal provisions set out a hierarchy for PPA, PPR, Regulations and Directives but further information could be provided in order to further improve clarity and certainty for all stakeholders, including public bodies and bidders. Consider providing simple explanatory notes or other guidance on hierarchy, precedence in the event of conflict and the extent to which public bodies need to take into account non-binding/advisory documents including Directives and Circulars.</p> <p>Suggestion for improvement Principles/objectives of public procurement: It is increasingly common to see provisions in public procurement legislation setting out the objectives underpinning the legislation. Consider whether to adopt this approach in the future. These types of provisions may be incorporated within the main body (operative provisions) of the legislation or in a preamble, depending upon local legislative drafting tradition/practices. See, for example: preamble to UNCITRAL Model Public Procurement Law and Guide to Enactment General Remarks; COMESA Public Procurement Regulations, s.4 General Procurement Principles; EU Directive on Public Procurement 2014/24/EU, A.18 and Recital 1.</p>

¹ Constitution of the Republic of Mauritius 1968, Mauritius National Assembly, March 2016 version

<https://mauritiusassembly.govmu.org/Documents/Legislations/constitution.pdf>

² A list of multilateral Conventions/Treaties to signed/ratified/acceded by Mauritius is available to download from the website of the Attorney General’s Office

<https://attorneygeneral.govmu.org/Documents/Documents/14-CONTREAT%20%281%29.pdf> accessed 21 September 2021. Mauritius acceded to the Vienna Convention on the Law of Treaties, 1969, on 18 January 1973, but has not acceded to the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986. An example of national implementing legislation is the “Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001”, enacted upon the ratification by the Republic of Mauritius of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“the New York Convention”).

³ Public Procurement Act 2006 [Act 33 of 2006] (as amended), last updated 13 September 2021.

<https://ppo.govmu.org/Documents/PPA/PPA.pdf>

	<p>The PPA and PPR and other ministerial Regulations provide for the Procurement Policy Office to issue Directives on prescribed or specified matters. In addition, the Procurement Policy Office issues advisory Circulars and Guidelines, as well as Standard Bidding Documents use of which is mandatory. Judicial decisions form part of the legal system and jurisprudence in Mauritius. Applications for judicial review of public procurement related decisions, including decisions of the specialist Independent Review Panel, fall within the jurisdiction of the Supreme Court of Mauritius, with further appeal in certain cases to the Judicial Committee of the Privy Council (UK)⁴.</p> <p>The PPA provides for the establishment of the Procurement Policy Office (“PPO”) to serve as an independent procurement policy making and monitoring body. S.7 PPA lists the functions of the Procurement Policy Office which include the formulation of policies relating to procurement, “including directives, procedures, instructions, technical notes and manuals” for the implementation of the PPA. Directives, Circulars, Guidelines and Standard Bidding Documents issued by the Procurement Policy Office can be downloaded from the Procurement Policy Office website⁵ free of charge, together with the PPA, PPR and other Regulations.</p> <p>There is a link to the e-procurement system (“e-PS”) from the Procurement Policy Office website and the e-PS website can also be accessed separately⁶. Use by public bodies of the e-PS is now mandatory for the conduct of nearly all open advertised bidding. Ministerial Regulations, the Public Procurement (Electronic Bidding System) Regulations 2015, were issued in 2015, with the introduction of the e-PS and there have been some e-procurement related amendments to the PPA and PPR. The PPA and PPR at points are not well aligned with the use of e-PS in practice.</p> <p>Public Procurement legal framework – more detail</p> <p>The Public Procurement Act 2006 (“PPA”) is the primary legislation governing public procurement. It is a relatively short Act “to provide for the basic principles and procedures to be applied in, and regulate, the public procurement of goods, public works, consultant services, and other services and for the institutions responsible for those matters.”⁷ The PPA was proclaimed with effect from 17 January 2008⁸ and is updated on a very regular basis.</p> <p>Ministerial Regulations: s.61(1) PPA provides that the Minister (to whom responsibility for the subject is assigned) may, on the recommendation of the Procurement Policy Office, make such Regulations as they think fit for the purposes of the PPA. s.61(2) PPA confirms that Regulations made under s.61(1) PPA may provide for: detailed procedures; competent authorities; operational thresholds; alternative methods of procurement; time limits and other deadlines; levying of fees or charges by the Procurement Policy Office, Central Procurement Board, or Independent Review Panel; amendment of the Schedule.</p> <p>A number of Regulations have been made by the Minister pursuant to s.61 PPA:</p> <ul style="list-style-type: none"> • Public Procurement Regulations 2008⁹ (“PPR”) • Public Procurement (Suspension and Debarment) Regulations 2008¹⁰ • Public Procurement (Disqualification) Regulations 2009¹¹ • Public Procurement (Framework Agreement) Regulations 2013¹² • Public Procurement (Diplomatic Missions of Mauritius) Regulations 2014¹³ 			
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⁴ Constitution of the Republic of Mauritius, Article 81 Appeals to the Judicial Committee.

⁵ Procurement Policy Office website home page

<https://ppo.govmu.org/SitePages/Index.aspx>

⁶ e-Procurement system of the Government of Mauritius (e-PS) website

<https://eproc.publicprocurement.govmu.org/login>

⁷ Wording taken from preamble to the PPA.

⁸ Proclamation No.25 of 2007. See s.65 PPA Commencement provision.

⁹ Public Procurement Regulations 2008, last updated 26 November 2021

<https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Regulations%202008%29%20Version%2026%2011%202021.pdf>

¹⁰ Public Procurement (Suspension and Debarment) Regulations 2008, Last updated – 08 October 2012 <https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Suspension%20and%20Debarment%29%20Regulations%202008%20updated%2008%2010%2012%20trial.pdf>

¹¹ Public Procurement (Disqualification) Regulations 2009, Last updated – 08 October 2012

<https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Disqualification%29%20Regulations%202009%20updated%2008%2010%2012%20trial.pdf>

¹² Public Procurement (Framework Agreement) Regulations 2013 – 23 July 2013 <https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Framework%20Agreement%29%20Regulations%202008.pdf>

¹³ Public Procurement (Diplomatic Missions of Mauritius) Regulations 2014 – 24 March 2014

<https://ppo.govmu.org/Documents/Regulations/Regulation%20for%20Diplomatic%20Missions%20Mauritius%202014.pdf>

	<ul style="list-style-type: none"> Public Procurement (Electronic Bidding System) Regulations 2015¹⁴ Public Procurement (Cancellation of Bidding Process) Regulations 2016¹⁵ <p>Procurement Policy Office Directives: s.7 PPA Functions of the Procurement Policy Office, refers, at s.7(1)(b) to one of the functions of the Procurement Policy Office being the formulation of policies for implementation of the PPA and specifically refers to “directives” as well as “procedures, instructions, technical notes and manuals”.</p> <p>Directives are issued by the Procurement Policy Office where prescribed in the PPA and/or specifically referred to as required in the PPR and other Regulations. There are currently 61 Directives listed on the Procurement Policy Office website¹⁶ issued over the period 2008 to 2021, although not all remain in force. Directives set out step-by-step “instructions” on particular issues.</p> <p>Procurement Policy Office Circulars¹⁷ - there are 141 Circulars listed on the Procurement Policy Office website¹⁸ issued over the period 2008 to 2021, although not all remain in force. Circulars are information notes issued by the Procurement Policy Office and are intended to be clarificatory in nature. In some cases, Circulars have Annexes which include, for example, Guidelines (see Guidelines below).</p> <p>Directives and Circulars are not legally binding but they are of considerable weight and importance in the procurement legal framework. Where relevant, the Independent Review Panel will refer to failure to respect Directives or Circulars in their decisions, and the content of relevant Directives and Circulars may be taken into account by the Supreme Court in considering applications for judicial review. Compliance with the public procurement legal framework, including compliance with Directives and Circulars, is monitored by the Procurement Policy Office. The Procurement Policy Office may request explanations of non-compliance from a public body. In the case of deliberate non-compliance, the Procurement Policy Office will refer the matter to the Head of the Civil Service.</p> <p>The Procurement Policy Office has issued a limited number of Guidelines to address very specific cases. These are intended as a guide for public bodies to follow and, in most cases are published as Annexes to Circulars. Six Guidelines are listed and downloadable by clicking on a link to “Procurement Guidelines” at the bottom of the Procurement Policy Office Home Page.¹⁹ Some of the Procurement Guidelines concern procurement/purchasing not subject to PPA procurement procedures (asterisked below**):</p> <ul style="list-style-type: none"> Evaluation Guide (Works and Goods), May 2014 (2012 version - Circular No.8 of 2012) Evaluation Guide (Consultancy Services), July 2012 (Circular No.8 of 2012) Procurement Structure in Public Bodies, June 2017 ** (Circular No.3 of 2017, PDF publication) Procurement of Vessels, November 2017 ** (Circular No.6 of 2017, Annex) Rental of Office Space, January 2021 (Circular No.1 of 2021, Annex & Circular No.2 of 2021) Sandbox for Innovative Technologies, March 2021 <p>There are other documents referred to as “Guidelines”, included on and accessible via the “Circulars” page, but not listed on the Procurement Policy Office website Procurement Guidelines page. These are:</p> <ul style="list-style-type: none"> Guidelines for Procurement under Government to Government Agreement, Annex to Circular No.7 of 2016²⁰ (procurement excluded from PPA) ** Procurement Guidelines for public bodies exempt as per Part VI of the First Schedule of the PPR, Circular No. 2 of 2017. <p>In addition, the Procurement Policy Office has published an extensive suite of Standard Bidding Documents, use of which is mandatory²¹. There are standard bidding documents for use in e-procurement (using the e-PS) and standard bidding documents for paper-based procurement. All of the Standard Bidding Documents are available to download, in Word format, direct from the Procurement Policy Office website²² (using the “Standard Bidding Documents” link and the “Standard Bidding</p>		
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¹⁴ Public Procurement (Electronic Bidding System) Regulations 2015 – 11 November 2016

<https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Electronic%20Bidding%20System%29%20Nov%202016.pdf>

¹⁵ Public Procurement (Cancellation of Bidding Process) Regulations 2016 – 11 November 2016

<https://ppo.govmu.org/Documents/Regulations/Regulation%20for%20Cancellation%20of%20Bidding%20Process.pdf>

¹⁶ As at 02 December 2021

¹⁷ <https://ppo.govmu.org/Pages/Circulars/Circulars.aspx>

¹⁸ As at 02 December 2021

¹⁹ <https://ppo.govmu.org/Pages/Procurement-Guidelines.aspx> accessed 23 September 2021

²⁰ <https://ppo.govmu.org/Documents/Circulars/Circular%20No%207%20of%202016.pdf> accessed 23 September 2021

²¹ PPA s.7 Functions of Procurement Policy Office, The Procurement Policy Office shall (c) “issue standard forms of contracts, bidding document, pre-qualification documents, requests for proposals and other similar documents for mandatory use by every public body implementing procurement.”

²² Procurement Policy Office website Standard Bidding Documents page

	<p>Documents (e-PS)" link). SBDs for use in e-procurement (e-PS) can also be accessed and downloaded from the e-PS website "e-SBD" tab.</p> <p>The Procurement Policy Office website has an "FAQs" page available through a link from the home page.²³ The Procurement Policy Office has also issued User Guides on using the e-Procurement System (e-PS) and you-tube videos accessible via the e-PS website, to assist suppliers to register for and use the e-PS.</p> <p>Build Operate Transfer Projects and PPP are regulated by separate legislation. In practice, no BOT or PPP projects have been implemented to date under the BOT Act or PPP Act. (see indicator 1 1(c)). There are no standard BOT or PPP project procurement documents or contract documents.</p> <p>International Treaties: There is no legislation that sets out precedence in the case of conflict between national laws and international treaties. International treaties do not automatically become part of domestic law. National legislation is necessary to implement international treaties/agreements into domestic law.²⁴ When the Attorney General's Office is working on the drafting for domesticating international treaties it makes sure that there is no conflict, so far as is possible, between national laws and international treaties.²⁵</p> <p>Procurement Rules of Donor Organisations: There is a specific provision in the PPA concerning conflict between the provisions of the PPA and procurement rules of donor organisations, in which case the latter shall prevail, s. 3(3) PPA provides that "Where any provision of this Act conflicts with the procurement rules of a donor organisation, the application of which is mandatory pursuant to an obligation entered into by Mauritius under any treaty or other form of agreement, those rules shall prevail."</p>			
<p>(b) It covers goods, works and services, including consulting services for all procurement using public funds.</p>	<p><i>Summary: The legal and regulatory framework covers the procurement of goods, works and services, including consulting services, for procurement by public bodies using public funds, subject to exclusions and exemptions specified in the PPA including for defence and security procurement, GtoG and certain ICT projects. In addition, "exempt organisation" provisions mean that listed public bodies are exempt from the application of the PPA in respect of specified types of contract. The PPA provides that public bodies shall establish their own procurement rules in relation to contracts falling within the exempt organisation provisions. Procurement by most state-owned enterprises, including SOEs undertaking utilities activities, is subject to the coverage and exceptions in the PPA.</i></p> <p>s.3 PPA Application of the Act: provides that the PPA applies to any "procurement effected by a public body" other than to specified exemptions from application of the PPA listed in s.3 PPA and for particular types of contracts procured by "exempt organisations". There is no specific reference in the PPA or in budget or finance laws to the PPA applying to all procurement using public funds, reliance being placed instead on the definitions of "procurement" and "public body". (see Indicator 6(a) Procuring entities definition for further explanation/discussion including definition of public body and exempt organisation provisions).</p> <p>Procurement: s.2 PPA defines "procurement" as "the acquisition by a public body, by purchase, lease or any other contractual means, of goods, works, or consultancy or other services"</p> <p>Goods, works and consultancy services/other services are widely defined in s.2 PPA:</p> <ul style="list-style-type: none"> • "goods" means objects of every kind and description including commodities, raw materials, manufactured products and equipment, industrial plant, objects in solid, liquid or gaseous form, electricity, as well as services incidental to the supply of the goods such as freight and insurance. • "works" means any work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services 		<p>Criterion met</p>	<p>Suggestion for improvement Presentation of coverage of PPA: <i>The way in which coverage is presented starts negatively, by first referencing exclusions/exemptions. Consider whether the message, in terms of coverage of the PPA, could be strengthened by switching the order, to start s.3 by stating that PPA applies to all procurement effected by a public body (conveying a message of presumption of coverage) and then move on to describe exclusions/exemptions from coverage.</i></p> <p>Suggestion for improvement "Low value" contracts thresholds: <i>The PPA does not refer to a threshold financial value below which competitive procurement methods are not required. This is currently addressed in the Direct Procurement provisions in the PPA. For improved clarity, consider including specific provision in the PPA clearly stating that there is/are threshold/s below which competitive procurement methods are not required. Other provisions in the PPA may apply to these "low value" contracts, such as underlying principles and specified transparency and reporting requirements. The actual financial threshold/s may be specified at a lower level in the legal hierarchy, such as in the PPR.</i></p> <p>Suggestion for improvement Exempt organization provisions: <i>Use of the term "exempt organization" is confusing for readers not familiar with the system and seeking to understand the coverage of the public procurement legal framework. This is because, save in the case of ICAC, these public bodies are not fully exempt from</i></p>

<https://ppo.govmu.org/Pages/Standard-Bidding-Documents.aspx>

²³ Procurement Policy Office FAQs <https://ppo.govmu.org/Pages/FAQS.aspx>

²⁴ A list of multilateral Conventions/Treaties to signed/ratified/acceded by Mauritius is available to download from the website of the Attorney General's Office

<https://attorneygeneral.govmu.org/Documents/Documents/14-CONTREAT%20%281%29.pdf> accessed 21 September 2021.

See also: Mauritius Trade Agreements from Ministry of Foreign Affairs, Regional Integration and International Trade <https://foreign.govmu.org/Pages/ITD/Internation-Trade-Division.aspx> and Government Website Mauritius Trade Easy accessed 23 November 2021. <http://www.mauritiustrade.mu/en/trade-agreements>

²⁵ Information provided in discussion between MAPs Assessment Team and Attorney General's Office, 17 September 2021.

	<p>incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services.</p> <ul style="list-style-type: none"> • "consultancy services" means services of an intellectual and advisory nature, not incidental to the supply of goods or to the execution of works, such as design, supervision, training, analysis, auditing, software development, and similar services. • "other services" means any services other than consultancy services or services incidental to the supply of goods or the execution of works. <p>Public body: s.2 PPA defines "public body" as meaning (a) any Ministry or the Government department; and includes (i) a local authority, (ii) a parastatal body and (iii) such other bodies specified in the PPA Schedule. (see Indicator 6(a) Procuring entities definition for further explanation/discussion, including exempt organisation provisions)</p> <p>Financial Thresholds: Low value contracts: There is no prescribed de-minimis financial threshold below which the PPA does not apply. There are no separate "low value" procurement provisions in the PPA. The PPA thus applies to all procurement by public bodies, irrespective of value (other than excluded contracts or contracts covered by the "exempt organisation provisions – see below). However, s.25(2)(a) PPA Direct Procurement allows a public body to purchase goods, other services or works from a single source without competition, where the value of the procurement does not exceed the prescribed thresholds set out in R.44 PPR. The prescribed thresholds are: procurement of goods where the value does not exceed MUR 500,000 (provided that the total cost per single item does not exceed MUR 100,000); and procurement of works, consultancy services or other services, where the value does not exceed MUR 500,000. In the case of consultancy services, s.24 PPA provides that for contracts below MUR 10 million a public body may draw up a shortlist based on its own knowledge and information. For consultancy services contracts above MUR 10 million an advertised competitive process is required. In the case of Direct Procurement, R.44 PPR requires that a public body shall maintain records showing details of oral or informal quotations sought from suppliers prior to the award of the contract. There are other thresholds relating to the use of different types of procurement methods and use of international open advertised bidding. (see indicator 1(b)(a) for detail)</p> <p>Exclusions/exemptions from application of the PPA (1) Exclusions listed in s.3(1) PPA s.3(1) PPA provides that the PPA shall not apply to procurement in the circumstance listed. These are, in summary, procurement undertaken:</p> <ul style="list-style-type: none"> • National security or defence - s.3(1)(a) PPA: to protect national security or defence, where the Prime Minister so determines²⁶ and the procurement is undertaken by the most competitive method of procurement available in the circumstances.²⁷ In practice, the restricted bidding method is used for such procurement and, as far as possible the procedures in the PPA are followed. There is no right of challenge or appeal under the PPA in respect of procurement of these contracts. No data is available in respect of this type of procurement.²⁸ • Government to Government procurement - s.3(1)(b) PPA: pursuant to an agreement or arrangement between Mauritius and a foreign State which allows Mauritius to benefit from the expertise and develop experience of that foreign State in a particular field ("GtoG"). Procurement Policy Office Circular No.7 of 2016 sets out Guidelines for Procurement under Government to Government Agreement. • Certain ICT projects - s.3(1)(c) PPA: by a Ministry acting on its own behalf or on behalf of another public body for certain ICT projects where there was an initial system developer/developer with similar system requiring interface with different systems and where there are confidentiality and risk issues necessitating the protection of safety or interests of Mauritius. <p>For any procurement under s.3(1)(b) PPA (GtoG procurement) or s.3(1)(c) PPA (certain ICT projects), s.3 (1A) PPA provides that the relevant Ministry must perform due diligence, prepare and submit a report to the high-powered committee for recommendations which shall be notified to the Ministry and forwarded, together with the report, to the Cabinet. s.3(1B) PPA provides that the Procurement Policy Office shall issue guidelines to assist the Ministry in performing such due diligence.²⁹</p>			<p><i>the application of the PPA. It is only specified contracts awarded by the public bodies listed which are exempt. Whilst the definition of "exempt organization" as elaborated in the PPR explains this, the term itself is not helpful. Clarity of coverage is further hindered by the way in which identifying both public bodies and exempt organizations, requires cross references between provisions/schedules in both the PPA and PPR. Consider, in reviewing the PPA, how to improve clarity and certainty as to coverage in general and with particular reference to exempt organization provisions. GoM could, for example, consider referring to and specifying exempt or excluded "activities" or "exempt contracts" of listed public bodies.</i></p> <p>Suggestion for improvement Publication of information about conduct of procurement under exempt organization provisions: <i>In order to increase transparency and accountability and improve public confidence as to proper expenditure of public funds, consider requiring exempt organizations to publish on their websites summaries of the rules and processes which apply to procurement falling within exempt organization provisions. This could, for example, take the form of simple "user guides" for bidders.</i></p> <p>Suggestion for improvement Greater use of flexibilities under exempt organization provisions: <i>Procurement falling within the exempt organization provisions can be conducted using flexible procurement methods and tools which help to promote enhanced competition and better, more innovative, procurement outcomes. There are already more flexible procurement methods and tools available under the PPA but the MAPS assessment team understands that these are not commonly used by exempt organizations, who tend to stick with more "traditional" methods of procurement.</i></p> <p><i>Consider capacity building measures, such as guidelines and practical training, to support increased use of greater flexibilities by public bodies in general and by public bodies procuring under the exempt organization provisions, in particular. These could include establishment and use of framework agreements with mini-competitions, e-reverse auctions and other more dynamic forms of purchasing as well as considering development of hybrid procurement methods for procurement under the exempt organization provision, to promote innovation and improved procurement outcomes including sustainable outcomes.</i></p>
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²⁶ The Defence and Home Affairs Division is a division of the Prime Minister's office.

²⁷ No data is available on defence and security procurement due to confidentiality (Information provided by Procurement Policy Office in response to question raised by the MAPS assessment team).

²⁸ Information in this paragraph provided by Procurement Policy Office in response to question raised by the MAPS assessment team.

²⁹ No guideline on ICT procurement under these provisions has been issued. This exclusion is rarely used. Information provided by Procurement Policy Office in response to question raised by the MAPS assessment team.

Directive No.53, 2020 Procurement of ICT projects, requires public bodies to set up a specialist team to carry out early market engagement, in accordance with Directive No.25 Early Market Engagement by Public Bodies, and use the result of the market engagement in preparing the procurement documents including technical specifications and eligibility and evaluation criteria. The team is also responsible for preparing bidding documents and monitoring implementation of the ICT solution. There are also provisions concerning procurement of ICT solutions of common use across Ministries/Departments and appointment of specialist consultants

Exclusions/exemptions from application of the PPA

(2) Exempt organisations: s.3(2) PPA confirms that the PPA “applies to any other procurement effected by a public body other than an exempt organisation.” Currently there is only one public body identified in the legal framework as wholly exempt: the Independent Commission Against Corruption (“ICAC”). In other cases, the exemption is partial, being an exemption for a particular type of contract or procurement funded at least 50 per cent from grant or concession financing, from a foreign state.

s.3(2A) PPA provides that every exempt organisation shall establish its own procurement rules in relation to such contracts as may be prescribed, being those contracts not subject to the PPA pursuant to the exempt organisation provisions. This means that public bodies may be required to fully comply with the PPA and the procurement legal framework in respect of some, but not all of their contracts. In order to fully understand these provisions, it is necessary to cross reference between the PPA and the PPR.

s.2 PPA defines an “exempt organisation” as “a body which is, by regulations, excluded from the application of this Act”. The relevant regulations are the PPR. R.2 PPR defines an exempt organisation as “a public body which is excluded from application of the PPA in relation to contracts referred to in the First Schedule” of the PPR. First Schedule PPR - List of Exempt Organisation[s] is divided into six Parts (Part I to VI), each with two columns. The first column lists the Public Body, and the second column lists the type of contract which is exempt from procurement under the PPA. These are presented in summary table format below:

Part	Public Body	Contracts not subject to the PPA
I	Agricultural Marketing Board	Goods purchased for resale, including services incidental to the purchase or distribution of such goods
I	Central Electricity Board	Goods purchased for resale, including services incidental to the purchase or distribution of such goods
I	Outer Islands Development Corporation	Goods purchased for resale, including services incidental to the purchase or distribution of such goods
I	State Trading Corporation	Goods purchased for resale, including services incidental to the purchase or distribution of such goods
I/IX	State Informatics Limited	Goods purchased for resale, including services incidental to the purchase or distribution of such goods Ad hoc hiring of personnel or subcontracting the provision of services for the sole purpose of enabling the State Informatics Limited to – (i) fulfill its contractual obligations under commercial contracts entered into with third parties following a bid exercise or otherwise; (ii) develop software or software solutions for resale.
II	Independent Commission Against Corruption	All contracts
III	Mauritius Exam Syndicate	Goods purchased, including services, relating to or for the purpose of holding examinations
IV	Mauritius Broadcasting Corporation	Purchase of films or acquisition of transmission rights for public broadcasting
V	Competition Commission	Procurement of forensic services in relation to searches and seizures
VI	Any public body	Procurement of goods, works, consultancy services or other services funded by a least 50 per cent of the estimated project value, from grant, or concessional financing as the Minister may approve, from a foreign State, where the condition imposed by that State in respect of the grant or concessional financing specifies that the supplier of goods, works, consultancy services

		or other services shall be from that State or from any other State which that State approves (see note on Guidelines below)			
VII	National Assembly	Procurement of Catering Services			
VIII	Ministry responsible for the subject of education	Procurement of cleaning services provided by Landscape (Facilities) Co. Ltd ³⁰ or through its contractors			
X	Ministry responsible for the subject of environment	Procurement of cleaning services and embellishment works provided by Mauri- Facilities Management Co Ltd ³¹ or through its contractors.			
XI	Ministry responsible for the subject of civil service	“Procurement of Government medical insurance scheme provided by SICOM General Insurance Ltd and NOC General Insurance Co. Ltd for the benefit of public officers.			

The types of contracts in Part I “Goods purchased for resale, including services incidental to the purchase or distribution of such goods” are purchased using public funds but costs are recovered through onward sale. The reason from the decision to exclude these contracts from coverage of the PPA was to allow the public bodies concerned greater flexibility in procurement so that consumers could benefit from lower prices which would not otherwise have been possible through the application of rigid procurement procedures.^{32 33} (see notes Case Note on State Trading Corporation below)

Guidelines on Exemption under Part VI First Schedule PPR: The Procurement Policy Office has published Guidelines to assist all public bodies to prepare procurement rules for procurement funded at least 50 per cent from grant, or concession financing, from a foreign state: Circular No.2 of 2017 Procurement Guidelines for Public Bodies exempt as per Part VI of the First Schedule of the PPR 2008.

Procurement rules of exempt organisations: s.3(2A) PPA provides that every exempt organisation shall establish its own procurement rules in relation to contracts not subject to the PPA, as may be prescribed. In practice, these procurement rules or summaries of the rules or processes which are used are not publicly available, for example on the websites of the exempt organisations. (See case note below, on procurement in practice under exempt organisation provisions).

Compliance by exempt organisations with their own internal procurement rules is monitored by internal auditors, external auditors and management. Additional monitoring is done by the Internal Control Unit of MOFEPD, as and when required.³⁴

³⁰ Landscape companies are government owned companies. Procurement Policy Office response to query on this issue raised by the MAPS assessment team.

³¹ Mauri Facilities Management Co Ltd is a government owned company and part of the Landscape group of companies. Procurement Policy Office response to query on this issue raised by the MAPS assessment team.

³² Information provided by the Procurement Policy Office to MAPS assessment team in response to query on this issue.

³³ Questions on the interpretation of aspects of the exempt organisation provisions in the PPA/PPR (as at 27 November 2009) were considered at length by the Judicial Committee of the Privy Council (final court of appeal) in *Betamax Ltd v State Trading Corporation* [2021] UKPC 14. <https://www.icpc.uk/cases/docs/icpc-2019-0109-judgment.pdf>

³⁴ Information provided by Procurement Policy Office in response to query on this issue raised by the MAPS assessment team.

	<p>Case Note: State Trading Corporation - procurement in practice under exempt organisation provisions³⁵ Most of the State Trading Corporation’s procurement activities fall within the exempt organisation provisions. It thus has significant flexibility, at least in theory, on how to conduct procurement under the exempt organisation provisions. The State Trading Corporation advertises competitive opportunities on its “Invitation for Bid” page of its website: https://www.stcmu.com/invitation-for-bids which states that that the State Trading Corporation procures goods and services in accordance with the Public Procurement Act 2006. The State Trading Corporation has detailed internal manuals covering the planning and conduct of procurement. In practice the State Trading Corporation complies with the requirements of the PPA and in general it opts to use less flexible procurement methods. It does not use procurement tools such as framework agreements with “mini-competitions”, e-reverse auctions or other forms of flexible purchasing.</p> <p>Exclusions/exemptions from application of the PPA (3) s.3A PPA and Second Schedule provides for the non-application of PPA Parts IV (Procurement Methods), V (The Bidding Process) and VI (Challenge and Appeal) for:</p> <ul style="list-style-type: none"> • procurement by a diplomatic mission of Mauritius abroad; and <p>Procurement by a public body in respect of:</p> <ul style="list-style-type: none"> • rental of office space; • training services; • vessels, including maintenance, repairs and periodic overhauls in a dry dock. <p>Any procurement of such goods, works or services shall be undertaken on such conditions as shall be prescribed. The following documents are available to download from the Procurement Policy Office website:</p> <ul style="list-style-type: none"> • Public Procurement (Diplomatic Missions of Mauritius) Regulations, 2014 (GN 36 of 2014, announced by Circular No.5 of 2014) • Directive No. 14 (2013) Procurement of Training Services • Guidelines on Procurement of Vessels, including procedures for dry docking of vessels, 2017 • Rental of Office Space, January 2021 (Circular No.1 of 2021, Annex & Circular No.2 of 2021) <p>There is no right of challenge and appeal to the Independent Review panel for defence and security contracts falling within s. 3(1)(a) PPA or for contracts listed in s.3A PPA (procurement by diplomatic missions abroad rental of office space, training services, vessels including maintenance repose and overhauls).</p> <p>State-owned enterprises (SOEs), including SOEs undertaking utilities activities: Procurement by most state-owned enterprises, is subject to the PPA. <i>(See indicator 6(a))</i></p>		
<p>(c) PPPs, including concessions, are regulated.</p>	<p><i>Summary: Public Private Partnerships (PPPs) and Build Operate Transfer (BOT) Projects are regulated by specialised legislation. The primary legislation is the Public Private Partnerships Act 2004 (as amended) (PPP Act) and the Build Operate Transfer Projects Act 2016 (BOT Act), supported by Regulations, Circulars, guidelines and other publications. There are no standard BOT or PPP project procurement documents and contract documents. In practice, no contracts have been awarded under the PPP Act or the BOT Act.</i></p> <p>PPP Public Private Partnerships The Public Private Partnerships Act 2004 (as amended)³⁶ (“PPP Act”) provides for the implementation of public private partnership agreements between contracting authorities and private parties and establishes a short set of rules governing public-private procurement. s.2A PPP Act provides that the Public Procurement Act (PPA) shall not apply to a project under the PPP Act. The subject matter of a PPP agreement may concern the provision of goods, works or other services and for the possibility of state facilities, equipment or other state resources to be transferred or made available to the private party. For the purposes of the PPP Act, “contracting authority” means “a Ministry, a Government department, a local authority, the Rodrigues Regional Assembly, a statutory body or any other Government-owned, or Government-controlled, entity designated by Government” (s.2 PPP Act).</p>	<p>Criterion met</p>	<p>Suggestion for improvement Calculation of thresholds for PPP projects: <i>The calculation of the thresholds for direct procurement and for reference to the CPB for PPP projects (and BOT projects) is made using the capital costs of the project, excluding operation and maintenance costs. It is not uncommon in long term PPP type arrangements for operation and maintenance costs to exceed capital costs over the life of the contract. Calculation by reference to capital costs thus has the potential to allow for some contracts with significant full lifetime costs to fall within the direct award provisions and/or avoid referral to the CPB. Consider whether this method of calculation remains appropriate, both in the context of PPP and BOT.</i></p>

³⁵ Information provided by State Trading Corporation to MAPS Assesment Team during Mission, November 2021.

³⁶ Public Private Partnerships Act 2004 No.37 of 2004 <https://bot.govmu.org/Documents/PPP%20Act%202004%20-%20version%205%20August%202021.pdf>

	<p>The term “local authority” has the same meaning as in the Local Government Act. The terms “own” and “control” in the context of “Government-owned, or Government-controlled” have the same meaning as in the Public Debt Management Act.³⁷</p> <p>s.12 PPP Act provides for the Minister to make such regulations as he thinks fit for the purposes of the PPP Act. The PPP (Prescribed Threshold) Regulations 2020 (03 November 2020)³⁸ published pursuant to s.12 PPP Act, prescribe the value for direct procurement of short term consultants (MUR 1 million) and threshold for procurement through the Central Procurement Board (MUR 300 million). The threshold is to be calculated using the capital cost of the project, excluding operation and maintenance costs.</p> <p>Legal challenge: The Independent Review Panel does not have jurisdiction in respect of PPP projects. No complaints mechanism is specified in the PPP Act.³⁹ Legal challenge in respect of procurement of PPP projects is by way of application for judicial review to the Supreme Court.</p> <p>PPP publications: The BOT Projects Unit has published, in relation to PPP:</p> <ul style="list-style-type: none"> • “Step by Step Process for Unsolicited PPP Proposal” documents⁴⁰ (undated) • a number of newsletters dating from 2003-2009⁴¹. <p>There are no standard PPP project procurement documents and contract documents, although drafts of some documents are currently being prepared.⁴²</p> <p>Procurement of PPP projects - see indicator 1(l)(b)</p> <p>Note: In practice, no contracts have been awarded under the current PPP Act.⁴³ However, PPP/BOT projects are currently underway⁴⁵, further projects are envisaged and there have been amendments in 2021 to the PPP Act with measures aimed to increase private sector participation in public procurement and simplify implementation of PPP projects with large commercial components⁴⁶.</p> <p>Build Operate Transfer</p> <p>The Build Operate Transfer Projects Act 2016 (as amended)⁴⁷ (BOT Act) provides for the legal framework for the procurement of BOT projects under Build Operate Transfer (BOT) agreements and content of the BOT agreement. S.3(1) BOT Act expressly provides that the PPA and the Public-Private Partnership Act (PPP Act) do not to apply to any BOT project under the BOT Act.</p> <p>A “BOT agreement” is an agreement, in relation to a BOT projects, between a contracting authority and a private party.s.2 BOT Act defines a “BOT project”, as follows:</p> <p>“(a) means a project based on the granting of rights, under a BOT agreement, to a private party, to build, set up, own, operate, rent, lease, finance, modernise, manage, maintain or develop, and to transfer the undertaking, in accordance with the BOT agreement; and</p>			
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³⁷ Public Debt Management Act 2008, as amended. s.2 Interpretation.

“control”, in relation to Government-controlled, means having an effective influence in the main aspects of management;

“own”, in relation to Government-owned, means having all or a majority of the shares or other forms of capital participation;

³⁸BOT Projects Unit Website accessed 24 September 2021

https://bot.govmu.org/Documents/The%20PPP%20%28Prescribed%20Threshold%29%20Regulations%202020_03Nov2020.pdf

³⁹ Benchmarking Infrastructure 2020, World Bank Group, p.53 notes that 97% of all surveyed economies (140 economies were surveyed) provide for a complaints review mechanism for PPPs. Mauritius is one of five surveyed economies that do not.

⁴⁰ BOT Projects Unit Website accessed 24 September 2021

<https://bot.govmu.org/Documents/step%20by%20step%20PPP%20process.pdf>

⁴¹ BOT Projects Unit Website accessed 3 January 2020

<https://bot.govmu.org/Pages/PPP-Newsletter.aspx>

⁴² Information provided by Procurement Policy Office, November 2021, in response to question raised by MAPS assessment team.

⁴³ Information provided by Procurement Policy Office, November 2021, in response to question raised by MAPS assessment team.

⁴⁴ The BOT Projects Unit has published a case study report on its website under the heading “First PPP Agreement”: “Development of 29.4 MW Wind Farm at Curepipe Point (Plaine Sophie) on PPP Basis”, September 2012, resulting in a 20 year Energy Supply & Purchase Agreement between the Central Electricity Board (buyer) and a consortium comprising Suzlon Energy and Padgreen Co. Ltd. (seller). There is, however, no reference in the report to the PPP Act.

<https://bot.govmu.org/Documents/CASESTUDYReport-Revised-Public.pdf>

⁴⁵ The PPO Annual Report 2019/2020, Table 13 Progress of BOT/PPP Projects during financial year 2019/202, lists 10 projects progressing.

⁴⁶ Budget Measures, Explanatory Notes, Main Provisions to be Included in The Finance (Miscellaneous Provisions) Bill 2021, Part B.1 (g)(h).

⁴⁷ The Build Operate Transfer Projects Act 2016 No.1 of 2016, Government Gazette of Mauritius No.29 of 2016

<https://bot.govmu.org/Documents/BOT%20Projects%20Act%202016%20-%20version%205%20August%202021.pdf>

	<p>(b) includes any agreement which may provide for a project based on BOO (Build, Own and Operate), BOOT (Build, Own, Operate and Transfer), DBFOT (Design, Build, Finance, Operate and Transfer) or MOT (Modernise, Own/Operate and Transfer) models;"</p> <p>For the purposes of the BOT Act, "contracting authority" means "a Ministry, a Government department, a local authority, the Rodrigues Regional Assembly, a statutory body or any other Government-owned, or Government-controlled, entity designated by Government" (s.2 BOT Act). The term "local authority" has the same meaning as in the Local Government Act. The terms "own" and "control" in the context of "Government-owned, or Government-controlled" have the same meaning as in the Public Debt Management Act.⁴⁸</p> <p>s.3(3) BOT Act provides that where there is an agreement or arrangement between Mauritius and a foreign State for a BOT project which allows Mauritius to benefit from the expertise and development experience of that foreign State in a particular field, specified sections of the Public Procurement Act relating to due diligence shall apply to that BOT project.</p> <p>s.3(4) BOT Act provides that s.10 BOT Act, Functions of Central Procurement Board (CPB) and s.10A BOT Act Pre-selection of bidders – responsibilities of CPB, shall not apply to a BOT project with a commercial component exceeding 80 per cent of the estimated project value. S.3(4) BOT Act further provides that in such cases a contracting authority shall use a transparent procurement process for the selection of the private party for the BOT project.</p> <p>Section 12 BOT Act provides for the Minister to make such regulations as he thinks fit for the purposes of the BOT Act. The Build Operate Transfer Projects (Prescribed Threshold) Regulations 2020 (03 November 2020)⁴⁹, issued pursuant to s.12 BOT Act prescribe the value for direct procurement of short term consultants (MUR 1 million) and threshold for procurement through the Central Procurement Board (MUR 300 million). The threshold is to be calculated using the capital cost of the project, excluding operation and maintenance costs.</p> <p>Legal challenge: The Independent Review Panel does not have jurisdiction in respect of BOT projects. No complaints mechanism is specified in the BOT Act. Legal challenge in respect of procurement of BOT projects is by way of application for judicial review to the Supreme Court.</p> <p>BOT Project publications: The BOT Projects Unit has also issued Circulars in relation to BOT Projects: BOT Circular No.1 of 2016 Embarking on BOT Projects⁵⁰ BOT Circular No.2 of 2016 BOT Projects Guidance Manual⁵¹ BOT Circular No.3 of 2016 Amendments to the Public Private Partnership (PPP) Act⁵² BOT Circular No.1 of 2017 Amendments to Build Operate Transfer Projects Act⁵³ BOT Circular No.2 of 2017 Assistance to Public Bodies in identification and implementation of BOT/PPP Projects⁵⁴ BOT Circular No.1 of 2018 [Template] Request for Proposals for Provision of Transaction Advisory Services⁵⁵</p>		
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⁴⁸ Public Debt Management Act 2008, as amended. s.2 Interpretation. "control", in relation to Government-controlled, means having an effective influence in the main aspects of management;

"own", in relation to Government-owned, means having all or a majority of the shares or other forms of capital participation;

⁴⁹BOT Projects Unit Website accessed 24 September 2021

https://bot.govmu.org/Documents/The%20BOT%20Projects%20%28Prescribed%20Threshold%29%20Regulations%202020_03Nov2020.pdf

⁵⁰ BOT Projects Unit Website accessed 24 September 2021

<https://bot.govmu.org/Documents/Circulars/BOT%20Circular%20No%20%201%20of%202016.pdf>

⁵¹ BOT Projects Unit Website accessed 24 September 2021 <https://bot.govmu.org/Documents/Circulars/BOT%20circular%20No%20%202%20of%202016%20-%20BOT%20Projects%20Guidance%20Manual.pdf>

⁵² BOT Projects Unit Website accessed 24 September 2021

https://bot.govmu.org/Documents/Circulars/BOT_3of2016.pdf

⁵³ BOT Projects Unit Website accessed 24 September 2021

<https://bot.govmu.org/Documents/Circulars/BOT%20Circular%20No%20%201%20of%202017.pdf>

⁵⁴ BOT Projects Unit Website accessed 24 September 2021

<https://bot.govmu.org/Documents/Circulars/BOT%20Circular%20No%20%202%20of%202017.pdf>

⁵⁵ BOT Projects Unit Website accessed 24 September 2021

<https://bot.govmu.org/Documents/Circulars/BOTCircular%20No%20%201%20of%202018.pdf>

	<p>BOT Circular No.1 of 2019 Amendments to Build Operate Transfer Projects Act and Public Private Partnership Act⁵⁶ BOT Circular No.1 of 2020 Amendments to Build Operate Transfer Projects and Public Private Partnership Legal Frameworks⁵⁷</p> <p>Procurement of BOT Projects - see indicator 1(I)(b) Note: In practice, no contracts have been awarded under the current BOT Act.⁵⁸ However, PPP/BOT projects are currently underway⁵⁹, further projects are envisaged and there have been amendments in 2021 to the BOT Act.</p>		
<p>(d) Current laws, regulations and policies are published and easily accessible to the public at no cost</p>	<p><i>Summary: Current PPA, PPR, other related regulations, Directive, circulars, and guidance relating to public procurement are published, easily accessible and can be downloaded free of charge from the Procurement Policy Office website. The collection of documents is extensive, creating a complex picture.</i></p> <p>The Procurement Policy Office website⁶⁰ is clearly organize. There are dedicated pages for legislation, Directives (60 plus), Circulars (130 plus) and Procurement Guidelines which can all be accessed by a single click from the Procurement Policy Office home page. The dedicated pages are also clearly organized. Announcements of recent Directives, Circulars (130 plus) and other publications appear in a live scrolling format in the “Communiqués” section of the Procurement Policy Office website. The legislation and regulations are updated versions, incorporating amendments made since they were originally adopted. The documents are dated to indicate when they were last amended. Amended provisions are clearly identified, with reference to the relevant amending legislation. Whilst the extensive collection of procurement legal framework documents are all easily available on-line, they create a complex picture.</p> <p>The Procurement Policy Office website homepage includes a link to the e-procurement website, “e-PS” as well as to a comprehensive suites of standard bidding documents and procurement guidelines.</p> <p>The Procurement Policy Office website homepage also has a tab for the Independent Review Panel, from which copies of decisions can be downloaded and tabs for publications and archives.</p>	<p>Criterion partially met</p> <p>GAP - Complexity of legal framework: The extensive collection of legal framework documents creates a complex picture which is not user-friendly and limits ease of accessibility, hindering transparency and clarity. The procurement legal framework reflects a mature system which could, however, be much more user friendly and accessible. Over the years since they were originally adopted, the PPA, PPR and other Regulations have been issued, updated and amended regularly, supplemented by 60 plus Directives and over 130 Circulars, as well as Guidelines on specific topics and Standard Bidding Documents together with standard contract conditions. This has developed into an extensive collection of documents, increasing the complexity of the overall public procurement legal framework, which is an area of concern consistently raised by stakeholders during the MAPS assessment. Whilst all documents are easily available from a single source, they are often in PDF format and the Procurement Policy Office website is not easily searchable using a free-text facility. There is no comprehensive index, consolidated document or compendium available. The documents are, in practice, interconnected and lack of index or consolidation, combined with inability to interrogate the database of information in a sophisticated manner, reduces the user-friendliness, accessibility, transparency and clarity of the public procurement legal framework. This hinders stakeholders’ (including public bodies, suppliers and the public) understanding of how the legal framework works in practice.</p>	<p>Recommendation Ease of accessibility, user-friendliness, transparency and clarity of the overall legal framework to be improved to ensure that those working with or seeking to understand the procurement legal framework in practice are able to easily identify relevant provisions and supporting guidance. This should also enhance compliance.</p>

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.</p>	<p><i>Summary: The legal framework sets out in a clear manner the available procurement methods, with open competitive bidding as the default method and, in a few cases, the mandated method. There are defined conditions under which each of the less competitive and non-competitive methods may be used.</i></p> <p>Procurement methods under the PPA Goods, other services and works procurement</p>		<p>Criterion met</p>		<p>Suggestion for improvement Sandbox for innovative technologies: Consider adding Sandbox for innovative technologies to the list of procurement methods, if it is intended to be treated as a method of procurement.</p> <p>Suggestion for improvement</p>

⁵⁶ BOT Projects Unit Website accessed 24 September 2021 <https://bot.govmu.org/Documents/Circulars/BOT%20Circular%20Number%201%20of%202019.pdf>

⁵⁷ BOT Projects Unit Website accessed 24 September 2021 <https://bot.govmu.org/Documents/Circulars/BOT%20Circular%20Number%201%20of%202020.pdf>

⁵⁸ Information provided by Procurement Policy Office, November 2021, in response to question raised by MAPS assessment team.

⁵⁹ The PPO Annual Report 2019/2020, Table 13 Progress of BOT/PPP Projects during financial year 2019/202, lists 10 projects progressing.

⁶⁰ <https://ppo.govmu.org/SitePages/Index.aspx>

	<p>s.15(1)(a) PPA lists eight methods for procurement of goods, other services and works. These are: (Method 1) open advertised bidding (which may be national or international, with pre or post qualification and single or two stage), (Method 2) restricted bidding, ((Method 3) request for sealed quotations, (Method 4) direct procurement, (Method 5) community or end-user participation, (Method 6) departmental execution, (Method 7) competitive negotiations and (Method 8) electronic reversion auctions. The provisions on competitive negotiations and electronic reverse auctions were introduced in 2021, pursuant to s.73 of the Finance (Miscellaneous Provisions) 2021.⁶¹</p> <p>In addition to the eight methods listed in s.15(1)(a), the PPA provides for use of “Sandbox for innovative technologies” and “design contests”. There are also provisions concerning emergency procurement.</p> <p>Sandbox for Innovative technologies s.25A PPA: s.25A PPA provides for use of “Sandbox for innovative technologies” permitting public bodies to request and pay for proof of concepts or prototypes for innovative technologies. Sandbox for innovative technologies is a relatively recent introduction and is in early stages in terms of experience of use for development of innovative ideas. This is not designated in s.15 PPA as a procurement method. In practice it is intended for use for a limited process to proof of concept/prototype stage only.⁶² S.25A (4) PPA refers to subsequent use of proof of concepts or prototypes in procurement using a procurement method specified under s.15 PPA.</p> <p>Design Contests s.40 PPA: R.40 PPR provides that, in appropriate cases, such as the procurement of architectural designs or urban planning designs, a public body may conduct a design contest for the purposes of selecting a design in accordance with such procedure as may be approved by the Procurement Policy Office. This is not designated in s.15 PPA as a procurement method. Design contests have been used for a long time in Mauritius and are always conducted in accordance with the PPA, following procedures approved by the Procurement Policy Office on a case-by-case basis. Once a design has been selected that architect is appointed for the project. Unsuccessful contestants are partially compensated for time spent in producing a design.⁶³</p> <p>Statement of procurement method to be used: R.22 PPR requires that a public body shall include in the announcement or other document to solicit a bid, a statement of the procurement method to be used in the procurement proceeding.⁶⁴</p> <p>Method 1: Open Advertised Bidding (s.16 PPA “Open national bidding”) and International Open Advertised Bidding (s.17 PPA “Open international bidding”)</p> <p>The Open Advertised Bidding method is the default method for procurement of goods, other services and works.</p> <p>S.15(2)(a) PPA requires use of the Open Advertised Bidding method for procurement of goods, other services and works, except in cases specified at s.15(2)(d) PPA.</p> <p>Requirement to use International Open Advertised Bidding: S.18 PPA lists three cases where International Open Advertised Bidding “shall be used”. This is when:</p> <p>(1) the estimated value of the procurement exceeds the prescribed threshold; R.5(2) PPR specifies the thresholds, being MUR 200 million for goods, works (see below) and other services and MUR 10 million for consultancy services. However, R.5(3) PPR provides that in the case of works procurement where (a) no prequalification is required;⁶⁵ and (b) with investment not exceeding MUR 300 million, the bidding shall be restricted to local contractors (R.5(3) PPR). This provision was introduced in response to the COVID-19 pandemic, in order to support local contractors.</p> <p>(2) the goods, works or other services are not available under competitive price and other conditions from more than one supplier in Mauritius; or</p> <p>(3) there is no response to open national bidding and the goods, other services or works must be obtained from international bidders.</p>			<p>Design contests: Consider adding Design contests, if it intended to be treated as a method of procurement. Consider also setting out some basic requirements for conduct of design contests. See, for example, some of the Design Contest provisions at A. 33 EU Directive 2014/24/EU.</p> <p>Suggestion for improvement</p> <p>Direct procurement: PPA and PPR should be correctly aligned so that s.25 PPA refers also to use of the Direct Procurement method for consultancy services</p>
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⁶¹ S.73, Finance (Miscellaneous Provisions) 2021, Act No.15 of 2021, Official Gazette of Mauritius No.121 of 5 August 2021.

⁶² Explanation on use of sandbox for innovative technologies provided Procurement Policy Office in discussion with MAPS assessment team, 17 September 2021.

⁶³ Explanation of use and conduct of design contests provided by Procurement Policy Office in discussion with MAPS assessment team, 17 September 2021.

⁶⁴ Circular No.9 of 2016 reminds public bodies of the obligation to refer in the Procurement Notice whether the procurement is Open National Bidding, or Open International Bidding.

⁶⁵ **Prequalification proceedings** are required for any large work for which the estimated costs exceeds MUR 400 million, or any work, irrespective of project costs, the execution of which may require specialised skilled expertise (R.6(1) PPR). Prequalification is also required for procurement of works contracts and contracts for complex industrial plant and equipment, in which the cost of bid-preparation is high, in which only bidders who pass the minimum qualification requirements set forth in the prequalification documents are permitted to submit bids (R.18(2) PPR). For other large or complex works procurements use of prequalification is not mandatory (s.27(1) PPA).

	<p>Further guidance on Use of International Open Advertised Bidding is contained in a number of circulars issued by the Procurement Policy Office⁶⁶.</p> <p>Use of procurement methods other than Open Advertised Bidding S.15(2)(d) PPA provides that for the procurement of goods, other services and works, use of methods other than Open Advertised Bidding method may be used only if the public body has reason to believe that open advertised bidding (i) will not be efficient or practical for the procurement in question; or (ii) will be too costly to apply, given the value of the procurement.</p> <p>Record of ground for choice of less/non-competitive procurement method: s.15(2)(e) PPA requires that where a public body uses a method other than the open advertised bidding method for goods, other services and works or other than a request for proposals for consultancy services, it shall note in the record of procurement proceedings the ground for the choice of the procurement method.</p> <p>Conditions for use of less competitive and non-competitive procurement procedure for goods, other services and works. Sections 16 to 25A PPA set out more details on the conduct and conditions of use of less competitive and non-competitive bidding methods. These are described further below: Method 2 Restricted bidding - Conditions for use of Restricted bidding S.19(1) PPA sets out the three circumstances when Restricted bidding may be used. These are, in summary: (a) where a public body has reason to believe that the goods, other services or works are only available from a limited number of bidders – in which case all known suppliers capable of delivering shall be directly solicited. (b) where the time and cost of considering a large number of bids is disproportionate to the value of the procurement. R. 41 PPR provides that the maximum threshold amount is MUR five million for the procurement of goods, other services and works. So far as possible, there shall be at least 2 SMEs⁶⁷ amongst bidders invited directly to bid, (c) to ensure that suppliers of specialised good and services have and maintain the necessary technical and financial capacity. This is achieved by limiting participation in a particular procurement to supplier on a public body’s pre-approved supplier eligibility list, in which case a minimum of 5 bidders shall be directly solicited for bids. PPR 42 sets out further requirements on “standing lists”, which are the same as pre-approved supplier eligibility lists.⁶⁸ In practice, with the introduction of mandatory use of e-PS, all suppliers are required to register with e-PS in order to participate.</p> <p>Method 3 Request for sealed quotations - Conditions for use of Request for sealed quotations S.20(1) PPA sets out the three circumstances when Request for sealed quotations method shall be used for procurement below the specified financial threshold. Request for sealed quotations may be used where the estimated value of the procurement does not exceed the prescribed threshold of MUR 5 million (R.5A PPR) and the procurement is of: (a) readily available commercially standard goods not specially manufactured to the particular specifications of the [public] body; (b) small works; (c) small other services.</p> <p>Method 4 Direct procurement (single source) - Conditions for use of Direct Procurement (single source) S.25 PPA direct procurement method allows a public body to purchase goods, other services and works from a single source without competition. S.25(2) PPA sets out the circumstances where direct procurement is permitted, being: (a) Financial thresholds: where the value of the procurement does not exceed the prescribed maximum thresholds. The prescribed thresholds are set out in R.44 PPR and are: Goods – where the value does not exceed MUR 500,000, provided that the total cost per single item does not exceed MUR 100,000; Works, consultancy services or other services where the value does not exceed MUR 500,000; or (b) Exclusive rights: where only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available; or</p>			
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⁶⁶ Circulars: No.12 of 2010 – publication of opportunities on COMESA Regional Procurement Portal; No.13 of 2010 – notification of foreign missions; No.7 of 2012 = thresholds and advertising requirements; No.5 of 2013 – International bidding *unable to access this from PPO website* No 9 of 2016 (Repealing Circular No.4 of 2014) Grounds for use and notification of procurement method in procurement notice

⁶⁷ SMEs as defined by the Small and Medium Enterprises Development Authority Act

⁶⁸ Procurement Policy Office confirmed in discussion with MAPS assessment team on 11 November 2021 that “pre-approved supplier eligibility list” and “standing list” are both terms used to describe the same list.

	<p>(c) Additional goods or services: within the prescribed limits for additional deliveries of goods by the original supplier which are intended either as partial replacement or extension for existing goods, services, or installations and where a change of supplier would compel the public body to procure equipment or services not meeting requirements of interchangeability with already existing equipment or service. The prescribed limit set out in R.44(3) PPR is 50% of the initial contract value; or</p> <p>(d) Additional works: within the prescribed limits, where additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works from the initial contract would be difficult for technical or economic reasons. The prescribed limit set out in R.44(3) PPR is 30% of the initial contract value.</p> <p>Safeguards in context of direct procurement</p> <p>Records of direct procurement s.44(2) PPR requires a public body to maintain records of direct procurement, showing details of oral or informal quotations sought from suppliers prior to the award of the contract.</p> <p>General Policy of Diligence, in context of award of contract by direct procurement: In addition, R.45 PPR requires that prior to awarding a contract by direct procurement the public body shall ascertain that: (a) the item to be procured is not available in existing stores or under any applicable framework agreement; (b) the provider possesses the qualifications required to perform the procurement contract; (c) the quality and technical aspects of the provider’s proposal meet the requirements of the public body; and (d) the price to be paid to the provider is fair and reasonable.</p> <p>Method 5 Community and end-user participation procurement</p> <p>- Conditions/circumstances for use of Community and end-user participation procurement</p> <p>S.22 PPA permits end-user or community participation in the delivery of services where such participation “may result in enhancing the economy, quality or sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community.”</p> <p>Although the reference in s.22 is to use of Community and end-user participation for the “services to be procured”, PPR appears to expand the coverage of end-user participation to cover small works: R.43(1) PPR provides that “In the interest of providing employment to local communities, a public body may decide to execute small construction works, including maintenance and repair, through local user committees.”</p> <p>Community and end-user participation procurement has, historically, only been used for procurement of works. It is no longer used in practice as a method of procurement.⁶⁹</p> <p>Method 6 Departmental execution - Conditions/circumstances for use of Departmental execution - works</p> <p>S.23 PPA permits procurement to be effected by the public body itself in the case of works carried out with government resources. This where one or more of seven conditions (a) to (g) are satisfied. The conditions concern, in summary: lack of competition; unacceptable contractor risks; unavoidable work interruptions; special circumstances mean it is the only practical method; it is a pilot project for technology; to prevent disruption of existing operations; in the event of emergency such as a natural disaster which calls for immediate action. In practice, this method is very rarely used.⁷⁰</p> <p>Method 7 Competitive negotiations - Conditions/circumstances for use of Competitive Negotiations</p> <p>s.25B PPA provides that a public body may engage in competitive negotiations in the circumstances specified in s.25B(1) (a) to (e). These are, in summary, where (a) there is urgent need and use of other competitive procurement methods would be impractical and time-consuming. This is subject to the caveat that the circumstances giving rise to the urgency were not foreseeable by the public body and not the result of any dilatory conduct on the part of the public body; (b) there is urgent need, due to catastrophe, and use of other competitive procurement methods would be impractical and time-consuming; (c) where all bids received in an open advertised bidding or restricted bidding are classed as irregular or unacceptable. The terms “irregular” and “unacceptable” are defined in s.25B(3) and include abnormally low bids and where there is evidence of collusion or corruption.; (d) where use of a competitive method is not appropriate for the protection of essential security interests of Mauritius; (e) as a complementary procedure in the event of a tie or where the lowest evaluated priced substantially exceeds the estimated cost.</p> <p>Other provisions on negotiations: s.40(2) PPA provides that there shall be no negotiation between a public body and a selected bidder or other bidders except in such special circumstances as may be</p>			
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⁶⁹ Explanation provided in discussion between MAPS assessment team, the Attorney General’s Office and Procurement Policy Office, 17 September 2021

⁷⁰ Information provided by Procurement Policy Office in response to query on this issue raised by the MAPS assessment team.

	<p>prescribed or where the selected procurement method includes negotiations. R.8 PPR Special Circumstances for Negotiation sets out the prescribed circumstances where negotiations may be carried out with a bidder or supplier, being: where (a) the lowest evaluated substantially responsive bid is substantially above the updated estimated costs and a re-bid exercise is not considered practical; (b) direct procurement from a single source under s.25(2)(b) PPA is resorted to; or (c) emergency procurement under section 21 of the Act is resorted to. S.40(2A) PPA concerning major contracts, provides that, the Central Purchasing Board shall “apply, initiate and oversee the negotiation” between a public body and a selected bidder or other bidders, in accordance with such instructions as may be issued by the Procurement Policy Office. Directive 61 Procedures for Negotiation, sets out procedures for negotiations pursuant to ss.25B PPA and R.8 PPR(s40(2) & (2A) PPA).</p> <p>Method 8 Electronic Reverse Auction – conditions for use of Electronic Reverse Auction s.25(C)(1) PPA provides that a public body may resort to electronic reverse auctions for goods, works or non-consultancy services through the e-PS provided that the procurement is accurately specified and the subject matter of the purchase and requirements are suitable for a simple bidding process where evaluation is solely in terms of price. A procurement which includes multiple variables and qualitative factors shall not be the subject of reverse auction. S.25(C)(2) sets out provisions concerning the conduct of the electronic reverse auctions.</p> <p>Emergency procurement Conditions for use of Emergency procurement and procurement methods to be used Emergency procurement is not a procurement method listed in s.15 PPA. Provisions on Emergency Procurement are set out in s.21 PPA. Prior to amendments made in 2021, and during the COVID-19 pandemic in 2020, s.21(1) PPA provided that a public body may purchase from a single supplier without competition in cases of “extreme urgency”. PPA was amended in 2021⁷¹, in the light of lessons learned from the COVID-19 pandemic, to permit a public body, in cases of extreme urgency, to purchase goods and procure works, consultancy services and other services “by such procurement method as may be prescribed.” (see note below on R.5C PPR and Directive No.60).</p> <p>“Extreme urgency” is defined non-exhaustively in s.21(3) PPA: extreme urgency includes, where the country is either seriously threatened by or actually confronted with a “disaster, catastrophe, war or Act of God”; or where life or the quality of life or environment may be seriously compromised; or where the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently taken; or where a capital project may be seriously delayed for want of an item of minor value.</p> <p>Limitation on use of Emergency procurement: s.21(2) PPA provides that the scope of the emergency procurement shall as far as possible be limited to the period of emergency, so that appropriate competitive procurement methods may be utilised at the conclusion of the emergency period.</p> <p>R.5C PPR elaborates on the provisions in s.21 PPA. R.5C (1) PPR lists the procurement methods to be used in the event that use of emergency procurement is justified. These are, in hierarchical order: call off from an existing framework; extending or modifying an ongoing contract under the same terms and conditions; call for competition using restricted or open advertised bidding with accelerated timescales; competitive negotiations, direct award due to absence of competition or protection of exclusive rights; direct award due to extreme urgency. Prior to authorising emergency procurement under s.21 PPA the chief executive officer of the public body must ensure that various conditions are met concerning, in summary: efficacy of recourse to emergency procurement as opposed to normal procurement, quantities of goods purchased are for duration of the emergency situation only, ensuring that suppliers have a relevant track record and that the contract price is fair and reasonable. There are also provisions on record keeping and publication including requiring the public body to publish a notice of contract award and submit a report to the Procurement Policy Office.</p> <p>Directive 60 presents the provisions of R.5C PPR and also highlights that a public body may resort to use of a framework agreement on an urgent basis in order to avoid recourse to Emergency Procurement.</p> <p>s.3 Emergency Powers Act 1968⁷² (ss.18 & 19 Constitution) permits the President to make such regulations as appear to him to be necessary or expedient for securing peace, order and good government during a period of public emergency.</p>			
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⁷¹ s.73, Finance (Miscellaneous Provisions) 2021, Act No.15 of 2021, Official Gazette of Mauritius No.121 of 5 August 2021.

⁷² <https://attorneygeneral.govmu.org/Documents/Laws%20of%20Mauritius/A-Z%20Acts/E/EMERGENCY%20POWERS%20ACT,%20No%205%20of%201968.pdf>

	<p>Further information on the short-term response to the COVID-19 pandemic in March to July 2020 and use of emergency procurement is set out in [cross reference to Volume III of the Report]</p> <p>Procurement of Consultancy services s.15(1)(b) PPA lists three methods for procurement of consultancy services. These are: request for proposals using: quality and cost; quality alone; quality and fixed budget; or least cost and acceptable quality; open advertised bidding and; direct procurement. s.15(2)(e) provides that where a public body uses a method for procurement of consultancy services other than request for proposals, it shall note in the record of the procurement proceedings the ground for choice of the procurement method. Conditions for use of direct procurement for consultancy services s.25 (2) (e) & (f) PPA sets out circumstances where direct procurement is permitted for procurement of consultancy services: (e) Uniqueness: where the nature of the consultancy services requires that a particular consultant be selected due to unique qualifications; or (f) Continuity: where continuity of consultancy services is essential to meet the objectives of the consultancy assignment. Records: (direct procurement) As noted above, s.44(2) PPR requires a public body to maintain records showing details of oral or informal quotations sought from suppliers prior to the award of the contract General Policy of Diligence, in context of award of contract by direct procurement for consultancy services. As noted above, R.45 PPR requires that prior to awarding a contract by direct procurement the public body shall ascertain that: (a) the item to be procured is not available in existing stores or under any applicable framework agreement; (b) the provider possesses the qualifications required to perform the procurement contract; (c) the quality and technical aspects of the provider’s proposal meet the requirements of the public body; and (d) the price to be paid to the provider is fair and reasonable.</p>			
<p>(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.</p>	<p><i>Summary: The legal framework provides for a range of procurement methods, for use across the spectrum, from simple to complex procurement and open competition to less competitive and non-competitive methods. The options available under the open advertised bidding method allow for use of this method for both simple and more complex procurements.</i></p> <p>Procurement methods under the PPA Goods, other services and works procurement s.15(1)(a) PPA lists eight methods for procurement of goods, other services and works. These are: (Method 1) open advertised bidding (which may be national or international, with pre or post qualification and single or two stage), (Method 2) restricted bidding, ((Method 3) request for sealed quotations, (Method 4) direct procurement, (Method 5) community or end-user participation, (Method 6) departmental execution, (Method 7) competitive negotiations and (Method 8) electronic reversion auctions. The provisions on competitive negotiations and electronic reverse auctions were introduced in 2021, pursuant to s.73 of the Finance (Miscellaneous Provisions) 2021.⁷³</p> <p>Procurement methods in more detail Method 1 Open Advertised Bidding - Sections 16, 17 & 18 PPA There are two forms of open advertised bidding: national open advertised bidding (open national bidding) and international open advertised bidding (open international bidding). Open advertised bidding may include a prequalification stage or post qualification procedure. A prequalification stage is mandatory for large works exceeding MUR 400 million or any work, irrespective of project costs which may require specialised skilled expertise (R.6 PPR). Open advertised bidding can be carried out in a single stage or two stages, in cases referred to in s.29 PPA) Advertising : All open advertised bidding procurements (and other procurements) must be conducted using the e-PS, with very limited exceptions. Notices for electronic Invitations for Bids under the Open Advertised Bidding procurements using the e-PS are published on the e-PS. S.16 PPA provides that where an open advertised bidding method is used, the invitation to bid or the invitation to pre-qualify shall be published in a national newspaper with wide circulation. Circular No.9 of 2016 confirms that the invitation to bid or invitation to prequalify shall also be posted on the public procurement portal and, in practice, Open Advertised Bidding paper-based procurements are</p>		<p>Criterion met</p>	

⁷³ S.73, Finance (Miscellaneous Provisions) 2021, Act No.15 of 2021, Official Gazette of Mauritius No.121 of 5 August 2021.

	<p>advertised on that portal. s.11 Public Procurement (Electronic Bidding System) Regulations 2015 provides that every public body shall prepare bidding documents and procurement notices through the e-PS.</p> <p>In the case of international open advertised bidding (open international bidding), s.16 PPA provides that the invitation to bid or the invitation to pre-qualify shall be published in a national newspaper with wide circulation and also in selected international media in wide circulation. Circular no.7 of 2012 confirms that, in the case of international open advertised bidding (open international bidding), the invitation must also be posted on the COMESA public procurement portal through the Procurement Policy Office and that diplomatic missions accredited to the Government of Mauritius must be informed.</p> <p>S.11 Public Procurement (Electronic Bidding System) Regulations 2015 provides that every public body shall prepare bidding documents and procurement notice through the e-procurement system.</p> <p>Choice between prequalification and post-qualification proceedings: R.18 PPR provides that, subject to R.6 PPR (which sets out requirement to use prequalification in specified cases), a public body may use prequalification of post-qualification for any procurement. Prequalification proceedings are required for any large work for which the estimated costs exceeds MUR 400 million, or any work, irrespective of project costs, the execution of which may require specialised skilled expertise (R.6(1) PPR). Prequalification is also required for procurement of works contracts and contracts for complex industrial plant and equipment, in which the cost of bid-preparation is high, in which only bidders who pass the minimum qualification requirements set forth in the prequalification documents are permitted to submit bids (R.18(2) PPR). For other large or complex works procurements use of prequalification is not mandatory (s.27(1) PPA). s.27(3) Prequalification proceedings and R.19 PPR Provision of prequalification documents, requires that where prequalification proceedings are used, a public body shall provide prequalification documents to all bidders responding to the invitation to prequalify so as to provide them with information required to prepare and submit applications for prequalification. Post-qualification: R.18 PPR provides that post-qualification shall be used for contracts involving simple commodities or manufacture goods involving the examination of qualifications of only the first ranked bidder.s.38 PPA and R. 20 PPR set out further details concerning the conduct of post-qualification proceedings.</p> <p>Two-stage bidding: s.29 (1) PPA provides that open advertised bidding may be held in two stages where (a) it is not feasible to fully define the technical or contractual aspects of the procurement to elicit competitive bids; or (b) because of the complex nature of the goods, other services or works to be procured, the public body wishes to consider various technical or contractual solutions, and to discuss with bidders the relative merits of those variants before deciding on the final technical specifications and contractual conditions. s.29 PPA goes on to set out further details concerning the conduct of two-stage bidding.</p> <p>international open advertised bidding (open international bidding). follows the national open advertised bidding (open national bidding) procedure subject to additional requirements including advertising in selected international media with wide circulation and specified other locations including the public procurement portal and COMESA procurement portal (s.16(1) PPA and Circular no.7 of 2012.)</p> <p>Method 2 Restricted Bidding S.19 PPA concerns Restricted bidding. Process for restricted bidding: s.19 (1) and s.19(2) PPA provide that when restricted bidding is used on the ground that a public body has reason to believe that the goods, other services or works are only available from a limited number of bidders, all known suppliers capable of supplying the goods, other services or works shall be directly solicited (s.19(2)(a) PPA). When restricted bidding is used on the ground that the time and cost of considering a large number of bids is disproportionate to the value of the procurement (the threshold amount is MUR five million for the procurement of goods, other services and works), the public body shall, as far as reasonably possible, directly solicit bids from a minimum of 5 bidders and so far as possible, there shall be at least 2 SMEs⁷⁴ amongst bidders invited directly to bid. (s.19(2)(b) PPA)</p>			
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⁷⁴ SMEs as defined by the Small and Medium Enterprises Development Authority Act

	<p>When restricted bidding is used in order to ensure that suppliers of specialised good and services have and maintain the necessary technical and financial capacity, participation can be limited to suppliers on a public body’s pre-approved supplier eligibility list – in which case a minimum of 5 bidders shall be directly solicited for bids. (s.19(1)(c) PPA)</p> <p>Standing lists: R.42 PPR sets out provisions concerning the maintenance and use of registration and classification systems in restricted bidding procedures and to any databases and lists of interested or approved parties</p> <p>Method 3 Request for Sealed Quotations for standard goods, small work, small other services S.20 concerns Request for sealed quotations. Process for Request for sealed quotations: S.20(2)& (3) provides that Sealed quotations shall be requested in writing from not less than 3 bidders, unless the item is not available from 3 suppliers. The written request must contain a clear statement of requirements as to quality, quantity, terms and time of delivery, other special requirements as well as other information as may be prescribed.</p> <p>Method 4 Community and end-user participation (services) procurement: R.43(2) PPR requires the Procurement Policy Office to establish procedure for procurement through user’s committee to ensure: clarity as to cases where users committee shall be utilised; details to be included in the arrangements; effective mechanisms for user representation; effective and accountable use of funds and record keeping obligations. As noted above, this procedure is no longer used in practice.</p> <p>Method 5 Direct procurement Records of direct procurement s.44(2) PPR requires a public body to maintain records of direct procurement, showing details of oral or informal quotations sought from suppliers prior to the award of the contract. General Policy of Diligence, in context of award of contract by direct procurement: In addition, R.45 PPR requires that prior to awarding a contract by direct procurement the public body shall ascertain that: (a) the item to be procured is not available in existing stores or under any applicable framework agreement; (b) the provider possesses the qualifications required to perform the procurement contract; (c) the quality and technical aspects of the provider’s proposal meet the requirements of the public body; and (d) the price to be paid to the provider is fair and reasonable.</p> <p>Method 6 Departmental execution - works S.23 PPA permits procurement to be effected by the public body itself in the case of works carried out with government resources. This where one or more of seven conditions (a) to (g) are satisfied. In practice, this method is very rarely used and there is no guidance on interpretation of the conditions.⁷⁵</p> <p>Method 7 Competitive Negotiations – Process for Competitive Negotiations R.5B PPR sets out provisions concerning the conduct of competitive negotiations in cases where it is used because (a) there is urgent need and use of other competitive procurement methods would be impractical and time-consuming; (b) there is urgent need, due to catastrophe, and use of other competitive procurement methods would be impractical and time-consuming, or; c) where all bids received in an open advertised bidding or restricted bidding are classed as irregular or unacceptable. In these cases the public body should aim to invite at least five capable bidders, with a minimum of three bidders shortlisted for competitive negotiations. R.5B PPR lists the minimum content of the invitation to participate and contains provisions concerning parallel conduct of negotiations, maintaining confidentiality and documenting the process. A public body may award a contract based on the initial bid if this option was mentioned in the invitation or it can use one or more negotiation stages during which it may reduce the number of bidders, prior to seeking final bids. No competitive negotiations are permitted on best and final offers and the award must be made to the bid that best meets the award criteria.</p> <p>Directive 61 Procedures for Negotiation sets out and Annexes A and B, procedures for competitive negotiations pursuant to ss.25B PPA and R.8 PPR(s.40(2)(2A) PPA). Annex A of Directive 60 covers competitive negotiations resorted to in accordance with s.25B(1)(a) (b) and (c) PPA: where (a) there is urgent need and use of other competitive procurement methods would be impractical and time-consuming; (b) there is urgent need, due to catastrophe, and use of other competitive procurement methods would be impractical and time-consuming; (c) where all bids</p>			
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⁷⁵ Information provided by Procurement Policy Office in response to query on this issue raised by the MAPS assessment team.

	<p>received in an open advertised bidding or restricted bidding are classed as irregular or unacceptable. Annex A confirms that discussions shall emphasise qualifications and suitability, based on factors in the bidding documents and that price shall be considered by need not be the sole determining factor. There are provisions concerning the selection committee and preparatory phase prior to negotiations as well as the scope of negotiations, and conduct of negotiations including prohibitions on disclosure of a bidder's proprietary or technical information, ideas or costs. There is also guidance on the manner of conducting negotiations and award of contract with particular provision confirming that no award shall be made based on criteria not specified in the bidding documents.</p> <p>Annex B of Directive 60 covers competitive negotiations resorted to in accordance with s.25B(1)(e) PPA, as a complementary procedure in the event of a tie or where the lowest evaluated priced substantially exceeds the estimated cost, and circumstance in R.8 PPR apply, being where (a) the lowest evaluated substantially responsive bid is substantially above the updated estimated costs and a re-bid exercise is not considered practical; (b) direct procurement from a single source under s.25(2)(b) PPA is resorted to; or (c) emergency procurement under section 21 of the Act is resorted to. The procedures applying vary according to the circumstances in particular whether the negotiations are conducted in parallel with all bidders or sequentially. There are provisions concerning pre-negotiation review, and particular provisions on negotiations of works contracts with a limit on resulting cost increase of 15% and for contracts for goods, other services and consultancy services.</p> <p>Method 8 Electronic Reverse Auction – Process for Electronic Reverse Auction S.25(C)(2) sets out provisions concerning the conduct of the electronic reverse auctions, including requirements to invite all registered suppliers in a specific category to compete and advertise its requirements on the e-PS. Electronic reverse auctions shall not reveal the identity of bidders and only downward price revision is permitted.</p> <p>Sandbox for innovative technologies S.25A PPA, introduced by recent amendments⁷⁶, permits the procurement of and payment for proof of concepts or prototypes for innovative technology or other systems. Guidelines on Sandbox for Innovative Technologies, sets out short guidelines on use of pre-commercial procurement (PCP) for implementation of pilot projects on innovative technologies. The process requires a Request for Proposals through an open advertisement containing specified details including the subject and scope, expected outcomes, budget and schedule as well as intellectual property issues and qualification requirements, eligibility and evaluation criteria. Following evaluation, the public body may select one or multiple providers to proceed to solution design in phases, with provision for payments corresponding to each phase. At the end of the last phase the public body "may conduct a bidding exercise to implement the solution".</p> <p>Design contest R.40 PPR provides that, in appropriate cases, such as the procurement of architectural designs or urban planning designs, a public body may conduct a design contest for the purposes of selecting a design in accordance with such procedure as may be approved by the Procurement Policy Office. Design contests have been used for a long time in Mauritius and always conducted in accordance with the PPA. Once a design has been selected that architect is appointed for the project. Unsuccessful contestants are partially compensated for time spent in producing a design.⁷⁷</p> <p>Consultancy services procurement (s.15(1)(b) PPA) s.15(1)(b) PPA lists three methods for procurement of consultancy services. These are: request for proposals using : quality and cost; quality alone; quality and fixed budget; or least cost and acceptable quality; open advertised bidding and; direct procurement.</p> <p>Request for proposals for consultancy services Process for Requests for proposals for consultancy services: S.24 PPA concerns the process used for Request for proposals for consultancy services, covering preparation of the shortlist, issuing request for proposals, basis of selection, technical evaluation criteria, evaluation of financial proposals, evaluation/award methodology and permitted negotiation with the winning consultant as well as provision for a "standstill" period of 7 days for challenge following notification of the award decision to all shortlisted parties in the case of contracts above MUR 15 million. R.47 PPR expands upon some of the provisions in s.24 PPA including requirements on provision of appropriate levels of information to be requested, content of the notice seeking expressions of interest,</p>			
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⁷⁶ Amendment made by Act no.7 of 2020

⁷⁷ Explanation provided in discussion between MAPS assessment team, the Attorney General's Office and Procurement Policy Office, 17 September 2021

	<p>information required to determine suitability, minimum time limits for submission of expression of interest and minimum numbers of shortlisted consultants.</p> <p>Drawing up the shortlist: The public body is required to draw up a shortlist of consultants with requisite capacity, to ensure effective competition. For contracts with an estimated value above the prescribed threshold of MUR 10 million (R.47 PPR), the public body shall seek expressions of interest by publishing a notice in a national newspaper of wide circulation and <i>include</i> those who have expressed an interest in the procurement. For contracts below that threshold the public body may draw up the shortlist on the basis of its own knowledge and information.</p>			
<p>(c) Fractioning of contracts to limit competition is prohibited.</p>	<p><i>The fractioning of contracts to limit competition is prohibited. The procurement legal framework permits fractioning of contracts (use of lots) subject to clear provisions requiring that division into lots is not used to avoid thresholds beyond which more competitive procurement methods may be used.</i></p> <p>S.40(2C) PPA Award of Procurement Contracts, provides that a public body may limit the number of lots awarded to a particular supplier provided that such limitations are based on non-discriminatory criteria, set out in the bidding documents, or determining which lots shall be awarded to substantially responsive suppliers.</p> <p>R.10 (5)(i) PPR Procurement Planning, provides that in the procurement of a major contract the public body shall take into account the possible slicing of procurement into lots provide that such slicing is not done to avoid thresholds beyond which more competitive procurement methods may be used and where factors indicate that this would, for example, provide the best overall value, improve technical compatibility, allow bidders to bid for individual lots or the whole package and promote SME participation.</p> <p>Circular No.11 of 2016 Guidance on Award of Public Contracts by Lots, was issued following amendment to the PPA to incorporate S.40(2C) PPA. The Guidance makes it clear that, as a general rule, public bodies should not restrict the award of number of lots to suppliers and confirms that the choice of lots to be awarded to suppliers should be such that the supplier/lot combination would result in the best value for money to the public body. The Guidance includes a worked example on limiting award of lots to suppliers. Circular No.12 of 2012 Preparation of Bidding Documents also provides a steer on use of the bidding documents where contracts are divided into lots.</p> <p>Standard Bidding Documents, for example for procurement of goods (e-SBD for Procurement of Goods,ref: G/EPROC/POG1/01-21), e-Standard Prequalification Documents for procurement of Design-Build, SBD for procurement of Large or Complex works Ref: W/SBDPLC33/10-20) include provisions concerning bidding for and evaluation of lots. The Evaluation Guidelines (Works and Goods) also include references to division into lots including application of cross discounting for award of multiple lots.</p>		<p>Criterion met</p>	
<p>(d) Appropriate standards for competitive procedures are specified.</p>	<p><i>Summary: The legal framework requires use of the open advertised bidding method as the default method with conditions applying to use of other less competitive and non-competitive methods and a requirement to include in the record of procurement proceedings the ground for choice of a procurement method other than open advertised bidding. Thus, there are limits on the discretion available to public bodies and individual procurement officers in deciding which procurement method to use, reducing the availability of procurement methods that limit competition.</i></p> <p>The Open Advertised Bidding method is the default method for procurement of goods, other services and works. S.15(2)(a) PPA requires use of the Open Advertised Bidding method for procurement of goods, other services and works, except in cases specified at s.15(2)(d) PPA. Requests for proposals and Open Advertised Bidding method are the specified competitive methods for procurement of consultancy services.</p> <p>S.15(2)(d) PPA provides that for the procurement of goods, other services and works, use of methods other than Open Advertised Bidding method may be used only if the public body has reason to believe that open advertised bidding (i) will not be efficient or practical for the procurement in question; or (ii) will be too costly to apply, given the value of the procurement. Sections 16 to 25A PPA set out details on the conduct and conditions of use of less competitive and non-competitive bidding methods.</p> <p>s.15(2)(e) PPA requires that where a public body uses a method other than the open advertised bidding method for goods, other services and works or other than a request for proposals for consultancy services, it shall note in the record of procurement proceedings the ground for the choice of the procurement method.</p>		<p>Criterion met</p>	

Name/organisation:

Date:

	Requests for proposals and Open Advertised Bidding method are the specified competitive methods for procurement of consultancy services.			
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1(c) Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).</p>	<p><i>Summary: The legal framework requires that procurement opportunities are publicly advertised on the e-PS or procurement portal in the event of paper-based bidding, unless restriction of procurement opportunities is explicitly justified.</i></p> <p>s.16 PPA provides that where the open advertised bidding method is used, the invitation to bid or the invitation to pre-qualify shall be published in a national newspaper with wide circulation. s.16 PPA does not refer to publication on the procurement portal or e-PS, although the requirements are picked up in the Public Procurement (Electronic Bidding System) Regulations 2015 and Circular issued by the Procurement Policy Office. In practice, advertisement for Open Advertised Bidding are published on the e-PS, with the procurement portal used for paper-based bidding.</p> <p>Circular No.9 of 2016 confirms that the invitation to bid or invitation to prequalify shall also be posted on the public procurement portal which since the introduction of mandatory use of e-PS for open advertised bidding is used for paper-based procurements. With effect from January 2021, all open advertised bidding procurements and most other procurements must be conducted using the e-PS, with limited exceptions and s.11 Public Procurement (Electronic Bidding System) Regulations 2015, provides that every public body shall prepare procurement notice through the e-procurement system (e-PS). s.12 require that every public body shall post on the e-procurement system (e-PS) procurements undertaken using the open advertised bidding methods; expression of interest; and prequalification proceedings. Procurement notices and bidding documents for open advertised bidding method are readily accessible from the e-PS without registration.</p> <p>In the case of international open advertised bidding, s.16 PPA provides that the invitation to bid or the invitation to pre-qualify shall be published in a national newspaper with wide circulation and also in selected international media in wide circulation. Circular no.7 of 2012 confirms that, in the case of international bidding, the invitation must also be posted on the public procurement portal, on PROMIS (COMESA Procurement Portal) through the Procurement Policy Office and that diplomatic missions accredited to the Government of Mauritius must be informed.</p>		<p>Criterion met</p>		
<p>(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.</p>	<p><i>Summary: The PPA requires that a public body shall set a deadline for submission of bids based on listed considerations including the complexity of the procurement and the need to provide sufficient time for preparation and submission of a bid, with a view to maximising competition. The minimum time frames for submission of bids/proposals for most procurement method, including open advertised bidding method using e-PS, are not defined by reference to a specified number of days, with legal provisions referring, instead, to the considerations to be applied. There are KPIs for Procurement Lead times including indicative periods for bid submission which vary according to the subject matter and/or complexity of the contract. There are no special provisions requiring consideration of extended time frames when international competition is solicited but this issue is adequately addressed by application of listed considerations.</i></p> <p>Deadlines for submission of bids/proposals</p> <p>S.32(1) PPA provides that a public body shall set a deadline for the submission of bids, applications for prequalification and expressions of interest so as to allow sufficient time for their preparation and submission, with a view to maximising competition. The deadlines shall not be less than such minimum period as may be prescribed.</p> <p>There is no minimum time period specified in the legal framework for submission of bids for Open Advertised Bidding methods using the e-PS. The time limit will depend on the complexity of the procurement. R.26 PPR sets a minimum time frame for submission of paper-based bids of 30 days in an</p>		<p>Criterion met</p>		

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

	<p>Open Advertised Bidding method. For simple projects not exceeding MUR 100 million, the deadlines for submission shall not exceed 30 days (Directive No.45, 08 April 2020)</p> <p>Circular No.8 of 2008, paragraph 12 provides that the time allowed for submission of bids should be set after taking into consideration the complexity of the procurement and the time it would reasonably take the bidder to prepare his bid, gather all relevant documents required for submission, obtain clarifications (if any) and submit documents by post or otherwise.</p> <p>There are KPIs for Procurement Lead times, proposed times for various stages of the bidding process including Bid submission time.</p> <p>There is no specific provision requiring extensions of time where international competition is solicited but this issue is adequately addressed by the combination of mandatory use of e-PS for international open advertised bidding, publication obligations and requirements to take into account complexity and bidder needs in setting the time period for submission of bids.</p> <p>In the case of procedures involving prequalification of bidders, public bodies should not allow a period of more than 12 months to elapse between determining the list of pre-qualified forms and issuing the Invitation for Bids (IFB). This is subject to additional time necessary to obtain necessary clearances from funding agencies. (Directive No.17, 13 October 2014, as amended by Directive No.34, 15 June 2017). In this context, Directive No.17 explains that it has been observed that there is a tendency of public bodies to take more than reasonable time to issue IFBs which is not conducive to achieving optimum value for money.</p> <p>Directive No.13/2013 KPIs for Procurement Lead Time sets out the appropriate “procurement lead time”, being “the interval in calendar days between the preparation of procurement documents and issue of award of contract”. The Directive distinguishes between major projects and non-major contracts, and contract types (works, goods, other services and pharmaceuticals contracts) with major works projects having the longest lead time. Directive No.13 provides that public bodies should aim to attain the lead times listed using Open Advertised Bidding.</p> <table border="1" data-bbox="501 940 1380 1255"> <thead> <tr> <th>Types of contracts</th> <th>Procurement Lead Time for Major contracts (days)</th> <th>Procurement Lead Time for Non-major contracts (days)</th> </tr> </thead> <tbody> <tr> <td>Works (without prequalification)</td> <td>120</td> <td>90</td> </tr> <tr> <td>Goods (except pharmaceuticals)</td> <td>100</td> <td>75</td> </tr> <tr> <td>Other Services</td> <td>95</td> <td>70</td> </tr> <tr> <td>Pharmaceuticals</td> <td>110</td> <td>85</td> </tr> </tbody> </table> <p>The Annex to Directive No.13 sets out indicative time frames for different stages of the bidding process, again distinguishing between types of contracts. The stages of the bidding process with indicative time frames are: preparation of bidding documents; vetting of bidding documents by CPB; rectification of bidding documents by public bodies prior to launching; bid submission time; bid evaluation; recommendations to award by the CPB; award (issue of notification), and; prequalification/shortlisting of suppliers/consulting firms. Section 1.4 of the Annex to Directive No.13 refers to proposed Bid submission times of 35 days for Works (Roads, Sewerage and Other works), 30 days for Goods and Services and 35 days for pharmaceuticals.</p> <p>The Public bodies must submit brief reports to the Procurement Policy Office where the lead times are exceeded.</p>	Types of contracts	Procurement Lead Time for Major contracts (days)	Procurement Lead Time for Non-major contracts (days)	Works (without prequalification)	120	90	Goods (except pharmaceuticals)	100	75	Other Services	95	70	Pharmaceuticals	110	85			
Types of contracts	Procurement Lead Time for Major contracts (days)	Procurement Lead Time for Non-major contracts (days)																	
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Goods (except pharmaceuticals)	100	75																	
Other Services	95	70																	
Pharmaceuticals	110	85																	
<p>(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).</p>	<p><i>Summary: Procurement notices for all tenders using open advertised bidding through e-PS must be published on the e-Ps which is easily accessible at no cost and without requirement for registration to access the notices.</i></p> <p>All open advertised bidding procurements must be conducted using the e-PS, with limited exceptions. The Public Procurement (Electronic Bidding System) Regulations 2015, s.12 require that every public body shall post on the e-PS bidding documents for procurements undertaken using the open advertised bidding method; expression of interest; and prequalification proceedings. The e-PS is a central portal. Individual public bodies have their own websites with direct links to the e-PS so that suppliers are able</p>		<p>Criterion met</p>																

Name/organisation:

Date:

	to find information about the same procurement opportunities from both the e-PS and the public bodies' own websites. The e-PS is easily accessible to suppliers at no cost and procurement notices can be accessed without registration.				
(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.	<p><i>Summary: The content published in the standard procurement notice and bidding documents includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.</i></p> <p>The content of the standard procurement notice for open advertised bidding includes: the Reference Number of the Invitation for Bid (IFB), name of public body, brief details about the procurement, deadlines for submission of bids, closing and opening and URL where the bidding documents can be downloaded.</p> <p>s.12 The Public Procurement (Electronic Bidding System) Regulations 2015, Release of bidding documents, requires every public body to post on the e-PS: procurements undertaken using the open advertised bidding method; the expression of interest and the prequalification proceedings. In addition, every bidding document shall be made available on the e-procurement system for supplier to view and consider participation in the bidding exercise. The information provided in the Invitation for Bids (IFB) Notice and the IFB documents are sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.⁷⁸ Use of Standard Bidding Documents is mandatory.</p> <p>s.24 PPA Request for proposals for consultancy services. The minimum content of the notice seeking expressions of interest is specified in R.47 PPR. This comprises, in summary: identification of a contract information for the public body; description of the assignment or project; date of issue of the notice, closing date and instructions for submission of expression of interest; any source of funding; projected time period for implementation and completion of the assignment; shortlisting qualification criteria.</p>		Criterion met		

1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.	<p><i>Summary: The legal framework establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusion underpinned by the principle of non-discrimination.</i></p> <p>S.15(2)(a) PPA Open Advertised Bidding Procedure, provides that in the case of goods, other services or works, equal access shall be provided to all "eligible and qualified" bidders without discrimination.</p> <p>R.12 PPR Non-discrimination, provides that, subject to s.17 PPA, a bidder shall be allowed to participate in procurement proceedings without regard to his nationality and permits public bodies to accept equivalent documents when a particular document required in the bidding documents is not available or issued in the bidder's country and to accept self-certification of compliance with eligibility requirements from a bidder.</p>		Criterion met		
(b) It ensures that there are no barriers to participation in the public procurement market.	<p><i>Summary: As a general principle, firms including foreign firms, are not prevented from participating in a procurement process other than for lack of qualifications and in accordance with published rules on eligibility. There are domestic content and price preference provisions including use of regional preference where relevant, which are not excessive. Recent introduction of new provisions requiring foreign contractors and service providers in the construction sector to collaborate with domestic contractors and providers creates a de facto barrier to participation by foreign bidders tender for those works and services.</i></p> <p>Registration: Use of the e-PS is mandatory for all procurement using open advertised bidding through the e-PS. All Suppliers are required to register on the e-PS in order to participate. Registration on e-PS is straightforward and does not create barriers to entry.</p>		<p>Criterion not met</p> <p>GAP: Restrictions on participation of foreign bidders: Restrictions on participation of foreign bidders are likely to undermine economy and efficiency of the system. The CIDB Collaboration Regulations, effective from October 2021, require foreign bidders to collaborate with local contractors/consultants in the delivery of construction works and specified construction related consultancy services and introduce harsh sanctions for breach. These provisions create a potential barrier to</p>	Yes	Recommendation Revoke the CIDB Collaboration Regulations.

⁷⁸ IFB Notices and Documents sampled and downloaded from e-PS, July 2021.

<p>The Public Procurement (Electronic Bidding System) Regulations 2015 (as amended) (“Electronic Bidding Regulations”), s.4 provide for the establishment of the Central Registration Body (CRB) as a unit within the Procurement Policy Office to deal with the registration of suppliers and keep and maintain an updated register of suppliers. s.5 provides for suppliers to be registered in the “open” category or the “restricted” category, in the latter case subject to the approval of the CRB.</p> <p>The Construction Industry Development Board (CIDB) runs the online registration scheme for contractors, consultants, suppliers, Computer Aided Design (CAD) operators and technicians in the construction sector. Where a procurement contract requires CIDB registration, provisional registration is permitted for foreign bidders participating in the procurement process.</p> <p>Restrictions on participation of foreign bidders: The Construction Industry Development Board (Collaboration between Foreign and Local Contractors) Regulations 2021 and the Construction Industry Development Board (Collaboration between Foreign and Local Consultants) Regulations 2021⁷⁹ came into operation on 1 October 2021 (“CIDB Collaboration Regulations”). The CIDB Collaboration Regulations were made pursuant to amendments made in 2021 to the Construction Industry Development Board Act.⁸⁰ The CIDB Collaboration Regulations provide, in summary, that for construction works and in specified fields of consultancy no foreign contractor/consultant shall carry out construction works/provide consultancy services unless it collaborates with a local contractor/consultant and is temporarily registered under the Construction Industry Development Board Act. Collaboration may take the form of joint venture agreement, a sub-contract/sub-consultancy agreement or any other form of agreement between the contractors for the execution of the project/consultants. For architectural, engineering and quantity surveying services at least 25% of the total consultancy fee shall apply to local consultants. Any person convicted for failure to comply with the CIDB Collaboration Regulations shall be liable to a fine not exceeding MUR 500,000 and a maximum 3 year term of imprisonment.</p> <p>Domestic advantage, domestic preference and reserved contracts: S.16 PPA provides that in the case of open advertised bidding proceedings, a public body may, in appropriate cases and subject to any regulations confer an advantage or preference to domestic or regional goods, services or contractors. R.35A PPR Advantage to domestic goods, confirms that a public body may grant an advantage to domestic goods, provided that the criteria to grant the advantage are spelt out in the bidding documents and are in accordance with such directive as the Procurement Policy Office may issue. R.35 PPR Margin of Preference, provides that where applicable, the financial evaluation stage shall involve the application of price preference in favour of domestically manufactured goods and domestic and foreign contractors and a regional price preference where the regional preference is applicable. Any applicable preference shall be stated in the bidding document and shall be in accordance with directives issued by the Procurement Policy Office.⁸¹</p> <p>Open National Bidding - Limitations on participation: S.17 PPA permits a public body to limit participation in Open advertised bidding “to citizens of Mauritius or entities incorporated in Mauritius” but “only where such limitation is stated in the invitation to bid or, for prequalification, in the bidding documents and is otherwise in accordance with such criteria as may be prescribed.”</p> <p>R.12 Non-discrimination provides that a bidder shall be allowed to participate in procurement proceedings without regard nationality but this is subject to the provisions in s.17 PPA.</p> <p>R.5(3) PPR provides that in the case of works procurement where (a) no prequalification is required;⁸² and (b) with investment not exceeding MUR 300 million, the bidding shall be restricted to local contractors (R.5(3) PPR). This provision was introduced in response to the COVID-19 pandemic in order to support local contractors.</p> <p>Reserved contracts</p>		<p>entry for foreign participants. The CIDB Collaboration Regulations limiting the level of participation of foreign consultants is likely to be a disincentive to participation. These combined measures will reduce ease of doing business for foreign contractors/consultants and may have a negative impact on competition and value for money, particularly in markets where there is already limited competition. (see Indicator 9(b) for indicators concerning levels of competition)</p>
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⁷⁹ <https://www.cidb.mu/wp-content/uploads/2020/05/CIDB-Amendment-Act-2021-new-2.pdf>

⁸⁰ The Construction Industry Development Board (Amendment) Act 2021. No.12 of 2021

⁸¹ Directive 50, 2020 (Ensuring minimum domestic content of 30% in purchases of goods effective 22 October 2020) confirms that public bodies are required to have a minimum domestic content of 30 percent in their purchases of goods, wherever possible. The detailed rules on application of margin of preference for goods contracts, are set out in Directive 49, 2020. Margins of preference of 20% to 40% apply, with highest margins of preference applying to locally manufactured goods produced by SMEs. Directive 43, 2019 provide for 15% domestic margin of preference for wheat flour and ration rice procured by the State Trading Corporation. There is a margin of preference scheme for works contracts, but application of the scheme was suspended in 2018.

⁸² **Prequalification proceedings** are required for any large work for which the estimated costs exceed MUR 400 million, or any work, irrespective of project costs, the execution of which may require specialised skilled expertise (R.6(1) PPR). Prequalification is also required for procurement of works contracts and contracts for complex industrial plant and equipment, in which the cost of bid-preparation is high, in which only bidders who pass the minimum qualification requirements set forth in the prequalification documents are permitted to submit bids (R.18(2) PPR). For other large or complex works procurements use of prequalification is not mandatory (s.27(1) PPA).

	<p>s.26B PPA Reservation of contracts for micro, small and medium enterprises. S.26B PPA provides that “specific types” of goods, works and other services contract and the estimated contract values, as may be prescribed, shall be reserved to microenterprises, small enterprises and medium enterprises.</p> <p>R.47A PPR Specific types of works contracts, elaborates on these provisions, referring to specific types of works contracts, as specified in first column of the Sixth Schedule, being Maintenance of roads and associated works with a value not exceeding Mauritius Rupees (MUR) 10 million. R.47A</p> <p>R.47B PPR specific types of good and other services contracts, refers to reserved contracts for specific types of goods and other services, as referred to in the Seventh Schedule, concerning office stationery (MUR 1 million), Cleaning materials, cleaning services and catering services (all MUR 1 million) and School furniture (MUR 5 million).</p> <p>Reservation of works contracts to national contractors</p> <p>R.5(3) PPR provides that in the case of works procurement where (a) no prequalification is required; and (b) with investment not exceeding MUR 300 million, the bidding shall be restricted to local contractors (R.5(3) PPR). This provision was introduced in 2020 in the context of the response to the COVID-19 pandemic, in order to support local contractors.</p>																		
<p>(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.</p>	<p><i>Summary: The legal framework details eligibility requirement and provides for the possibility of administrative debarment and disqualification, subject to due process which is clearly defined. Eligibility requirements are clearly set out in the SBDs and explained in User Guides, but are not listed in the PPA or the PPR. The legal framework does not explicitly exclude bidders on grounds of conviction by final judgment for terrorism and trafficking offences.</i></p> <p>Note on terminology: The term “exclusion” is understood in a narrower sense in the Mauritius public procurement legal framework than its use in the MAPS methodology. Under the procurement legal framework in Mauritius “exclusion” occurs where a bidder is excluded from participation in procurement undertake by a particular public body for a fixed period. Exclusion is on the grounds of prior poor performance, is linked to the performance review system and is subject to a specified process leading to an exclusion decision. The term “exclusion” is also used under the general heading of “eligibility” in the SBDs/User Guides, to refer to a bidder’s ineligibility to participate in two specified cases: (1) if as a matter of law or official regulation, the Republic of Mauritius prohibits commercial relations with that country (2) By an act of compliance with a decision of the UN Security Council, under Chapter VII of the UN Charter.</p> <p>Determining eligibility to participate (qualification)</p> <p>S.15(2)(a) PPA Open Advertised Bidding procedure provides that in the case of goods, other services or works, equal access shall be provided to all “eligible and qualified” bidders without discrimination. The legal framework includes provisions concerning eligibility and requires public bodies to take these into account in their procurement processes. The PPA and the PPR do not set out a list, or lists, of eligibility requirements. Eligibility requirements and the process to be applied by public bodies are best understood by reference to Guidelines (User’s Guide/Evaluation Guides) issued by the Procurement Policy Office on the conduct of procurement processes, in conjunction with the relevant Standard Bidding Document. The most recent User’s Guide is the User’s Guide for Procurement of Works, issued on 15 October 2020 (“User’s Guide for Works”). The other Guidelines are the Evaluation Guide for Works and Goods, May 2014 and the Evaluation Guide for Consultancy Services, May 2012. Analysis in this indicator 1(d)(a) is by reference to the most recent Guide, the User’s Guide for Works</p> <p>Open Advertised Bidding may involve pre-qualification (s.15(2)(b) PPA) or post-qualification (s.15(2)(b) PPA). In the case of post-qualification, bidders are required to submit the information pertaining to their qualification together with their bids. The User’s Guide for Works, Section III contains all the criteria to be used to evaluate bids (Section III.1) and to qualify bidders (Section III.2) The criteria listed in section III.2 are:</p> <table border="1" data-bbox="498 1640 1448 1871"> <tr> <td>2.1</td> <td>Eligibility</td> </tr> <tr> <td>2.1.1</td> <td>Nationality</td> </tr> <tr> <td>2.1.2</td> <td>Conflict of interest</td> </tr> <tr> <td>2.1.3</td> <td>Country Eligibility</td> </tr> <tr> <td>2.1.4</td> <td>Government-owned entity</td> </tr> <tr> <td>2.1.5</td> <td>Exclusions</td> </tr> <tr> <td>2.2</td> <td>Pending litigation</td> </tr> <tr> <td>2.2.1</td> <td>Historical contract non-performance</td> </tr> </table>	2.1	Eligibility	2.1.1	Nationality	2.1.2	Conflict of interest	2.1.3	Country Eligibility	2.1.4	Government-owned entity	2.1.5	Exclusions	2.2	Pending litigation	2.2.1	Historical contract non-performance	<p>Criterion partially met</p> <p>GAP: List of eligibility requirements in PPA/PPA: The rules on eligibility are not sufficiently clear. It is important for potential bidders, bidders and other stakeholders to clearly understand the eligibility requirements and to understand the legal basis for those requirements and grounds. The PPA and the PPR do not set out a list, or lists, of eligibility requirements. Eligibility requirements are found in the SBDs but not in higher level documents in the legal hierarchy.</p>	<p>Recommendation</p> <p>List eligibility requirements in the PPA/PPR.</p> <p>Suggestion for improvement Ineligibility on the grounds of conviction by final judgment for organised crime, terrorism, money laundering, child labour and trafficking offences: The MAPS Methodology for assessment of this indicator requires that firms or individuals that have been subject to conviction by final judgment for one of the following reasons shall be excluded [ineligible] from participation in specified types of offences relating to participation in a criminal organization; terrorist and terrorism related offences; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings. Although there is legislation in place addressing such matters, the procurement legal framework does not explicitly list these circumstances as grounds for ineligibility from participation. Consider referencing and listing in PPA/PPR grounds for ineligibility due to conviction by final judgment for specified organised crime, terrorist and trafficking offences (participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings.)</p> <p>Suggestion for improvement Grounds for debarment: Regulation 3 of The Public Procurement (Disqualification) Regulations 2009 lists five grounds for disqualification. The Public Procurement (Suspension and Debarment) Regulations 2008 do not list the grounds for suspension and debarment. S.53 PPA does not distinguish between the grounds. Consider improved clarity on this issue either by amending PPA (preferable) or amending Suspension and Debarment Regulations to refer to the grounds for Suspension and Debarment under the Public Procurement (Suspension and Debarment) Regulations 2008.</p> <p>Suggestion for improvement</p>
2.1	Eligibility																		
2.1.1	Nationality																		
2.1.2	Conflict of interest																		
2.1.3	Country Eligibility																		
2.1.4	Government-owned entity																		
2.1.5	Exclusions																		
2.2	Pending litigation																		
2.2.1	Historical contract non-performance																		

2.2.2	Pending litigation
2.3	Financial Situation
2.3.1	Historical financial performance
2.3.2	Average annual construction turnover
2.3.3.	Financial resources
2.4	Experience
2.4.1	General construction experience
2.4.2	Specific construction experience
2.5	Personnel
2.6	Equipment

The Eligibility Criteria listed at 2.1.1 to 2.1.5 are considered as relating to eligibility for the purposes of this sub-indicator. Criteria listed at 2.2 to 2.6 are considered as suitability/ability criteria and considered under sub-indicator 1(d)(e).

The User's Guide for Works sets out each of the Eligibility Criteria in table form, with compliance requirements noted for single entity bidders and joint ventures as well as submission requirements in terms of documents/evidence required. For each of the Eligibility Criteria listed there is a reference to the relevant provision in the Instructions to Bidders (ITB) (SBD for Large or Complex Works SBD-LCW⁸³) which expands upon the requirement. These can be summarised as follows:

2.1	Eligibility	
2.1.1	Nationality	ITB Sub-clause 5.3
	A bidder and all partners constituting the bidder may have nationality of any country. <ul style="list-style-type: none"> Deemed nationality if citizen or constituted, incorporated or registered and operate in conformity with laws of that country. 	
2.1.2	Conflict of interest	ITB Sub-clause 4.3
	All bidders found to have a conflict of interest shall be disqualified. S.5.4 lists circumstances where bidder may be considered to have a conflict of interest with one or more parties in the bidding process, in summary: having one controlling partner in common; in receipt of direct/indirect subsidy; have same legal representative for purposes of bid; have relationship with access to information about or influence on bid of another bidder or influence decisions of public body; participation as principal bidder in more than one bid; consultant in preparation of design or technical works that are subject of the bid; bidder or affiliates hired or proposed to be hired by the Employer public body as engineer for contract implementation.	
2.1.3	Country Eligibility	ITB Sub-clause 5.5
	<ul style="list-style-type: none"> A firm sanctioned by Government of Republic of Mauritius in relation to fraudulent or corrupt practices. A firm under a declaration of ineligibility by Government of Mauritius⁸⁴ Contractors appearing on ineligibility [debarment] lists of African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, World Bank Group 	
2.1.4	Government-owned entity	ITB Sub-clause 5.6
	<ul style="list-style-type: none"> Government-owned entities are eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. They shall not be dependent agencies of the Employer public body 	
2.1.5	Exclusions	ITB Sub-clause 5.8
	<ul style="list-style-type: none"> If as a matter of law or official regulation, the Republic of Mauritius prohibits commercial relations with that country By an act of compliance with a decision of the UN Security Council, under Chapter VII of the UN Charter. 	

Ineligibility lists of international institutions: The Procurement Policy Office website page with the list of Suspended-Debarred-Disqualified Suppliers includes links to ineligibility lists published by the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group and the World Bank Group. Suggest a review of the links to add other current and relevant lists, such as the African Development Bank.

⁸³ SBD for Procurement of Large or Complex Works, 2nd edn. Ref: W/SBDPLC33/10-20 used

⁸⁴ The phrase "declaration of ineligibility" in this context refers to a decision by the Procurement Policy Office on disqualification, suspension or debarment. Information provided by Procurement Policy Office in response to query raised by MAPS assessment team.

<p>The legal framework does not explicitly refer to ineligibility of bidders on grounds of conviction by final judgment for: participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings, or the equivalent of those offences.</p> <p>Exclusion from participation in procurement undertake by a particular public body on grounds of prior poor performance “Exclusion” has a particular meaning in the context of the procurement legal framework in Mauritius. There are provision permitting a public body to exclude a bidder from participation in procurement processes undertaken by that public body for a period of up to 6 months, on the grounds of prior poor performance of a contract. s.35(1A)(a) PPA provides that a public body may exclude a bidder (i) whose performance in a previous public contract has been deficient; or (b) who has failed to deliver goods, works or services satisfactorily, and has caused prejudice to the public body with regard to contractual requirements, notwithstanding that the bidder is not disqualified (see Administrative Debarment below). Directive No.35 Excluding bidders to participate in a procurement exercise, concerning s.35(1A)(a) PPA links the discretion available to a public body to exclude a bidder with the proper operation by the public body of a performance review system for continuous assessment of the supplier’s performance as from award of a contract. This includes providing a poor performing supplier with the opportunity to remedy deficient performance. Where a public body proposes to exclude a supplier the decision to exclude is recommended by a Performance Review Committee established by the Chief Executive of the public body. In order to apply an exclusion, the Performance Review Committee must have determined that the public body has suffered prejudice as a result of the poor performance or failure and demonstrate that the exclusion is fair and reasonable under the circumstance. The decision to exclude should be approved by the Chief Executive within 15 days from the date of recommendation of the Performance Review Committee, communicated to the supplier, copied to the Procurement Policy Office and published on the public body’s website within seven days from date of the decision. The period of exclusion shall not exceed six months, during which the public body shall not award any contract to the excluded bidder (other than in circumstances permitted under s.21 PPA Emergency Procurement). A bidder that has been excluded by a public body may also be subject to suspension, debarment or disqualification by the Procurement Policy Office on grounds specified in s.53 PPA. A bidder may challenge an exclusion decision by way of application for Judicial Review to the Supreme Court.</p> <p>Administrative debarment – suspension, debarment and disqualification S.53(1) PPA Grounds for Suspension, debarment and disqualification of bidders and suppliers, lists eleven grounds on which the Director of the Procurement Policy Office may suspend, debar or disqualify a potential bidder or supplier from participation in public procurement, subject to procedural safeguards. The eleven grounds are, in summary: (a) supplying false information; (b) collusion; (c) interference with participation of competing bidders; (d) misconduct in relation to submission of bids, including corruption, price fixing, under-pricing, breach of confidentiality, misconduct concerning execution of procurement contract or “any other misconduct” relating to responsibilities of the bidder or supplier; (e) conviction for offences relating to obtaining/attempting to obtain a procurement contract, (f) dishonesty or fraud in professional activity; (g) submission of bid containing inaccurate/inadequate information with a view to misleading regarding eligibility or responsiveness of a bid; (h) where no bid security is required, refusing to accept award and enter a contract with a public body; (i) repeated failure to comply with terms & conditions or specification in one or more contracts; (j) material breach of contract; (k) unlawful assignment or subcontracting S.53(3) PPA Period of suspension, debarment or disqualification. S.53(6) provides that a period of suspension, debarment or disqualification shall not exceed five years. The public procurement legal framework distinguishes between (1) suspension and debarment: and (2) disqualification. There are separate Regulations on the grounds and process to be followed in each case. Suspension applies in both cases.</p> <p>Suspension and debarment The Public Procurement (Suspension and Debarment) Regulations 2008 (as amended) (“Suspension and Debarment Regulations”) are regulations made by the Minister under s.61 PPA. S.61 PPA provides that the Minister may, on the recommendation of the Procurement Policy Office, make such regulations as it thinks fit for the purposes of the PPA.</p>		
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⁸⁵ PPA 53(1)(h) concerning failure to provide bid security, refers to a carve out for force majeure, which does not appear in ground (b) of the Disqualification Regulations

	<p>Period of disqualification: The Director of the Procurement Policy Office determines the period of disqualification from participation in procurement proceedings and shall maintain a register of disqualified suppliers, contractors and consultants. S.53(3) PPA provides that a period of suspension, debarment or disqualification under s.53(1) PPA shall not exceed 5 years. There is, in general, a right to apply to the Director of the Procurement Policy Office to terminate or modify the period of disqualification after expiry of 6 months from the original disqualification decision.</p> <p>A bidder or supplier may challenge a decision made by the Procurement Policy Office under the Disqualification Regulations by way of application for Judicial Review to the Supreme Court.</p> <p>Register of suspended-debarred-disqualified suppliers: The Procurement Policy Office website home page includes a “Quick Link” to the list [Register] of Suspended-Debarred-Disqualified Suppliers⁸⁶ as well as Notices of Suspension, debarment or disqualification. The page listing suspended, debarred and disqualified suppliers is headed “List of ineligible suppliers, contractors, consultants”</p> <p>Ineligibility lists of international institutions: Directive No.8, Eligibility of Suppliers, Contractors, Service Providers and Consultants, 26 July 2012 confirms that firms/individuals that are under a declaration of ineligibility issued by African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank and World Bank Group shall not be allowed to participate in the bidding process and bids received from such firms/individuals shall be rejected. The Procurement Policy Office website page with the Register of Suspended-Debarred-Disqualified Suppliers includes links to ineligibility lists published by the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group and the World Bank Group. It requires public bodies and the Board to systematically conduct due diligence for each procurement process to establish eligibility by consulting the ineligibility list of the Procurement Policy Office as well as debarment list of international financing agencies.</p>									
<p>(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.</p>	<p><i>Summary: there are rules for participation of state-owned enterprises participating as bidders which aim to ensure a level playing field and prevent preferential treatment.</i></p> <p>The rules for participation of state-owned enterprises (“government-owned entity”) are included in Guidelines issued by the Procurement Policy Office and in the eligibility requirements set out in the Standard Bidding Documents. These rules aim to ensure fair competition where state-owned enterprises participate as bidders in public procurement by limiting the eligibility of government owned entities to circumstances where they can establish that they are legally and financially autonomous and operate under commercial law and are not dependent agencies of the procuring public body.</p> <p>For example, the User’s Guide for Procurement of Works (issued 15 October 2020) sets out each of the Eligibility Criteria in table form, with compliance requirements noted for single entity bidders and joint ventures as well as submission requirements in terms of documents/evidence required. For each of the Eligibility Criteria listed there is a reference to the relevant provision in the Instructions to Bidders (ITB) (SBD for Large or Complex Works SBD-LCW⁸⁷) which expands upon the requirement. The conditions on participation of state-owned enterprises are as follows:</p> <table border="1" data-bbox="501 1367 1368 1562"> <tr> <td data-bbox="501 1367 581 1419">2.1.4</td> <td data-bbox="581 1367 970 1419">Government-owned entity</td> <td data-bbox="970 1367 1368 1419">ITB Sub-clause 5.6</td> </tr> <tr> <td data-bbox="501 1419 581 1562"></td> <td colspan="2" data-bbox="581 1419 1368 1562"> <ul style="list-style-type: none"> Government-owned entities are eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. They shall not be dependent agencies of the Employer public body </td> </tr> </table> <p>The term used in the SBDs, which are based on IFB standard documents, uses the term “government-owned entities” which is not a term used or defined in the PPA/PPR.</p>	2.1.4	Government-owned entity	ITB Sub-clause 5.6		<ul style="list-style-type: none"> Government-owned entities are eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. They shall not be dependent agencies of the Employer public body 			<p>Criterion met</p>	<p>Suggestion for improvement</p> <p>SOE participation as bidders in public tenders: The rules on participation of state-owned enterprises in public tenders are set out in the SBDs and User’s Guides (using the term “government owned enterprises”). The term “government owned enterprises” is found in standard IFB bidding documents, upon which the SBDs are based but it is not entirely clear which bodies it is intended to cover in Mauritius. There are references in the procurement and wider legal framework to, variously, “state-owned enterprises” (used in the Mauritius Code of Corporate Governance and Declaration of Asset (State-owned Enterprises) Regulations 2109)), “statutory corporations” (financial and non-financial) and “parastatal bodies” (some of which are government owned corporations). Consider including provisions in primary or secondary legislation setting out conditions for participation of these entities as bidders in public procurement, in order to raise the profile of these requirements. Consider also reviewing the procurement legal framework to ensure that defined terms used correctly capture bodies which is it intended to cover and to use terms which are consistent with those used elsewhere in the procurement and wider legal framework.</p>
2.1.4	Government-owned entity	ITB Sub-clause 5.6								
	<ul style="list-style-type: none"> Government-owned entities are eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. They shall not be dependent agencies of the Employer public body 									

⁸⁶ <https://ppo.govmu.org/Pages/Suspended-Debarred-Disqualified-Suppliers.aspx> accessed 05 October 2021

⁸⁷ SBD for Procurement of Large or Complex Works, 2nd edn. Ref: W/SBDPLC33/10-20 used

	<p>There are no additional rules or guidelines for public bodies or other stakeholders on this issue. In practice, there are very limited cases where SOEs/Government-owned entities participate as bidders in competitive public procurement processes.</p>																																					
<p>(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.</p>	<p><i>Summary: the procedures to be used to determine bidder's eligibility and ability to perform a specific contract are set out in Standard Bidding Documents, use of which is mandatory, and elaborated upon in User's Guides/Evaluation Guide). The legal framework provides for use of both pre-qualification and post-qualification.</i></p> <p>The grounds for eligibility are described in indicator 1(d)(c). The PPA provides that Open Advertised Bidding may involve pre-qualification (s.15(2)(b) PPA) or post-qualification (s.15(2)(b) PPA).</p> <p>The criteria and procedures to be used to determine bidder's eligibility and ability to perform a specific contract are set out in the relevant Standard Bidding Document and elaborated upon in the Guidelines (User's Guide/Evaluation Guides) issued by the Procurement Policy Office on the conduct of procurement processes. The most recent User's Guide is the User's Guide for Procurement of Works, issued on 15 October 2020 ("User's Guide for Works"). The other Guidelines are the Evaluation Guide for Works and Goods, May 2014 and the Evaluation Guide for Consultancy Services, May 2012. Analysis in this indicator 1(d)(e) is by reference to the most recent Guide, the User's Guide for Works.</p> <p>The User's Guide for Works, Section III contains all the criteria to be used to evaluate bids (Section III.1) and to qualify bidders (Section III.2) The criteria listed in section III.2 are:</p> <table border="1" data-bbox="507 852 1377 1860"> <tr><td>2.1</td><td>Eligibility</td></tr> <tr><td>2.1.1</td><td>Nationality</td></tr> <tr><td>2.1.2</td><td>Conflict of interest</td></tr> <tr><td>2.1.3</td><td>Country Eligibility</td></tr> <tr><td>2.1.4</td><td>Government-owned entity</td></tr> <tr><td>2.1.5</td><td>Exclusions</td></tr> <tr><td>2.2</td><td>Pending litigation</td></tr> <tr><td>2.2.1</td><td>Historical contract non-performance</td></tr> <tr><td>2.2.2</td><td>Pending litigation</td></tr> <tr><td>2.3</td><td>Financial Situation</td></tr> <tr><td>2.3.1</td><td>Historical financial performance</td></tr> <tr><td>2.3.2</td><td>Average annual construction turnover</td></tr> <tr><td>2.3.3</td><td>Financial resources</td></tr> <tr><td>2.4</td><td>Experience</td></tr> <tr><td>2.4.1</td><td>General construction experience</td></tr> <tr><td>2.4.2</td><td>Specific construction experience</td></tr> <tr><td>2.5</td><td>Personnel</td></tr> </table>	2.1	Eligibility	2.1.1	Nationality	2.1.2	Conflict of interest	2.1.3	Country Eligibility	2.1.4	Government-owned entity	2.1.5	Exclusions	2.2	Pending litigation	2.2.1	Historical contract non-performance	2.2.2	Pending litigation	2.3	Financial Situation	2.3.1	Historical financial performance	2.3.2	Average annual construction turnover	2.3.3	Financial resources	2.4	Experience	2.4.1	General construction experience	2.4.2	Specific construction experience	2.5	Personnel		<p>Criterion met</p>	
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2.5	Personnel																																					

2.6	Equipment
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The Criteria listed at 2.2 to 2.6 are considered as relating to ability/suitability to perform a particular contract for the purposes of this sub-indicator.

The User's Guide for Works sets out each of the Criteria in table form, with notes, as well as submission requirements in terms of documents/evidence required. These can be summarised as follows:

2.2	Pending litigation	
2.2.1	Historical contract non-performance	Form CON-2
	Form CON – 2 to be completed requires information concerning performance/non-performance and details of non-performed portion of contracts and total contract amount	
2.2.2	Pending litigation	
	Form CON – 2 to be completed requires information concerning pending litigation with reference to contract which is the subject of the litigation – year, outcome as % of total assets, total contract value. Criterion provides that pending litigation shall be treated as resolved against the bidder and shall not represent more than a specified percent of the Bidder's total net worth (range of 50-100% is advised)	
2.3	Financial Situation	
2.3.1	Historical financial performance	Form FIN-1
	Requires submission of audited balance sheets and income statements for time period of not less than 3 years. As a minimum bidder's net worth calculated as difference between total assets and total liabilities should be positive <i>Note: not applicable for bidders having provisional registration or bidders operating in Mauritius who are registered with the CIDB</i>	
2.3.2	Average annual construction turnover	
	<i>Deleted in this Guide</i>	
2.3.3	Financial resources	Form FIN-3, Form FIN-4
	Bidder must demonstrate access to, of availability of financial resources to meet cash flow requirements for a specified period not exceeding 6 months, and overall cash flow requires for the contract in question and current works commitment	
2.4	Experience	
2.4.1	General construction experience	
	Registration with CIDB as per required grade and specialisation	
2.4.2	Specific construction experience	
	(a) Contracts of a similar nature and size: Information about 1 to 3 contracts (depending on size and complexity of subject contract), over specified period (5 to 10 years) of specified value (usually 80% of estimated value of subject contract) (b) Construction experience in key activities	
2.5	Personnel	
	Number, position, total work experience and experience in similar work for proposed personnel	

Name/organisation:

Date:

	2.6	Equipment			
		Number, type and characteristics of equipment and minimum number required.			

1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.</p>	<p><i>Summary: public bodies are required to use Standard Bidding Documents (SBDs) which set out the minimum content. The range of SBDs aims to ensure that the content is both relevant and sufficient for suppliers to respond to the requirements and is proportionate to the complexity and/or value of the procurement.</i></p> <p>s.2 PPA defines “bidding document” as “any document” issued by a public body on the basis of which bidders prepare bids”; and this “includes any document which contains instructions to bidders, specifications, maps, designs, terms of reference, work schedules, evaluation criteria, bills of quantities, conditions of contract or similar items.”</p> <p>s.7 (c) PPA, Functions of Procurement Policy Office provides that one of the functions of the Procurement Policy Office is to issue standard forms of contract, bidding documents, pre-qualification documents, requests for proposals and other similar documents for <i>mandatory use</i> by every public body implementing procurement.</p> <p>A comprehensive collection of Standard Bidding Documents (for procurement using e-PS and in other cases) plus General Conditions of Contract (all in Word format) can be downloaded from the Procurement Policy Office website, Standard Bidding Documents page⁸⁸. [See Indicator 2(b)(a) for further detail.]</p> <p>The SBDs cover different types of procedures and contract values, different subject and specialist procurement. The SBDs include, where relevant, standard information on the conduct of the bidding process including Instructions to Bidders, Bidding Data Sheets, Evaluation and Qualification Criteria and Bidding Forms as well as General Conditions of Contract and Special Conditions of Contract.</p> <p>Circular No.8 of 2008 Compliance with the Public Procurement Act 2006 and Procurement Regulations 2008 provides that public bodies are required to ensure that they use the updated version of SBD, as posted on the Procurement Policy Office website.⁸⁹ Paragraph 5, Circular No.8 provides that public bodies must not alter the sections in the SBDs dealing with Instructions to Bidders and General Conditions of Contract. The sections in the SBD concerning Bidding Data and Special Conditions of Contract are meant to be customised.</p> <p>Circular No. 12 of 2012 provides further information on the use of SBDs and related templates including guidance on when customisation is permitted and appropriate.</p> <p>A comprehensive collection of Standard Bidding Documents (for procurement using e-PS and in other cases) plus General Conditions of Contract (all in Word format) can be downloaded from the Procurement Policy Office website, Standard Bidding Documents page⁹⁰. See Indicator 2(b)(a) for further detail.</p>	<p>Criterion met</p>			
<p>(b) It requires the use of neutral specifications, citing international</p>	<p><i>Summary: There are no provisions in the PPA or PPR requiring the use of “neutral” specifications. However, Directive No.11 Technical Specifications, requires that public bodies shall not prepare, adopt</i></p>	<p>Criterion met</p>			

⁸⁸ <https://ppo.govmu.org/Pages/Standard-Bidding-Documents.aspx> accessed 31 July 2021.

⁸⁹ Circular No.8 provides that, where necessary for a particular procurement, the Procurement Policy Office will customise SBDs for sole use by the public body concerned so as to be compliant with the PPA.

⁹⁰ <https://ppo.govmu.org/Pages/Standard-Bidding-Documents.aspx> accessed 31 July 2021.

<p>norms when possible, and provides for the use of functional specifications where appropriate.</p>	<p><i>or apply any technical specifications or descriptions with the effect of eliminating or restricting competition or discriminating against eligible suppliers. It provides that performance-based descriptions and definitions (functional specifications) shall be used wherever possible. Directive No.11 Technical Specifications confirms that descriptions and definitions of procurement requirements may be formulated in terms of international and national standards. These requirements flow through into the SBDs.</i></p> <p>Directive No.11, 17 December 2012 Technical Specifications sets out clear requirements concerning the preparation and use of technical specifications or descriptions. The general principle, set out in paragraph (a) of Directive No.11, is that public bodies shall not prepare, adopt or apply any technical specifications or descriptions with the effect of eliminating or restricting competition or discriminating against eligible suppliers.</p> <p>Paragraph (b) provides that performance based descriptions and definitions (functional specifications) shall be used wherever possible. It also provides that descriptions and definitions of procurement requirements <i>may</i> be formulated in terms of international and national standards, so as to maximize competition and avoid creating unnecessary obstacles to participation by bidders in the procurement proceedings, while ensuring that applicable national and international standards and the requisite quality levels are met.</p> <p>Sample provisions from SBD: SBD for Procurement of Goods, November 2021 (Ref: G/SBD1/11-21//e-SBD Procurement of Goods (Ref: G/EPROC/PSG1/11-21), November 2021 for use in Open Advertised Bidding and Restricted Bidding includes, in italics, instructions to/information for public bodies preparing bidding document. Section V, 3. Technical specifications includes the following paragraphs: “standards for equipment, materials, and workmanship specified in the Bidding Documents shall not be restrictive. Recognized international standards should be specified as much as possible. Reference to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.” When other particular standards or codes of practice are referred to in the TS, whether from Mauritius or from other eligible countries, a statement should follow other authoritative standards that ensure at least a substantially equal quality, then the standards mentioned in the TS will also be acceptable;” & “reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable, the words “or at least equivalent” shall always follow such references;”</p>			
<p>(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.</p>	<p><i>Summary: the legal framework requires the recognition of equivalent standard where neutral specifications cannot be used. These requirements flow through into the SBDs.</i></p> <p>Directive No.11, 17 December 2012 Technical Specifications sets out clear requirements concerning the preparation and use of technical specifications or descriptions. The general principle, set out in paragraph (a) of Directive No.11, is that public bodies shall not prepare, adopt or apply any technical specifications or descriptions with the effect of eliminating or restricting competition or discriminating against eligible suppliers.</p> <p>Paragraph (c) provides that that no requirement or reference shall be made in the technical specifications to a particular trademark or name, patent, design or type, specific original, producer or service provider, unless: (i) there is no sufficiently precise or intelligible way of describing the procurement requirements; and (ii) words such as “or equivalent” are included in the specifications</p> <p>Equivalence: A general principle of equivalence applies so that a public body may not reject a bid on the grounds of non-compliance with specified standards where a bidder can demonstrate equivalence or where an applicable national or international standard addresses the same function and performance requirements described by a public body.</p> <p>Sample provisions from SBD: SBD for Procurement of Goods, November 2021 (Ref: G/SBD1/11-21//e-SBD Procurement of Goods (Ref: G/EPROC/PSG1/11-21), November 2021 for use in Open Advertised Bidding and Restricted Bidding, in italics, instructions to/information for public bodies preparing bidding document. Section V, 3. Technical specifications includes the following paragraphs: “standards for equipment, materials, and workmanship specified in the Bidding Documents shall not be restrictive. Recognized international standards should be specified as much as possible. Reference to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.” When other particular standards or codes of practice are</p>		<p>Criterion met</p>	

	<p>referred to in the TS, whether from Mauritius or from other eligible countries, a statement should follow other authoritative standards that ensure at least a substantially equal quality, then the standards mentioned in the TS will also be acceptable;" & "reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable, the words "or at least equivalent" shall always follow such references;"</p>			
<p>(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)</p>	<p><i>Summary: Potential bidders are allowed to request clarification of procurement documents and the e-PS has a pre-bid query function for the submission of both the request from potential bidders and response from the public body. The provisions on timing of requests and responses are contained in the SBDs.</i></p> <p>The PPA and PPR do not include specific provisions giving potential bidders the right to request clarification of procurement documents and setting out requirements in terms of responses by the public body concerned. However, the e-PS includes a specific prebid query function and the SBDs include reference to the right to request clarification and, in some cases, also include provisions referring in more detail to the process which a bidder can use to clarify bid document, the time scales for response by the public body and how subsequent amendments are to be made and shared (if required). See, for example, e-SBD for procurement of goods (Open International Bidding), section 1, paragraph 8 and e-Standard Prequalification Documents for Procurement of Design-Build (Works Contract)</p> <p>Circular No.8 of 2008, para 12 Time allowed for bid preparation and submission from bidders requires the public body to take into consideration a number of matters in setting the time period including the time it would reasonably take the bidder to seek and obtain clarifications, if any.</p> <p>e-Procurement The Procurement Policy Office has published "User Manual for Supplier for operations on the e-Procurement System of Government of Mauritius for Prebid query".⁹¹ This confirms that a prospective bidder may submit a query/clarification of the Bidding Documents through the e-PS, with the request being submitted no later than the number of days specified in the Bidding Documents prior to the deadline for submission of bids. The Manual goes on to set out how queries are to be submitted using the e-PS. The query is anonymised by default. The public body's response to a prebid query is published on the e-PS system and the default position is that it will be accessible to all bidders. There is also an explanatory YouTube video on how to submit a Prebid query, which can be accessed using a link from the e-PS system⁹².</p>		<p>Criterion met</p>	<p>Suggestion for improvement Right of bidders to request clarification: This is an important right for bidders. Consider increasing the profile of this right and improving clarity by including a short provision in the PPA confirming the right of bidders to seek clarification and including standard provisions concerning times scales and responses in the PPA or the PPR. See, for example, Article 15 of UNCITRAL Model PP Law.</p>

1(f) Evaluation and award criteria

The legal framework mandates that:

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.</p>	<p><i>Summary: There is a single pre-disclosed and objective criterion for the evaluation criteria for the award of contracts for goods, works and other services, being the lowest evaluated substantially responsive bid. The legal framework mandates that the award decision is made solely on the basis of criteria stipulated in the procurement documents.</i></p> <p>s.37(9) PPA Examination and evaluation of bids, requires that every bid shall be evaluated according to the criteria and methodology set out in the bidding documents. s.40 (1) PPA provides that a procurement contract shall be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents.</p>		<p>Criterion met</p>		

⁹¹ e-procurement website accessed 24 November 2021

<https://eproc.publicprocurement.govmu.org/files/masterfiles/HOW%20TO%20SEND%20QUERY%20TO%20PUBLIC%20BODY.pdf>

⁹² e-procurement website accessed and video watched 1 February 2021

	<p>Circular No.8 of 2008, paragraph 9 Evaluation and methodology, requires Bid documents to contain all criteria and sub-criteria as well as the methodology and weights in the form of marking on the bases of which evaluations will be conducted.</p>			
<p>(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions</p>	<p><i>Summary: Consideration of price and non-price attributes and life cycle cost is permitted.</i></p> <p>s.40 (1) PPA provides that a procurement contract shall be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents. s.28(2)(b) PPA provides that in appropriate cases <i>and subject to regulations to that effect</i>, bidding documents may provide for qualifications and evaluation criteria based on life-cycle costing.</p> <p>Directive No.53 Procurement of ICT, 10 December 2020 requires that public bodies shall abstain from incorporating “restrictive, unrealistic, over specified or subjective eligibility qualifications and criteria.”</p> <p>See indicator 9 for analysis of use of life-cycle costing and other VfM approaches in practice.</p>		<p>Criterion met</p>	
<p>(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.</p>	<p><i>Summary: The legal framework provides for use of quality as a major consideration in the evaluation of proposals for consulting services and sets out when specified approaches may be used.</i></p> <p>s.15(1)(b) PPA provides that the competitive methods for procurement of consultancy services are: (1) request for proposals: which can be assessed on a variety of bases – quality and cost; quality alone; quality and fixed budget; or least cost and acceptable quality; and (2) open advertised bidding</p> <p>s.24 PPA Request for proposals requires that the evaluation of technical proposals shall be on the basis of criteria which shall include: relevant experience, quality of methodology proposed, qualifications of key staff, transfer of knowledge (if required) and, in the case of international competition the extent of participation by nationals among key staff in the performance of the assignment.</p> <p>The Evaluation Guide for Consultancy Services covers evaluation criteria of technical proposals. Quality is a major consideration with evaluation criteria for technical proposals normally including experience, adequacy of methodology and work plan, qualifications and competence of staff and provides further suggested sub-criteria. Section 3 of the Guide covers the evaluation process including use of criteria , sub-criteria, additional criteria and weightings as well as scoring scales. Sample criteria and sub-criteria, as well as explanations of criteria, are provided.</p> <p>Assessment of technical capacity: S.37(9) PPA requires that every bid shall be evaluated according to the criteria and methodology set out in the bidding documents and the evaluated cost of each bid shall be compared with the evaluated cost of other bids to determine the lowest evaluated bid. The legal framework provides for use of two-stage open advertised bidding in cases where technical issues require detailed consideration/discussion prior to submission of final bids (s.29 PPA) and allows for submission of technical alternatives to be evaluated in accordance with the method set out in the procurement documents. The Evaluation Guide (Works and Goods) covers the evaluation process in some detail, including evaluation of responsiveness on technical aspects of bids.</p>		<p>Criterion met</p>	
<p>(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.</p>	<p><i>Summary: Evaluation criteria must be disclosed in the procurement documents and evaluation must be undertaken applying only disclosed criteria. However, there is only one basis for award, being the lowest evaluated substantially responsive bid, meeting the qualification criteria.</i></p> <p>s.40 (1) PPA provides that a procurement contract shall be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents.</p> <p>s.28(2)(b) PPA provides that in appropriate cases and subject to regulations to that effect, bidding documents may provide for qualifications and evaluation criteria based on life-cycle costing.</p> <p>The legal framework provides that only the evaluation and award criteria set out in the procurement documents may be used. s.40 (1) PPA provides that a procurement contract shall be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents. The requirement to evaluate on the basis</p>		<p>Criterion partially met.</p> <p>Based on practice, there are instances of use of point system in single stage bidding where price information is known to evaluators when carrying out technical scores, which is not consistent with SBD</p>	<p>Discontinue use of point system/technical score when price information is known to evaluators. To follow Standard Bidding Document</p>

	<p>of published criteria and award on the basis of lowest evaluated bid, are also set out in s.37(9) PPA Examination and evaluation of bids.</p>			
<p>(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.</p>	<p><i>Summary: There are provisions in the legal framework requiring that information is treated as confidential and not disclosed to participants or to others not officially involved in the evaluation process and concerning the security of bids. There are provisions prohibiting disclosure of confidential or proprietary commercial information. Unsuccessful bidders are entitled to request and be given a debriefing and a contract award notice notifying the outcomes of the evaluation must be published together with relevant specified documents.</i></p> <p>S.51(e) (1) PPA Conduct of public officials: requires that a public official involved in planning or conducting procurement proceedings or contract administration shall keep confidential any information that comes into his possession relating to procurement proceedings and to bids, including bidders' proprietary information. S.51 PPA was amended in 2021 to permit disclosure of such information in limited cases: "where disclosure is required by an investigatory body vested with powers of investigation, including the Independent Commission against Corruption, Competition Commission or Police"⁹³. R.79 PPR extends the requirement of confidentiality imposed on public officials by virtue of s.51 PPA to any other person acting on behalf of a public body in procurement proceedings.</p> <p>R.23 PPR Confidentiality of bid evaluation: requires that, except as provided for in the PPA and the PPR, any information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination or comparison of bids or in the decision on what bids should be accepted.</p> <p>R.78 PPR Confidentiality of procurement information: provides that (1) Except for the purposes of auditing or upon an order of a Court, no public official is permitted to disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of his involvement in, or contact with officials involved in, procurement proceedings or the planning of procurement; and (2) No information relating to the examination, evaluation and comparison of bids shall be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided for in s.37 PPA Examination and evaluation of bids.</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015, R.7 Confidentiality: requires that every public body, the Board, a registered supplier or the CRB (Central Registration Body) shall maintain the confidentiality of every bidding document or bid data processed through the e-procurement system. Any person who, without lawful excuse, contravenes these requirements shall commit an offence and shall on conviction be liable for a fine not exceeding MUR 10,000 and to imprisonment for a term not exceeding 2 years. e-PS allows access to the bid documents and evaluation information to the evaluation committee members only after they sign confidentiality and conflict of interest declaration forms electronically. Practices of public bodies in the conduct of tender evaluation are currently in transition. Although the e_PS allows for on-line evaluation, in practice the evaluation process is still quite often carried out offline, with evaluation records subsequently entered into the e-PS. (see Indicator 7).</p> <p>R.27 PPR Reception and security of bids requires a public body to ensure that all bids received are kept in a secure manner so as not to permit the bids to be opened by accident or viewed. Directive No.7, 6 July 2012 provides further guidance (non-electronic submission of bids).</p> <p>s.50(6) PPA Duties of public bodies: requires that where other means of communication are used, including electronic communication, for publication of ITBs, transmission of bidding documents, submits of bids, conclusion of contracts and processing of payments the public body shall ensure that an adequate level of security and confidentiality is preserved.</p> <p>Procurement Structures In Public Bodies, Procurement Policy Office Guidelines, June 2017 include a section on proceedings of procurement committees and confirm that public officials and other persons participating in the deliberations of the Procurement Committee are duty-bound to comply with the provisions of the Prevention of Corruption Act and the PPA including reference to confidentiality. At the first meeting of an ad-hoc Evaluation Committee the members of the committee are required to make a declaration of confidentiality.</p>		<p>Criterion met</p>	<p>Suggestion for improvement Specific provisions on standstill: The provisions PPA/PPR in the PPA create a "standstill" type period although it is not expressed as such and there is no provision expressly prohibiting award of the contract during the 7-day period prescribed. Consider updating these provisions in line with current models of practice, for example to introduce more overtly the concept of "standstill", expressly prohibit award during the standstill period, expand upon the debriefing information to be proactively provided to participants in respect of the contract award decision. See, for example, A.22 UNCITRAL Model Law on Public Procurement. Consider also presenting the different requirements for notification of award for contracts according to threshold values in one consolidated document.</p>

⁹³ S.73, Finance (Miscellaneous Provisions) 2021, Act No.15 of 2021, Official Gazette of Mauritius No.121 of 5 August 2021.

	<p>Notification of award</p> <ul style="list-style-type: none"> • Contracts below MUR 1 Million: There is no requirement to notify unsuccessful bidder of contract award in the case of contracts below MUR 1 million. • Contracts of a value over MUR 1 million: In the case of contracts exceeding MUR 1 million, Directive No.10 of 2012 requires public bodies, <i>after awarding the contract</i> to promptly inform all unsuccessful bidders in writing of the name and address of the successful bidder and the contract amount • Contracts of a value equal to or over MUR 5 million: In the case of contracts equal to or in excess of MUR 5 million, there is a requirement to publish a contract award notice after award of the contract (R.71 PPR/Directive No.10 of 2012). <p>In the case of contracts below MUR 15 million there is no obligation on the public body to notify the unsuccessful bidders in writing of the award decision prior to signature of the contract and delay award for a specified time period pending receipt of a possible challenge. (s.40(3)(4) PPA & R.38 PPR).</p> <ul style="list-style-type: none"> • Contracts of a value over MUR 15 million: s.40(3) PPA/R.38 PPR & s.24 PPA requires a public body to notify both the successful and unsuccessful bidders in writing of the award decision in respect of contracts of all types of a value over MUR 15 million. S.40(4) PPA provides that the contract shall be awarded to the successful bidder in the absence of challenge by any other bidder within 7 days of the date of the written notice, thus creating a “standstill period”. The public body must publish a contract award notice on its website and on the public procurement portal within 7 days of signature of the contract (R.71 PPR). <p>s.41 PPA Debriefing of unsuccessful bidders, requires that the public body shall, promptly on request of an unsuccessful bidder, inform that bidder of the reasons for which its bid or its application for prequalification was unsuccessful. A bidder must submit the request within 30 days of the publication of the notice of contract award required under s.40(7) PPA.</p> <p>R.70 PPR provides that the notice of contract award under s.40(7) PPA shall include the name and address of the successful bidder, contract price and requires that the public body shall also upload the letter of acceptance, signed contract form agreement, bid submission form, addenda (if any) and special or particular conditions of contract.</p> <p>Sample SBD provisions</p> <p>SBD for procurement of Works (Large or complex), October 2020, s.I ITB, E. Evaluation and Comparison of Bids, s.27.1 Confidentiality provides that information relating to the evaluation of bids and recommendation on ion shall not be disclosed to any other persons not official concerned with such process until information on contract award is communicated to all Bidders.</p> <p>SBD for Procurement of Goods, November 2021 (Ref: G/SBD1/11-21/) (Ref: G/EPROC/PSG1/11-21), November 2021 for use in Open Advertised Bidding and Restricted Bidding, s.I ITB, E. Evaluation and Comparison of Bids, s.29.1 Confidentiality provides that information relating to the examination, evaluations, comparison and post-qualification of bids, and recommendation of contract award shall not be disclosed to Bidders or any other persons not official concerned with such process until publication of the contract award.</p>				
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1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.</p>	<p><i>Summary: The process for opening tenders is subject to defined and regulated proceedings which are timed to coincide with deadlines for submission of bids or immediately following the closing date and time.</i></p> <p>s.36 PPA Opening of Bids: provides that every bid shall be opened at the time and place indicated in the bidding documents. The time of bid opening shall coincide with the deadlines for submission of bids, of follow immediately thereafter if necessary for logistic reasons.</p> <p>Every bidder or his representative is authorized to attend the bid opening.</p>		<p>Criterion met</p>		

	<p>s.36 PPA confirms the information to be read out at the bid opening and confirms that no decision regarding disqualification or rejection of the bid shall be taken or announced at the bid opening session. Amendments were made in 2020, in response to the COVID-19 crisis, to allow for bid opening by technological means. Additional provisions on bid opening are set out in R.32 PPR.</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015 section 13 concerns Bid preparation and submission, other than in the case of direct procurement. It includes provisions on submission and acceptance of encrypted bids only. S.14 sets out provisions concerning the Opening of electronic bids including provision permitting bidders to attend the opening of bids.</p> <p>Bid opening is carried out as soon as the bid submission deadline is over using the digital certificates.</p>			
<p>(b) Records of proceedings for bid openings are retained and available for review.</p>	<p>:</p> <p>s.36(4) PPA Opening of Bids, requires that the name of the bidder, the total amount of each bid, any discount or alternative offered and the presence or absence of any bid security, if required, shall be read out and recorded and a copy of the record shall be made available to any bidder on request. S.36(5) provides that no decision regarding the disqualification or rejection of a bid shall be taken or announced at the bid opening session.</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015 section 17 Record keeping requires every public body to keep electronic records of procurement proceedings, which shall be kept for a period of not less than 5 years after completion of the relevant procurement proceedings and e-PS is designed to comply with the requirements.</p> <p>Transparency requirements on contract award: R.71 PPR Notice of procurement contract award requires that, in respect of contracts whose value exceeds the prescribed threshold of MUR 5 million, the public body shall cause a notice of the procurement contract to be published The public body must publish a contract award notice on its website and on the public procurement portal within 7 days of signature of the contract (R.71 PPR). The notice, which identifies. the procurement, must include the name and address of the successful bidder and the contract price. It must be accompanied by scanned copies of documents including signed contract agreement form. This information must be updated with amendments or variations made during the course of implementation of the contract. (see indicator 1(i) Contract amendments)</p>		<p>Criterion met</p>	
<p>(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.</p>	<p><i>Summary: the legal framework provides for security and confidentiality of bids to be maintained prior to bid opening and until after award of contracts.</i></p> <p>R.23 PPR Confidentiality of bid evaluation: requires that, except as provided for in the PPA and the PPR, any information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination or comparison of bids or in the decision on what bids should be accepted.</p> <p>R.27 PPR Reception and security of bids requires a public body to ensure that all bids received are kept in a secure manner so as not to permit the bids to be opened by accident or viewed. Directive No.7, 6 July 2012 provides further guidance (non-electronic submission of bids).</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015, R.7 Confidentiality: requires that, except for the purpose of administering these regulations, every public body, the Board, a registered supplier or the CRB (Central Registration Body) shall maintain the confidentiality of every bidding document or bid data processed through the e-procurement system. Any person who, without lawful excuse, contravenes these requirements shall commit an offence and shall on conviction be liable for a fine not exceeding MUR 10,000 and to imprisonment for a term not exceeding 2 years.</p> <p>. In e-PS, bidders must mandatorily use a Digital Signature Certificate to encrypt the bid data to maintain confidentiality and digitally sign the bids to ensure non-repudiation. Data integrity is maintained using hashing algorithms that verify that the hash of the bid at submission and is same as that of opening. Similarly, various hashes are computed and verified at different stages to ensure that data integrity is maintained.</p> <p>R.78 PPR Confidentiality of procurement information: provides that (1) Except for the purposes of auditing or upon an order of a Court, no public official is permitted to disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of his involvement in, or contact with officials involved in, procurement proceedings or the planning of procurement; and (2) No information relating to the examination, evaluation and</p>		<p>Criterion met</p>	

Name/organisation:

Date:

	<p>comparison of bids shall be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided for in s.37 PPA Examination and evaluation of bids.</p>			
<p>(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.</p>	<p><i>Summary: the legal framework includes specific reference to the duty of public officials to treat as confidential and not to disclose confidential or proprietary commercial information obtained in conduct of procurement proceedings or planning of procurement</i></p> <p>S.51(e) (1) PPA Conduct of public officials: requires that a public official involved in planning or conducting procurement proceedings or contract administration shall keep confidential any information that comes into his possession relating to procurement proceedings and to bids, including bidders' proprietary information. S.51 PPA was amended in 2021 to permit disclosure of such information in limited cases: "where disclosure is required by an investigatory body vested with powers of investigation, including the Independent Commission against Corruption, Competition Commission or Police"⁹⁴.</p> <p>R.78 PPR Confidentiality of procurement information: provides that (1) Except for the purposes of auditing or upon an order of a Court, no public official is permitted to disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of his involvement in, or contact with officials involved in, procurement proceedings or the planning of procurement; and (2) No information relating to the examination, evaluation and comparison of bids shall be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided for in s.37 PPA Examination and evaluation of bids.</p> <p>Revised Code of Conduct on Procurement for Public Officials, December 2015. Prepared in collaboration with the Procurement Policy Office, the Code of Conduct addresses the following key elements: transparency in decision making processes; accountability regarding roles and responsibilities; equity and fairness in actions; management of situations of conflicts of interest; and, use of confidential and proprietary information.</p> <p>Sensitive information like the bidders' offer are kept encrypted in the e-Procurement system along with the complete bid until the bid is opened using digital certificate after the stipulated bid opening date and time.</p>		<p>Criterion met</p>	
<p>(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.</p>	<p><i>Summary: The legal framework sets out clear requirements for submission of bids in paper format and using the e-PS, which are reflected in the instructions to bidders in the standard bidding documents.</i></p> <p>s.31 PPA Submission of Bids requires a bid to be submitted in writing, duly signed and in a sealed envelope at the address specified in the bidding documents. The bidding documents may authorise other methods for submission of bids where it is so prescribed. S.32 PPA Deadline for submission of bids requires public bodies to set a reasonable deadline and provides that a sealed bid received after the deadlines for submission shall be returned unopened.</p> <p>s.33 PPA provides that a bidder may modify, substitute or withdraw its bid after submission where written notice of the modification, substitution or withdrawal is received by the public body before the deadline for submission of bids.</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015, section 13 Bid preparation and submission sets out clear rules concerning the submission, receipt and acceptance of bids. Section 14 sets out provisions on Opening of electronic bids</p> <p>E-PS also provides a clear guidelines through online help and visual content to make aware about the modality of submitting tenders and other processes.</p>		<p>Criterion met</p>	

1(h) Right to challenge and appeal

The legal framework provides for the following:

⁹⁴ S.73, Finance (Miscellaneous Provisions) 2021, Act No.15 of 2021, Official Gazette of Mauritius No.121 of 5 August 2021.

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.</p>	<p><i>Summary: The legal framework provides for participants in procurement proceedings to have the right to challenge decisions or actions taken by the procuring entity (public body). The challenge must be submitted in writing, within specified time periods, to the Chief Executive officer of the public body concerned.</i></p> <p>Part VI PPA ss.43 to 45 concern the Right to challenge and appeal/application for review s.43 PPA concerns the initial challenge submitted to the public body conducting the procurement. ss.44 to 45 PPA concern the subsequent right of review by application to an administrative body, the Independent Review Panel (IRP), and conduct of that appeal. The term used in the PPA</p> <p>Challenge - Submission of the challenge to the public body under s.43 PPA Right to challenge: S.43 PPA Challenge, provides that a bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a public body or the Board by the PPA may, subject to ss. 43(2), 43(3) and 39(5), challenge the procurement proceedings before entry into force of the procurement contract.</p> <ul style="list-style-type: none"> • s.2 PPA defines “bidder” as a “participant or potential participant in procurement proceedings.” • s.43(2) PPA requires that challenge must be made in writing to the Chief Executive Office of the public body concerned and identify the specific act or omission alleged to contravene the PPA • s.43(3) PPA sets out time limits for submission of a challenge <p>Public body is recipient of challenge and respondent in IRP proceedings. The challenge is submitted to the public body awarding the procurement contract (s.43(2) PPA). Where the value of the procurement exceeds specified thresholds, meaning that the Central Procurement Board (CPB) vets the bidding documents prepared by the public body, conducts the evaluation and approves award of the contract, the public body (not the CPB) is the recipient of the challenge and is the respondent in any subsequent application for review by the bidder to the IRP. The CPB is not joined as a respondent party to the IRP proceedings, but it is required to cooperate with submission of relevant documents and information for the proper conduct of the appeal process. e-PS provides challenge and appeal module and the module is in use.</p>	<p>Criterion met</p>	<p>Criterion met</p>		<p>Suggestion for improvement Decision to proceed with direct procurement: It is unclear whether a decision to proceed to direct procurement (with no competition and thus no aggrieved bidder) falls within the jurisdiction of the IRP. The system would benefit from clarity on this point.</p>
<p>(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.</p>	<p><i>Summary: The legal framework provides a bidder who is not satisfied with the response to a challenge with the right to apply for review to the Independent Review Panel (IRP) which is a body independent of the procuring entity. The PPA provides for automatic suspension of the procurement proceedings until the appeal is determined by the Independent Review Panel. The IRP may order a range of remedies which are defined in broad terms. There is a subsequent right to apply for judicial review of the decision making of the IRP to the Supreme Court.</i></p> <p>Right of Review by Independent Review Panel (IRP) S.45 PPA provides for Right of Review and specifies the circumstances where the entitlement to review arises. An unsatisfied bidder is entitled to seek a review by the IRP in the circumstances listed in s.45(1) PPA, being,</p> <ul style="list-style-type: none"> • Prior to contract award where the Chief Executive Officer of the public body does not issue a decision on a challenge within the time specified in s.43(4) PPA. i.e., within 7 days of filing of the challenge (s.45(1)(a) PPA) • Prior to contract award where the bidder is not satisfied with the decision of the Chief Executive Officer in response to a challenge (s.45(1)(b) PPA) • After the entry into force of the procurement contract, the value of which is above MUR 1 million (R.48(6) PPR) but does not exceed MUR 15 million (s.40(3) PPA and R.38 PPR), he is not satisfied with the procurement proceedings on grounds that he claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a public body or the Board by the PPA. (s.45(1)(c) PPA) <p>Public body is recipient of challenge and respondent in IRP proceedings: The challenge is submitted to the public body awarding the procurement contract (s.43(2) PPA). Where the value of the procurement exceeds specified thresholds, meaning that the Central Procurement Board (CPB) vets the bidding documents prepared by the public body, conducts the evaluation and approves award of the contract, the public body (not the CPB) is the recipient of the challenge and the public body is the respondent in any subsequent application for review by the bidder to the IRP. The CPB is not joined as a respondent</p>	<p>Criterion met</p>	<p>Criterion met</p>		<p>Suggestion for improvement Expand provisions on remedies: The remedies available are described quite broadly in s.45 PPA. Consider whether to expand upon these provisions and, for example, provide specifically for some/all of the remedies listed in the UNCITRAL Model Law Chapter VIII, s67(9), which goes into more detail.</p>

	<p>party to the IRP proceedings, but it does cooperate with the respondent and the IRP in submission of relevant documents and information.</p> <p>Suspension: s.45(4)PPA provides for the automatic suspension of the procurement proceedings until the appeal is determined by the Independent Review Panel, subject to the Independent Review Panel being satisfied that there is a prima facie case for review. There are provisions permitting the procurement proceedings to continue in limited cases where there are urgent public interest considerations.</p> <p>Remedies s.45(10) PPA provides that the Independent Review Panel may dismiss an application for review or may, if it determines there is merit in it, order one or more of the following remedies:</p> <ul style="list-style-type: none"> (a) prohibit the public body from acting or deciding in an unauthorised manner or from following an incorrect procedure; (b) recommend the annulment in whole or in part of any unauthorised act or decision of the public body; (c) recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation; or (d) recommend payment of reasonable costs incurred in participating in the bidding process where a legally binding contract has been awarded which, in the opinion of the Review Panel, should have been awarded to the applicant. <p>The IRP does not have power to order the setting aside or cancellation of concluded contracts.</p> <p>Limited remedy (recovery of bid costs and costs of participation) in the event of delay by the Independent Review Panel: s.45(7) provides that where the Independent Review Panel does not determine the application for review within the 30 day period and continues with the review (the suspension having lapsed and the contract awarded), the remedy, in the event of the Independent Review Panel finding that there is merit in the application for review, is limited to the remedy provided for in s.45(1)(d), being a recommendation to pay reasonable costs incurred in participating in the bidding process. Due to the nature and context of procurement challenges the IRP is strict in its requirements on participating parties to comply with specified time limits for submission of documents and other information. In practice the IRP determines applications within the statutory period, save in exceptional circumstances.⁹⁵</p> <p>Limited remedy (recovery of bid costs and costs of participation) where procurement is not suspended: S.45(9) PPA provides that where the procurement proceedings are not suspended and the application for review is determined in the bidder's favour, the Independent Review Panel shall award the bidder compensation. The compensation shall be limited to recovery of the costs of bid preparation and participation in the procurement proceedings.</p> <p>Right to judicial review of decision by IRP Where a party to the IRP review is dissatisfied with the decision of the IRP, there is a right to apply to the Supreme Court for judicial review of the decision making of the IRP. Judicial review involves review by the court of the administrative decision making of the IRP, applying a special test of reasonableness. The right to judicial review is not specified in the procurement legal framework. It is a general right of review available in respect of all decision making by public bodies.</p>			
<p>(c) Rules establish the matters that are subject to review.</p>	<p>Right to challenge: S.43 PPA Challenge provides that a bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a public body or the Board by the PPA may, subject to ss. 43(2), 43(3) and 39(5), challenge the procurement proceedings before entry into force of the procurement contract.</p>		<p>Criterion met</p>	<p>Suggestion for improvement Matters not subject to review by IRP – decision to cancel a procurement procedure: It is possible that in some cases public bodies may use the provisions permitting cancellation of a procurement procedure under s.39 PPA in order to manipulate the outcome of a procurement, particularly as there is no right of challenge or appeal in respect of such a decision. Consider whether, to improve overall confidence in the system, a right to challenge and appeal is provided for in defined cases of cancellation of a procurement procedure.</p>

⁹⁵Confirmed in discussions between MAPS assessment team, IRP and PPO on 20 September 2021.

	<p>There is no right to challenge or appeal/apply for review by the IRP in the following cases</p> <ul style="list-style-type: none"> • Decision to cancel a procurement procedure made pursuant to s.39 PPA: S.39(5) PPA provides that where public procurement proceedings are cancelled by a public body under s.39 PPA there is no right of challenge under s.43 PPA and no right of application for review under PPA s.45. • Defence and security contracts falling within s. 3(1)(a) PPA • Contracts listed in s.3A PPA (procurement by diplomatic missions abroad rental of office space, training services, vessels including maintenance repose and overhauls. • Emergency Procurement: s.21(4) PPA, added in 2021⁹⁶ provides that Part VI – the right to challenge, review and appeal under the PPA shall not apply to Emergency Procurement <p>In circumstance where there is no right to challenge or appeal/apply for review by the IRP, a direct application for judicial review to the Supreme Court is available with respect to the decision making of executive and governmental public bodies, including public corporations/agencies such as the State Trading Company. Decision making of the IRP can also be judicially reviewed. It is unlikely, however, that decisions made by companies with substantial government ownership operating as private or public companies will be amenable to judicial review. This is because these entities are not part of the executive or quasi-judicial in nature.⁹⁷</p> <p>PPP/BOT: The Independent Review Panel does not have jurisdiction in respect of PPP and BOT projects. Legal challenge in respect of procurement of PPP and BOT projects is by way of application for judicial review to the Supreme Court.⁹⁸</p>		<p>Suggestion for improvement BOT/PPP Projects: IRP has no jurisdiction in respect of procurement of PPP/BOT projects. Consider expanding jurisdiction of the IRP to cover this subject matter. This measure needs to be considered in conjunction with addressing the GAPS identified.</p>
<p>(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.</p>	<p><i>Summary: The legal framework sets out time frames for the submission of challenges to public bodies and applications for review to the Independent Review Body (IRP), including in cases where the public body has failed to respond to a challenge. There are time frames specified for decisions to be issued by the IRP.</i></p> <p>Timeframe for submission of the challenge to the public body under s.43 PPA Deadlines for submission of the challenge - summary s.43(3) PPA provides that a challenge shall not be entertained unless it is submitted within specified timescales:</p> <ul style="list-style-type: none"> • Procurement contracts for works, goods and other services over MUR 15 million: In the case of procurement contracts for works, goods and other services , the deadline for submission of a challenge is within 7 days of the written notification by the public body of its award decision to the successful bidder and the other bidders.⁹⁹ • Consultancy services contracts over MUR 15 million: In the case of procurement of consultancy services contracts over the value of MUR 15 million, the deadline for submission of a challenge is within 7 days of the written notification by the public body of its award decision to the successful consultant and the other shortlisted consultants.¹⁰⁰ • 5 day deadline in other cases s.43(3)(b) PPA provides that the challenge shall be submitted “in any other case within such time as may be prescribed” R.48(2) PPR requires that a challenge under s.43(3)(b) must be submitted within 5 days from the invitation to bid or from the opening of bids <i>Note: there is no obligation to notify suppliers/contractors of award decision prior to award of the contract for contracts under specified threshold of MUR 15 million</i> <p>Suspension and Timeframe for issuance of decision by the public body in relation to challenge under s.43 PPA s.43(4) PPA provides that unless the challenge is resolved, the Chief Executive Officer of the public body shall suspend the public procurement proceedings and shall, within such time period as may be</p>	<p>Criterion partially met</p> <p>GAP: The rules on time periods for submission of challenges and triggers for deadlines lack sufficient precision. The PPA/PPR provide for challenges to be submitted within 7 days of the date of the notice of contract award. It is not clear from the PPA/PPR whether the calculation of the deadline is triggered by the issue of the notice by the public body or the receipt (or deemed receipt) of the notice by the bidder concerned. The PPA provides that in cases not triggered by the notice of contract award, the challenge shall be submitted “within such time as may be prescribed” The rules refer to submission of a challenge within 5 days from the invitation to bid or from the opening of bids. There is, however, no reference to other possible stages such as pre-qualification and the rules are ambiguous.</p>	<p>Recommendation Rules on process and timeframes for issuing decisions, submission of challenges and triggers for deadlines to be reviewed and amended to ensure clarity for bidders seeking to challenge decisions by public bodies at any stage of procurement proceedings.</p> <p>Suggestion for improvement User guide for challenge and review: <i>The only comprehensive information on process for challenge and review is in the PPA/PPR and is consequently expressed in formal terms. Consider publishing a user-friendly guide for bidders/stakeholders on how to submit appeals/applications for review to the IRP, conduct of appeals/review. how appeals will be conducted. This could include confirmation that there is no requirement for legal representation and that cases can be paper-based with no absolute requirement for a hearing. In practice, this could, perhaps, be tied in with planned roll out of e-PS challenge/review function.</i></p> <p>Suggestion for improvement</p>

⁹⁶ s.73 of the Finance (Miscellaneous Provisions) 2021.

⁹⁷ Information provided by IRP, received December 2021, in response to question from MAPS Assessment team.

⁹⁸ Benchmarking Infrastructure 2020, World Bank Group, p.53 notes that 97% of all surveyed economies (140 economies were surveyed) provide for a complaints review mechanism for PPPs. Mauritius is one of five surveyed economies that do not.

⁹⁹ **Procurement contracts for works, goods and other services: Establishing the value threshold for application of the deadline** s.43(3) PPA refers to submission of a challenge within the time specified in s.40(4)PPA, being within 7 days of the written notification of the award decision required pursuant to s.40(3) PPA. s.40(3) PPA concerns the award of procurement contracts for works, goods and other services exceeding the prescribed threshold. This then tracks through to R 38(3) PPR which refers to the prescribed threshold for the purposes of s.40(3) PPA as being MUR 15 million.

¹⁰⁰ **Consultancy services - establishing the value threshold for application of the deadline for submission of challenge to public body:** s.43(3) PPA refers to submission of a challenge within the time specified in s.24(12) PPA, being within 7 days of the written notification of the award decision required pursuant to s.24(11)(b). s.24(11)(b) concerns the award of consultancy service contracts exceeding the prescribed threshold specified in s.40(3) PPA. S.40(3) PPA refers, in turn, to a “prescribed threshold” which then tracks through to R 38(3) PPR which refers to the prescribed threshold for the purposes of s.40(3) PPA as being MUR 15 million

	<p>prescribed, issue a written decision, stating his reasons and, if the challenge is upheld, indicating the corrective measures to be taken. s.48(4) PPR requires the written decision to be issued within 7 days of the filing of the application.</p> <p>Timeframe for submitting application for review by the Independent Review Panel Filing the application for review with the Independent Review Panel: s.45 PPA and R.48 PPR to R.59 PPR set out provisions concerning the filing of the application of review with the Independent Review Panel and conduct of the review. Deadlines for application for review to the Independent Review Panel 7 day deadline for Application for review: R.48(5) provides that the application for review to the independent review panel must be filed within 7 days of receipt of the decision of the public body or the time when that decision should have been received. 5 day deadline for Application for review to the Independent Review Panel after entry into force of the procurement contract: R48(7) PPR provides that an application for review after the entry into force of a procurement contract the value of which is above MUR 1 million shall be made within 5 days of the date the applicant becomes aware of the alleged breach. Conduct of review proceedings: s.44(4) PPA provides that the Review Panel shall subject to section 45, seek to avoid formality in its proceedings and shall conduct them in such manner as may be prescribed. In practice, however, the process presents as formal, involving significant levels of involvement from legal professionals. R.57 PPR provides that a hearing may be conducted at the request of the applicant for review or on the initiative of the IRP. R.57 PPR sets out rules concerning the timescales and conduct of the hearing which the applicant and public body concerned may attend. In theory, therefore, hearings are optional. In practice, hearings are conducted in respect of all applications for review accepted by the IRP. The IRP automatically issues hearing dates upon acceptance of an application for review. Whilst there is no obligation for an applicant or respondent to be legally represented, in practice, legal representation is standard. Each case may involve one or more sessions which are generally conducted in the afternoons to accommodate Court commitments of legal representatives. Cases are held in person and are recorded by shorthand writers. There are no facilities for “virtual” or remote hearings or electronic recording.¹⁰¹ Timeframe for issuance of decision by Independent Review Panel 30 day time frame for determining an application for review and consequences of failure to determine an application within the required time frame: ss.45(8) PPA concerns time frames for determining the application for review, with reference to Regulations prescribing time frames. R.57A PPR provides that the Independent Review Panel shall determine an application for review within 30 days of the application. The IRP complies with the statutory time limits save in exceptional cases where, for example, there are problems with participants arranging for personal attendance at hearings.¹⁰² Where the Independent Review Panel does not determine the application for review within the 30day period: (i) the suspension shall lapse; (2) the public body shall proceed to award the contract: (iii) the review panel shall continue with the application for review, with only a limited remedy available (see below).</p>		<p>Conduct of appeal (review) process: Stakeholders mentioned the high cost of pursuing proceedings through the IRP, primarily due to the perceived necessity for hearings in person, legal representation and related legal fees. It is possible that bidders do not seek review of decisions because of the costs of the appeal process which, as a matter of practice, involve both hearings and legal representation. In order to improve accessibility, consider whether IRP should proactively offer to conduct IRP reviews on basis of paper-based assessment, without hearings and also consider the possibility of offering remote/virtual hearings. This may also help to speed up decision making.</p>
<p>(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.</p>	<p><i>Summary: Applications for appeal are not published. Decisions of the IRP are published promptly on the Procurement Policy Office website, which is easily accessible, but no timescales for publication are set out in the legal framework.</i></p> <p>Applications for appeal: Applications for appeal are not published. Publication of Decisions of the Independent Review Panel: IRP decisions are published and available to download free of charge from a dedicated tabbed page on the Procurement Policy Office Website.¹⁰³ In practice, decisions are published promptly¹⁰⁴ but no timescales for publication are set out in the legal framework. R.58 PPR provides that any decision by the public body or Independent Review Panel pursuant to s.45 PPA shall be made part of the record of the procurement proceedings.</p>	<p>Criterion partially met</p> <p>GAP: No publication of applications for appeal and no time frame for publication of decisions by IRP: Applications for review (appeal) are not published. Decisions of the Independent Review Panel are published promptly, on a dedicated page of the Procurement Policy Office website but no time frame for publication of decisions by the IRP is specified in the legal framework.</p>	<p>Recommendation To further enhance transparency of and confidence in the review (appeal) system, publish applications for review (appeal) within specified (short) period of receipt. To increase legal certainty of the review (appeal) system, introduce provisions into PPA specifying deadline for publication of IRP decisions.</p>

¹⁰¹ Information on practice and conduct of hearings discussed at MAPS assessment team meeting with IRP and PPO, 20 September 2021

¹⁰² Confirmed at MAPS assessment team meeting with IRP and PPO, 20 September 2021

¹⁰³ For example: 2021 Decisions: <https://ppo.govmu.org/Pages/Independent%20Review%20Panel/Decisions-2021.aspx> accessed 26 September 2021.

¹⁰⁴ **Publication of IRP decisions** Samples of decisions published in early 2021 indicate that they were published promptly – Decision 01_21 9 February 2021 and Decision 02_21 15 February both available when website checked on 21 February 2021

<p>(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).</p>	<p><i>Summary: Decision making by the IRP can be subject to judicial review by the Supreme Court.</i></p> <p>Right to judicial review Where a party to the IRP review is dissatisfied with the decision of the IRP, there is a right to apply to the Supreme Court for judicial review. of the decision making of the IRP. An application for judicial review involves review by the court of the administrative decision making of the IRP, applying a special test of reasonableness. The right to judicial review is not specified in the procurement legal framework but is generally available in respect of decision making by public bodies.</p>		<p>Criterion met</p>
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1(i) Contract management

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned.</p>	<p><i>Summary: Functions for undertaking contract management are defined and responsibility is clearly assigned to the end user.</i></p> <p>Guidelines on Procurement Structure in Public Bodies, June 2017, confirms at s.14 that the End User is responsible for managing contracts or assisting the designated contract manager as required. "End User" is defined as "an individual, department or divisions that requires the goods, services or works in order for it to undertake its operational functions."</p> <p>Sampled SBDs/contract conditions include, where relevant and appropriate, provisions/contract clauses addressing: monitoring timely delivery of goods, works and services, including consulting services; Inspection, quality control, supervision of civil works and final acceptance of products; review, issue and publication of contract amendments; examination of invoices and timely processing of payments including administration of guarantees; disputes and termination; suppliers rights in case of late payment and employment conditions.</p> <p>Sampled SBD/contract conditions SBD for Procurement of Goods, November 2021 (Ref: G/SBD1/11-21//e-SBD Procurement of Goods (Ref: G/EPROC/PSG1/11-21), November 2021 for use in Open Advertised Bidding and Restricted Bidding General Conditions of Contract (Works), 15 October 2020, SBD for Procurement of Works (Large or Complex) (W/EPROC/POWLC1/10-20) Standard Request for Proposal following shortlisting/invitation for proposals through open advertised bidding for Selection of Consultants (for Time-based Contract) (SC/SRFP6-TB/07/20), 8 July 2020.</p>		<p>Criterion met</p>		
<p>(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.</p>	<p><i>Summary: the conditions for contract amendments are clearly defined in the legal framework and there are safeguard provisions aimed to ensure that amendments do not alter the basic nature or scope of the contract and restricting increases in contract value which should ensure economy and encourage competition.</i></p> <p>s.46 PPA Contents of contracts: includes provisions on contract amendment. S.46(2) PPA provides that any amendment to the contract, other than changes which do not alter the basic nature or scope of the contract, shall be expressly agreed by the partners in writing. s.46(3) PPA provides that an amendment to a contract that will increase the contract value by more than 25 percent shall require fresh procurement proceedings. This provision applies except where the amendment is in accordance with the Direct Procurement provisions in s.25(2)(c) PPA for additional deliveries of goods by the original supplier in specified circumstances; and s.25(2)(d) additional works in unforeseeable circumstances. s.46(4) PPA confirms that no formal amendment of the contract shall be required where the public body wishes to make a variation or invokes a contract price adjustment which is expressly authorised in the contract. R.25 PPR Price adjustment sets out further detail of requirements concerning price adjustment.</p>		<p>Criterion met</p>		<p>Suggestion for improvement Contract amendments: Improve transparency and accountability by ensuring that the full "life history" of the contract can be easily tracked including variations and amendments after contract award</p>

	<p>s.7 PPA Functions of Procurement Policy Office: one of the functions of the Procurement Policy Office is to advise the Financial Secretary regarding delegation of financial authority to public officers enabling them to approve contract awards and changes to contracts of a financial nature and the annual review of such delegations.</p> <p>Transparency requirements: R.71 PPR Notice of procurement contract award requires that, in respect of contracts whose value exceeds the prescribed threshold of MUR 5 million¹⁰⁵, the public body must publish a contract award notice on its website and on the public procurement portal within 7 days of signature of the contract (R.71 PPR). R.71(3) PPR provides that the information in the contract award notice shall be updated with amendments or variations made during the course of implementation of a contract. In practice, the updating is by means of publication of a new notice published on the website of the public body and the e-PS and there is no direct linkage with the original notice.</p> <p>Variation and amendment of Major contracts – Central Procurement Board: s.46(4A) PPA require prior approval of the Board for specified amendments, variations or adjustments and direct procurement with respect to major contracts that exceed the prescribed threshold. R.67A PPR sets out the prescribed thresholds, being: MUR 10 million in respect of a contract not exceeding MUR 100 million; MUR 20 million in respect of a contract not less than MUR 100 million and not more than MUR 300 million; MUR 30 million in respect of a contract exceeding MUR 300 million.</p> <p>s.11 Functions of the Board: provides that one of the functions of the Board in respect of major contracts is to review the recommendations of a public body with respect to an amendments that increase contract value by more than 20 per cent (s.12(3)(a) PPA) or a variation to a contract and to approve, reject or require the public body to make a fresh recommendation in respect of the amendment or variation.</p>			
<p>(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.</p>	<p><i>Summary: the legal framework provides for efficient and fair dispute resolution and allows for direct informal negotiations, where appropriate, and different methods of more formal dispute resolution including adjudication and arbitration.</i></p> <p>s.46 PPA Contents of Contracts require that a procurement contract shall include a provision covering the procedure for dispute resolution.</p> <p>R.60(4) PPR Inspection and inspection of goods requires that a dispute shall be subject to the dispute settlement procedures in the procurement contract.</p> <p>R.67 PPR Agreement to submit disputes to arbitration, provides that parties to a procurement contract may agree in the procurement contract, or by a separate agreement, to submit any dispute arising under the procurement contract for settlement by arbitration.</p> <p>Domestic arbitration: procedures for domestic arbitration are set out in the Civil Procedure Code 1808 (Code de Procédure Civile)</p> <p>International arbitration: Mauritius acceded to the New York Convention on the Recognition and Enforcement of Arbitral Awards on 19 June 1996.¹⁰⁶ International Arbitration is governed by the International Arbitration Act 2008 (as amended) which is modelled on the UNCITRAL Model Law on International Commercial Arbitration as amended in 2006.</p> <p>In practice, where mediation is resorted to in the first instance, public bodies most frequently refer cases to the commercial court for resolution.¹⁰⁷</p> <p>The General Conditions of Contract and Standard Bidding Documents, use of which is mandatory, include dispute resolution provisions. Dispute resolution provisions in sampled GCCs/SBD are shown below.</p> <p>General Conditions of Contract for Goods (G/RFQ-GCC4 11/21), provides at GCC 10.1 that the purchase and supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract. GCC 10.2 provides for use of arbitration in the event that the parties have failed to resolve their dispute or difference within 28 days, with final settlement by arbitration</p> <p>General Conditions of Contract (Works), 15 October 2020, provides at GCC 24 Procedure for dispute provides for a contractor who believes that a decision taken by a project manager is outside the project manager’s authority or wrongly taken, it shall be referred to an adjudicator. Either party may refer a decision of an adjudicator to an arbitrator.</p> <p>SBD for Procurement of Large or Complex Works (W/SBDPLC33/10-20) 15 October 2020 Provides that General Conditions shall be as per FIDIC Conditions of Contract for Buildings and Engineering works</p>		<p>Criterion met</p>	

¹⁰⁵ As prescribed in Directive No.10 of 2012.

¹⁰⁶ <http://www.newyorkconvention.org/list-of-contracting-states> accessed 2 February 2021.

¹⁰⁷ Information provided by Procurement Policy Office in response to query raised by MAPS assessment team.

	designed by the Employer – First Edition 1999. It shall also include the Appendix in respect of General Conditions of Dispute Adjudication Agreement			
(d) The final outcome of a dispute resolution process is enforceable.	<p><i>Summary: the final outcome of a dispute resolution process is enforceable</i></p> <p>s.46 PPA Contents of Contracts require that a procurement contract shall include provision covering the procedure for dispute resolution. R.60(4) PPR Inspection and inspection of goods requires that a dispute shall be subject to the dispute settlement procedures in the procurement contract. R.67 PPR Agreement to submit disputes to arbitration: provides that parties to a procurement contract may agree in the procurement contract, or by a separate agreement, to submit any dispute arising under the procurement contract for settlement by arbitration. The General Conditions of Contract provide, in the case of goods, that final settlement is by arbitration. In the case of large of complex works the standard bidding documents provide that FIDIC Conditions of Contract for Buildings and Engineering works designed by the Employer – First Edition 1999 and shall include the Appendix in respect of General Conditions of Dispute Adjudication Agreement. Mauritius acceded to the New York Convention on the Recognition and Enforcement of Arbitral Awards on 19 June 1996.¹⁰⁸</p> <p>Dispute resolution in sampled GCCs/SBD General Conditions of Contract for Goods (G/RFQ-GCC4 11/21), provides at GCC 10.1 that the purchase and supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract. GCC 1.2 provides for use of arbitration in the event that the parties have failed to resolve their dispute or difference within 28 days, with final settlement by arbitration</p> <p>General Conditions of Contract (Works), 15 October 2020, provides at GCC 24 Procedure for dispute provides for a contractor who believes that a decision taken by a project manager is outside the project manager’s authority or wrongly taken, it shall be referred to an adjudicator. Either party may refer a decision of an adjudicator to an arbitrator.</p> <p>SBD for Procurement of Large or Complex Works (W/SBDPLC33/10-20) 15 October 2020, Provides that General Conditions shall be as per FIDIC Conditions of Contract for Buildings and Engineering works designed by the Employer – First Edition 1999. It shall also include the Appendix in respect of General Conditions of Dispute Adjudication Agreement</p>		Criterion met	

1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.	<p><i>Summary: the legal framework mandates use of e-PS for conduct of all procurement, with very limited exceptions. e-PS covers part of the procurement cycle – advertising, publication and provision of procurement documents, submission of bids and publication of contract award notices. Evaluation of bids remains an off-line process. The legal framework addresses key issues arising in the use of electronic methods such as standardized formats, technical requirements, privacy, security of data and authentication and procedures to grant access to the e-PS.</i></p> <p>Mandatory use of e-Procurement System (e-PS): Directive No.47 Mandatory Use of e-Procurement System (e-PS), 21 August 2020 provides that the 55 public bodies listed in the appendix to the Directive shall undertake all their procurement exercises through the e-PS. Other public bodies had up to 31 December 2020 to fully on-board on the e-PS. Public bodies were advised to request their suppliers to register on the e-PS, otherwise they would not be able to participate in any bidding exercise. (see indicator 7 for additional data on use of e-PS)</p> <p>s.26A (1) PPA Electronic bidding process provides that there shall be an electronic bidding system to receive and process bidding documents for evaluation and for the award of any procurement contract,</p>		<p>Criterion partially met</p> <p>GAP- Insufficient alignment between PPA/PPR and e-PS: The PPA and PPR are not well aligned with the, now mandatory, use of e-PS. The PPA and PPR read as intended for use in paper-based procurement, which is understandable, as this reflects the history and development of the system. The e-Procurement Regulations address particular issues concerning the conduct of e-procurement. However, at points, the PPA and PPR are no longer well aligned with the practice of mandatory use of e-PS and thus potentially hinder correct understanding of the way in which e-PS is to be used.</p>		<p>Recommendation Undertake a critical review of the PPA, PPR, e-Procurement Regulations and other procurement legal framework documents including Guidelines and SBDs, with the aims to (1) better align the legal framework documents for use of e-PS in practice; and (2) prepare an easy to understand, consolidated guidance on e-Procurement requirements for the parts of the procurement cycle to which use of e-PS applies.</p>

¹⁰⁸ <http://www.newyorkconvention.org/list-of-contracting-states> accessed 2 February 2021.

	<p>in accordance with such regulations as may be made The e-PS provides facility for on-line evaluation of bids and in practice there is currently a process of transition from off-line to on-line evaluation.</p> <p>S.26A (2) PPA provides that any reference in the PPA to a document which has to be submitted in writing shall include reference to a document submitted electronically under the electronic bidding system.</p> <p>There are further provisions on electronic submission of bids in R.26 PPR.</p> <p>s.50 PPA Duties of public bodies, in the context of provisions on communication, provides at (5) that where it is so prescribed, a public authority may authorize the use of other forms of communication, including electronic communication for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts and processing of payment.</p> <p>Exceptional use of paper-based procurement processes and quarterly returns to the Procurement Policy Office: Directive No.47 further provides that paper-based procurement processes may exceptionally be used where the use of the e-PS is considered as not being practical for certain types of procurement such as: (a) minor works, repairs and maintenance, catering of low value; or (b) one-off procurements from non-regular suppliers. Public bodies must keep a register of all procurement exercises not undertaken using the e-PS, with justifications, and provide quarterly returns to the Procurement Policy Office.</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015 set out provisions concerning the establishment of the Central Registration Body (CRB) and registration of suppliers; digital signature, encryption and decryption; confidentiality; common procurement vocabulary; use of e-Ps to manage procurement requests; posting of the annual procurement plan on the e-PS; preparation and release of electronic bidding documents; bid preparation, submission, opening, evaluation and approval of award; contract formation; and record keeping.</p>			
<p>(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.</p>	<p><i>Summary: The legal framework ensures the use of tools and standards that provide unrestricted access to information on procurement opportunities and contracts awarded on the e-PS. Full access to the system takes into consideration privacy and security requirements and requires registration, which is based on self-reporting of information and is free of charge.</i></p> <p>The e-Ps is a centralised portal that provides open access to procurement notices and bidding documents for open advertised bidding. Certain activities like preparing bidding documents and submissions are accessible after registration. Registration is through self-reporting information and is free. (see indicator 7)</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015 set out provisions concerning the establishment of the Central Registration Body (CRB) and registration of suppliers as well as issues concerning privacy, security of data and authentication including: digital signature, encryption and decryption and confidentiality; use of e-Ps to manage procurement requests; preparation and release of electronic bidding documents; bid preparation, submission, opening, evaluation and approval of award; contract formation; and record keeping.</p> <p>The Procurement Policy Office has published a collection of e-SBDs, use of which is mandatory. The e-SBDs can be downloaded from both the Procurement Policy Office website and the e-PS website.</p> <p>The security of the bidding process is a very important element in the implementation of e-Procurement. In e-PS, bidders must mandatorily use a Digital Signature Certificate to encrypt the bid data to maintain confidentiality and digitally sign the bids to ensure non-repudiation. Data integrity is maintained using hashing algorithms that verify that the hash of the bid at submission and is same as that of opening. Similarly, various hashes are computed and verified at different stages to ensure that data integrity is maintained.</p>		<p>Criterion met</p>	
<p>(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.</p>	<p>The e-Standard Bidding Documents, use of which is mandatory, describe in the introduction the parts of the processes managed electronically through the e-PS. Bidding documents are publicly available to review through the e-PS, thus interested parties are informed which parts of the process are to be managed electronically.</p>		<p>Criterion met</p>	

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

The legal framework provides for the following:

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access..	<p>There is no general definition of “procurement documents” (including documents issued and received by the public body) in the PPA.</p> <p>Record of procurement proceedings s.50(3) PPA Duties of public bodies requires that every public body shall record and preserve all documentation relating to any procurement proceedings in such manner as may be prescribed.</p> <p>R.70 PPR Record keeping and reporting requirements confirms that every public body must keep a record of every procurement proceeding. It provides that the records shall include documentation relating to the proceeding such as the invitation to bid, decision of award, work take-over certificate and any other information on the method of the supplier’s completion of his commitment.</p> <p>Guidelines on Procurement Structure in Public Bodies, June 2017 refers to the role of the Procurement Unit including to maintain and archive full record of all procurement transactions within the organisation. In practice, records are kept in manual paper files which include all documents from the start of the bidding exercise.</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015 section 17 Record keeping requires every public body to keep electronic records of procurement proceedings, which shall be kept for a period of not less than 5 years after completion of the relevant procurement proceedings.</p> <p>There is no single comprehensive list of procurement records and documents to be retained by the public body. There is no guideline or other information published on what documents are available for public inspections, including conditions for access, either as part of the procurement legal framework or otherwise.¹⁰⁹ There is no general freedom of information legislation or right to information legislation.</p> <p>See also indicator 7 for Gap and recommendation for use of Open Contracting Data Standards.</p>		<p>Criterion not met</p> <p>GAP - No single comprehensive list of records and documents to be retained: The preparation of full records and documents with policies for retention and security and clarity on rights of access are an important feature of a procurement system, for performance and internal and external control purpose, to ensure public accountability and provide a basis for review.</p> <p>There is no single comprehensive list of the records and documents to be retained. There is no guideline or other information published on what documents are available for public inspection, including conditions for access, either as part of the procurement legal framework or otherwise.</p>		<p>Recommendation Prepare and publish a comprehensive list for use at operational level of records and documents to be retained. The list should cover the entire procurement process, including contract management, for both paper based and electronic procurement. The list should also outline what is available for public inspection including conditions for access.</p>
b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.	<p><i>Summary: Public bodies are obliged to record and preserve documentation and (where relevant) electronic records) relating to procurement proceedings but there is no procurement specific document retention policy or explanation of how general document retention policies should be applied in the procurement context.</i></p> <p>s.50(3) PPA Duties of public bodies requires that every public body shall record and preserve all documentation relating to any procurement proceedings in such manner as may be prescribed.</p> <p>The Public Procurement (Electronic Bidding System) Regulations 2015 section 17 Record keeping requires every public body to keep electronic records of procurement proceedings, which shall be kept for a period of not less than 5 years after completion of the relevant procurement proceedings.</p> <p>Fully audited Accounts Forms and receipts may be disposed of by destruction after 2 years after making arrangements with the Accountant General’s Department. The destruction of procurement records is subject to the approval and direction of the National Archives and no minimum retention period has been prescribed.¹¹⁰</p> <p>Documents and transactional records of e-PS are archived in a regular daily basis, and can be retrieved when needed. Data preservation policy is also guided by the IT Security Policy for the e-PS.</p>		<p>Criterion not met</p> <p>GAP - No procurement specific document retention policy: There is no procurement specific document retention policy or explanation of how general document retention policies should be applied in the procurement context, applying to all procurements.</p>		<p>Recommendation Prepare and publish a procurement specific document retention policy or explanation of how general document retention policies should be applied in the procurement context, for all procurement.</p>
(c) There are established security protocols to protect records (physical and/or electronic).	<p>The Prime Minister’s Office has issued Government Security Instructions applying to the protection of physical records. The e-PS provides for inbuilt security controls as per the security policy of the Government enforced by the IT Security Unit. The PPO has developed an IT Security Policy for the e-PS.¹¹¹</p>		<p>Criterion met</p>		

1(l) Public procurement principles in specialized legislation

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

¹⁰⁹ Information provided by Procurement Policy Office, November 2021, in response to query raised by MAPS assessment team.

¹¹⁰ Information provided by Procurement Policy Office, November 2021, in response to query raised by MAPS assessment team.

¹¹¹ Information provided by Procurement Policy Office, November 2021, in response to query raised by MAPS assessment team.

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.	<p>There is no specialised legislation governing procurement by entities in specific sectors such as the utilities sector. Most of the utilities in Mauritius (some of which are SOEs), including Airports of Mauritius Ltd, Central Electricity Board, Central Water Authority, Wastewater Management Authority, Irrigation Authority and National Transport Corporation are classified as public bodies subject to the PPA, with exempt organisation provisions applying in some cases.</p> <p>A number of organisations active in the utilities sector are set up pursuant to GtoG arrangements and/or operate on a fully commercial basis, and the PPA does not apply to their procurement. (see Indicator 1(a)(b) and Indicator 6(a)).</p>		Criterion met		
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	<p><i>Summary: The specialist PPP and BOT legislation requires projects to be structured to ensure value for money. The legislation provides for use of competitive methods of procurement and, in the case of PPP projects non-competitive methods but these are described only at a high level. The PPP and BOT legislation does not include explicit provisions setting out underlying principles to apply to conduct of the procurement of all PPP and BOT projects, such as transparency and fairness.</i></p> <p>The procurement (selection and contracting) of PPP projects and BOT projects is covered by BOT and PPP specific legislation: The Public Private Partnerships Act 2004 (as amended)¹¹² (PPP Act), which is a high level Act. The Build Operate Transfer Projects Act 2016¹¹³ (BOT Act),), which is a high level Act. plus Regulations, Circulars and guidelines issued by the BOT Project Unit (see Indicator 1(a)(c))</p> <p>Procurement of PPP projects S.4 PPP Act requires a contracting authority to structure a project to ensure value for money. S.10 PPP Act provides that the Central Procurement Board, where it is involved in procurement of PPP projects, shall be responsible for ensuring transparency and equity in bidding procedures. The PPP Act does not , however, include explicit provisions setting out underlying principles to apply to conduct of the procurement of PPP projects in all cases, such as transparency and fairness. The MOFEPD is responsible for vetting affordability and other aspects of PPP projects.</p> <p>s.4 PPP Act confirms the responsibilities of contracting authorities to: identify a project to be implemented under the PPP Act, submit a project brief for registration to the BOT Projects Unit, structure a project with the assistance of the BOT Projects Unit to ensure value for money, seek approval of Cabinet both to proceed with the procurement exercise for a project and to sign an agreement and to furnish other information/documents to the BOT Projects Unit as it may require. S.4(da) PPP Act requires a contracting authority to carry out the procurement exercise to select a private party for a project below the prescribed threshold with the assistance of the BOT Projects Unit or a consultant. Where the value of the project is above the prescribed threshold the procurement must be conducted through the Central Procurement Board.</p> <p>Request for proposals: s.7 PPP Act Request for Proposal¹¹⁴ provides that a notice of invitation or document pertaining to a request for proposal for procurement of a private party may be issued using any of the following procurement methods: a) open advertised bidding method, whereby the invitation to bid shall be published in a national newspaper having wide circulation and, in the case of an international bidding, in selected international media having wide circulation; (b) framework agreement, between a contracting authority and one or more private parties, which establishes the terms and conditions under which the private party or parties, as the case may be, shall enter into one or more agreements with the contracting authority during the duration of the agreement; or</p>		Criterion not met GAP: Principles underlying PPP and BOT legislation: The PPP and BOT legislation does not include explicit provisions setting out underlying principles to apply to conduct of the procurement of all PPP and BOT projects, such as and fairness.		Recommendation Review and amend PPP and BOT legislation [to assess fitness for purpose] and, in particular, to ensure that underlying principles of competition, transparency, fairness and value for money are expressed to apply.

¹¹² Public Private Partnerships Act 2004 No.37 of 2004 – last updated 3 November 2020

https://bot.govmu.org/Documents/The%20PPP%20Act%202004_03Nov2020.pdf

¹¹³ The Build Operate Transfer Projects Act 2016 No.1 of 2016, Government Gazette of Mauritius No,29 of 2016

https://bot.govmu.org/Documents/The%20BOT%20Projects%20Act%202016_03Nov2020.pdf

¹¹⁴ S.7 PPP Act was added by the Finance (Miscellaneous Provisions) 2021, Act No.15 of 2021, Official Gazette of Mauritius No.121 of 5 August 2021.

	<p>(c) restricted bidding procedure, where a contracting authority has reason to believe that the agreement may be implemented by a limited number of bidders.</p> <p>Unsolicited proposals: S.3C PPP Act sets out provisions governing receipt and consideration of unsolicited projects and subsequent proposals. On receipt of a proposal containing information specified in s.4 PPP Act, a contracting authority must seek approval of Cabinet to proceed with the procurement exercise for the project, as well as setting up a project team and designating a suitable and qualified project officer to manage the project. Where the value of the project is about the threshold the procurement must be conducted through the Central Procurement Board.</p> <p>Direct award: s.3C(10) provides that where a person submits a project (a) which has no financial implication for the Government; and (ii) which will benefit the public, he may be awarded the project subject to successful negotiation with the contracting authority.</p> <p>Content of PPP Agreement: S.6 PPP Act lists the basic content of a PPP Agreement including a requirement for disputes to be settled by arbitration, according to the rules defined in the agreement. There are no standard PPP project procurement documents or contract documents, although drafts of some template documents (PPP Toolkit) are currently being prepared with the assistance of the African Legal Support Facility¹¹⁵.</p> <p>Procurement of BOT Projects:</p> <p>s.7 BOT Act requires the contracting authority to structure a BOT project to ensure value for money. The BOT Act does not, however, include explicit provisions setting out underlying principles to apply to conduct of the procurement of BOT projects in all cases, such as transparency and fairness.</p> <p>s.7 BOT Act confirms the responsibilities of contracting authorities to identify a project to be implemented under the BOT Act, submit a project brief for registration to the BOT Projects Unit, structure a project with the assistance of the BOT Projects Unit to ensure value for money and seek approvals of Cabinet to proceed with a BOT project and to sign an agreement. A contracting authority is required to set up a project team and designate a suitable and qualified project officer. S.7(da) BOT Act requires a contracting authority to carry out the procurement exercise to select a private party for a project below the prescribed threshold with the assistance of the BOT Projects Unit or a consultant. Where the value of the project is above the prescribed threshold the procurement must be conducted through the Central Procurement Board.</p> <p>Request for proposals: s.9 BOT Act, Request for Proposal¹¹⁶ provides that a notice of invitation or document pertaining to a request for proposal may be issued using any of the following procurement methods:</p> <p>a) open advertised bidding method, whereby the invitation to bid shall be published in a national newspaper with wide circulation and, in the case of an international bidding, in selected international media with wide circulation;</p> <p>(b) framework agreement, between a contracting authority and one or more private parties, which establishes the terms and conditions under which the private party or parties, as the case may be, shall enter into one or more BOT agreements with the contracting authority in the period during which the agreement applies; or</p> <p>(c) restricted bidding procedure, whereby a contracting authority has reason to believe that the BOT agreement may be implemented by a limited number of bidders.</p> <p>The BOT Act has minimal provisions regarding the pre-selection of bidders (s.10A) and the conduct of competitive procedures for procurement of BOT Projects. The BOT Projects Unit has, however, issued BOT Circular No.1 of 2016 Embarking on BOT Projects¹¹⁷ and BOT Circular No.2 of 2016 BOT Projects Guidance Manual ¹¹⁸.</p> <p>Content of BOT agreement: S.11 BOT Act lists the basic content of a BOT Project Agreement including a requirement for disputes to be resolved by amicable settlement, mediation or arbitration. There are no standard BOT project procurement documents or contract documents. Every BOT agreement must, as soon as practicable, be laid before the National Assembly by the contracting authority.</p>				
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¹¹⁵ Budget Measures, Explanatory Notes, Main Provisions to be Included in The Finance (Miscellaneous Provisions) Bill 2021, Part B.1 (i).

¹¹⁶ S.7 PPP Act was added by the Finance (Miscellaneous Provisions) 2021, Act No.15 of 2021, Official Gazette of Mauritius No.121 of 5 August 2021.

¹¹⁷ BOT Projects Unit Website accessed 3 January 2020 <https://bot.govmu.org/Documents/Circulars/BOT%20Circular%20No%20%201%20of%202016.pdf>

¹¹⁸ BOT Projects Unit Website accessed 3 January 2020 <https://bot.govmu.org/Documents/Circulars/BOT%20Circular%20No%20%202%20of%202016%20-%20BOT%20Projects%20Guidance%20Manual.pdf>

	<p>Right to challenge and review: The Independent Review Panel does not have jurisdiction in respect of PPP and BOT projects. Legal challenge in respect of procurement of PPP and BOT projects is by way of application for judicial review to the Supreme Court.</p>			
<p>(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.</p>	<p><i>Summary: Responsibility for developing policies and supporting the implementation of PPPs lies with the BOT Projects Unit.</i></p> <p>s.4 BOT Act and s.3 PPP Act provide that the BOT Projects Unit shall be within the Procurement Policy Office. The BOT Projects Unit was located within the Procurement Policy Office but in 2021 an internal arrangement was made for the BOT Projects Unit to work under the aegis of the Ministry of Finance.¹¹⁹</p> <p>Functions of BOT Projects Unit vis-à-vis PPP: Section 3 PPP Act provides for the establishment, functions and powers of the BOT Projects Unit within the Procurement Policy Office ¹²⁰. S.3 provides that the BOT Projects Unit shall deal with PPP projects.</p> <p>s.3A PPP Act sets out the functions and powers of the BOT Projects Unit as regards PPP, as follows: The BOT Projects Unit shall –</p> <ul style="list-style-type: none"> (a) formulate policies, directives, procedures and guidelines on PPP projects; (b) issue standard templates for request for proposal and model PPP Agreements; (c) assist a contracting authority in structuring a project to ensure value for money; (d) assist a contracting authority in preparing a request for proposal documentation; (da) monitor the implementation of a project until signature of a contract with a private party and the operation of the project (e) conduct training programmes on PPP; (f) maintain a register of projects; and (g) provide such other assistance as may be required to a contracting authority or to the Board. <p>s.3B PPP Act sets out the powers of the BOT Projects Unit in the discharge of its functions.</p> <p>Functions of BOT Projects Unit vis-à-vis BOT projects: The BOT Act provides for the establishment, functions and powers of the BOT Projects Unit within the Procurement Policy Office¹²¹, which shall deal with BOT projects.</p> <p>s.5 BOT Act sets out the functions of the BOT Projects Unit as regards BOT Projects, as follows:</p> <ul style="list-style-type: none"> (a) formulate policies, including directives, procedures and guidelines on BOT projects; (b) issue templates in relation to BOT projects; (c) assist the contracting authority in (i) structuring a project to ensure value for money; (ii) preparing request for proposals documentation; (ca) monitor value for money and budget affordability during the operational stage of a BOT project; (d) maintain a register of BOT projects; and (e) conduct training programmes on BOT Projects <p>s.5A BOT Act sets out the powers of the BOT Projects Unit in the discharge of its functions.</p>		<p>Criterion met</p>	<p>Suggestion for improvement Location of BOT Projects Unit: s.4 BOT Act and s.3 PPP Act provide that the BOT Projects Unit shall be within the Procurement Policy Office. The internal agreement for the Unit to work under the aegis of the Ministry of Finance makes sense, particularly bearing in mind the potential for conflict of interest between the Procurement Policy Office and the BOT Projects Unit in terms of project specific advisory activities of the Unit. Consider amending the PPA so that the location of the BOT Projects Unit correctly The PPA should be reflects the new arrangement.</p>

2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
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¹¹⁹ Confirmed in meeting with Procurement Policy Office and Economic Development Board on 10 September 2021.

¹²⁰ BOT Unit Website originally accessed 31 July 2021, checked for update 24 September 2021.

<https://bot.govmu.org/SitePages/Index.aspx>

¹²¹ BOT Unit Website originally accessed 31 July 2021, checked for update 24 September 2021.

<https://bot.govmu.org/SitePages/Index.aspx>

<p>(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.</p>	<p><i>Summary: Ministerial Regulations are issued pursuant to s.61 PPA, which supplement and detail the provisions of the PPA and are consistent with the PPA. These are supplemented by Directives¹²² issued by the Procurement Policy Office, pursuant to the PPA, PPR and other Regulations.</i></p> <p>The Public Procurement Act 2006¹²³ (“PPA”) is the primary legislation governing public procurement. It is a relatively short act, to provide for the basic principles and procedures to be applied in, and regulate the public procurement of goods, public works, consultant services and other services and for the institutions responsible for those matters.¹²⁴ Section 61(1) PPA provides that the Minister (to whom responsibility for the subject is assigned) may, on the recommendation of the Procurement Policy Office, make such regulations as it thinks fit for the purposes of the PPA.</p> <p>A number of Regulations have been made by the Minister pursuant to s.61 PPA, including;</p> <ul style="list-style-type: none"> • Public Procurement Regulations 2008¹²⁵ (“PPR”) • Public Procurement (Suspension and Debarment) Regulations 2008¹²⁶ • Public Procurement (Disqualification) Regulations 2009¹²⁷ • Public Procurement (Framework Agreement) Regulations 2013¹²⁸ • Public Procurement (Diplomatic Missions of Mauritius) Regulations 2014¹²⁹ • Public Procurement (Electronic Bidding System) Regulations 2015¹³⁰ • Public Procurement (Cancellation of Bidding Process) Regulations 2016¹³¹ <p>The PPA and PPR and other ministerial Regulations provide for the Procurement Policy Office to issue Directives on prescribed or specified matters. There are currently 59 Directives listed on the Procurement Policy Office website¹³², issued over the period 2008 to 2021, although not all remain in force. Directives set out step-by-step “instructions” on particular issues.¹³³</p>		<p>Criterion met</p>		
<p>(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.</p>	<p>The Ministerial Regulations and Procurement Policy Office Directives are clear and comprehensive. A full set of Regulations and Directives published by the Procurement Policy Office is available to download from the Procurement Policy Office website using a clearly identified tab.</p>		<p>Criterion met</p>		
<p>(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.</p>	<p><i>Summary: Responsibility for maintenance of the regulations lies with the Policy Office and regulations are updated regularly.</i></p> <p>s.61 PPA Regulations, provides that the Minister may, on the recommendation of the Procurement Policy Office, make such regulations as it thinks fit for the purposes of the PPA. Regulations made pursuant to this provision may provide for detailed procedures, competent authorities, operational thresholds, alternative procurement method, time limits and other deadlines, levying of fees or charges by the Procurement Policy Office, the Board or the Review Panel; and amendment of the PPA Schedule.</p> <p>S.7 PPA Functions of the Procurement Policy Office do not explicitly refer to review and make recommendations to the Minister on updating of the Regulations. There is a more generally expressed function which covers this role, at s.7(e) PPA which requires that the Procurement Policy Office shall</p>		<p>Criterion met</p>		

¹²² <https://ppo.govmu.org/Pages/Directives/Directives.aspx>

¹²³ Public Procurement Act 2006 [Act 33 of 2006] (as amended)

¹²⁴ Wording taken from the preamble to the PPA.

¹²⁵ Public Procurement Regulations 2008

¹²⁶ Public Procurement (Suspension and Debarment) Regulations 2008, Last updated – 08 October 2012 <https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Suspension%20and%20Debarment%29%20Regulations%202008%20updated%2008%2010%2012%20trial.pdf>

¹²⁷ Public Procurement (Disqualification) Regulations 2009, Last updated – 08 October 2012

<https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Disqualification%29%20Regulations%202009%20updated%2008%2010%2012%20trial.pdf>

¹²⁸ Public Procurement (Framework Agreement) Regulations 2013 – 23 July 2013 <https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Framework%20Agreement%29%20Regulations%202008.pdf>

¹²⁹ Public Procurement (Diplomatic Missions of Mauritius) Regulations 2014 – 24 March 2014

<https://ppo.govmu.org/Documents/Regulations/Regulation%20for%20Diplomatic%20Missions%20Mauritius%202014.pdf>

¹³⁰ Public Procurement (Electronic Bidding System) Regulations 2015 – 11 November 2016

<https://ppo.govmu.org/Documents/Regulations/Public%20Procurement%20%28Electronic%20Bidding%20System%29%20Nov%202016.pdf>

¹³¹ Public Procurement (Cancellation of Bidding Process) Regulations 2016 – 11 November 2016

<https://ppo.govmu.org/Documents/Regulations/Regulation%20for%20Cancellation%20of%20Bidding%20Process.pdf>

¹³² As at 25 September 2021

¹³³ <https://ppo.govmu.org/Pages/Directives/Directives.aspx>

Name/organisation:

Date:

<p>“recommend, and facilitate the implementation of, measure to improve the functioning of the procurement system...” .</p> <p>The Regulations are updated regularly and updated (consolidated) versions are available to download from the Procurement Policy Office website. Updates are published promptly.</p>	
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2(b) Model procurement documents for goods, works, and services

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations													
<p>(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.</p>	<p><i>Summary: There is are comprehensive sets of model procurement documents (Standard Bidding Documents SBD) as well as General Conditions of Contract (GCC) and Special Contract Conditions for use in a wide range of procurements, including consulting services.</i></p> <p>All of the Standard Bidding Documents are available to download, in Word format, free of charge, direct from the Procurement Policy Office website¹³⁴ (following the “Standard Bidding Documents” link and the “Standard Bidding Documents (e-PS)” link and also from the e-PS website “e-SBD” tab for procurement conducted using the e-PS.</p> <p>The SBDs include documents to cover different types of procedures and contract values, different subject matter (goods, works, consultancy services and other services) and specialist procurement such as cleaning, health sector goods, security, single stage procurement of IT, security and scavenging services. (see full list below)</p> <p>The SBDs include, where relevant, standard information on the conduct of the bidding process including Instructions to Bidders, Bidding Data Sheets, Evaluation and Qualification Criteria and Bidding Forms as well as General Conditions of Contract and Special Conditions of Contract.</p> <p>The Standard Bidding Documents available from the Procurement Policy Office website are listed below</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">Standard Bidding Documents¹³⁵</th> </tr> <tr> <th style="width: 50%;">Model Standard Bidding Documents listed on Procurement Policy Office Website “Standard Bidding Documents” link https://ppo.govmu.org/Pages/Standard-Bidding-Documents.aspx</th> <th style="width: 50%;">e-PS Model Standard Bidding Documents listed on Procurement Policy Office Website “Standard Bidding Documents (e-PS)” link https://ppo.govmu.org/SitePages/Index.aspx</th> </tr> </thead> <tbody> <tr> <td style="background-color: #d9e1f2;">Goods</td> <td style="background-color: #d9e1f2;">Goods</td> </tr> <tr> <td>Procurement of Goods (Ref: G/SBD1/11-21)</td> <td>Procurement of Goods (Ref: G/EPROC/PSG1/11-21)</td> </tr> <tr> <td>Procurement of Goods (Recommended for Restricted Bidding for values up to Rs 5,000 000) (Ref: G/RBD2/11-21)</td> <td>Procurement of Goods (Restricted Bidding) to be used for online bidding for contract amount up to Rs 5 million excluding VAT (Ref:G/EPROC/POG1/11-21)</td> </tr> <tr> <td>Request for Sealed Quotations (for small goods) Ref: G/RFQ3/11-21)</td> <td>Request for Sealed Quotations (to be used for online bidding for contract amount up to Rs 5 million excluding VAT) (Ref:G/EPROC/RB1/11-21)</td> </tr> <tr> <td>Information Quotation for (Goods) (Ref: G/IQ36/11-21)</td> <td>Procurement of Goods (Informal Quotation)(to be used for online bidding for</td> </tr> </tbody> </table>	Standard Bidding Documents ¹³⁵		Model Standard Bidding Documents listed on Procurement Policy Office Website “Standard Bidding Documents” link https://ppo.govmu.org/Pages/Standard-Bidding-Documents.aspx	e-PS Model Standard Bidding Documents listed on Procurement Policy Office Website “Standard Bidding Documents (e-PS)” link https://ppo.govmu.org/SitePages/Index.aspx	Goods	Goods	Procurement of Goods (Ref: G/SBD1/11-21)	Procurement of Goods (Ref: G/EPROC/PSG1/11-21)	Procurement of Goods (Recommended for Restricted Bidding for values up to Rs 5,000 000) (Ref: G/RBD2/11-21)	Procurement of Goods (Restricted Bidding) to be used for online bidding for contract amount up to Rs 5 million excluding VAT (Ref:G/EPROC/POG1/11-21)	Request for Sealed Quotations (for small goods) Ref: G/RFQ3/11-21)	Request for Sealed Quotations (to be used for online bidding for contract amount up to Rs 5 million excluding VAT) (Ref:G/EPROC/RB1/11-21)	Information Quotation for (Goods) (Ref: G/IQ36/11-21)	Procurement of Goods (Informal Quotation)(to be used for online bidding for	<p>Criterion met</p>		
Standard Bidding Documents ¹³⁵																		
Model Standard Bidding Documents listed on Procurement Policy Office Website “Standard Bidding Documents” link https://ppo.govmu.org/Pages/Standard-Bidding-Documents.aspx	e-PS Model Standard Bidding Documents listed on Procurement Policy Office Website “Standard Bidding Documents (e-PS)” link https://ppo.govmu.org/SitePages/Index.aspx																	
Goods	Goods																	
Procurement of Goods (Ref: G/SBD1/11-21)	Procurement of Goods (Ref: G/EPROC/PSG1/11-21)																	
Procurement of Goods (Recommended for Restricted Bidding for values up to Rs 5,000 000) (Ref: G/RBD2/11-21)	Procurement of Goods (Restricted Bidding) to be used for online bidding for contract amount up to Rs 5 million excluding VAT (Ref:G/EPROC/POG1/11-21)																	
Request for Sealed Quotations (for small goods) Ref: G/RFQ3/11-21)	Request for Sealed Quotations (to be used for online bidding for contract amount up to Rs 5 million excluding VAT) (Ref:G/EPROC/RB1/11-21)																	
Information Quotation for (Goods) (Ref: G/IQ36/11-21)	Procurement of Goods (Informal Quotation)(to be used for online bidding for																	

¹³⁴ Procurement Policy Office website Standard Bidding Documents page

<https://ppo.govmu.org/Pages/Standard-Bidding-Documents.aspx>

¹³⁵ PPO website pages accessed 16 November 2021.

Name/organisation:

Date:

		contract amount up to Rs 500 000 excluding VAT) (Ref:G/EPROC/POG1/11-21)			
	General Conditions of Contract (Goods) (Ref: G/RFQ-GCC4/11-21)	General Conditions of Contract (Goods) (Ref: G/RFQ-GCC4/11-21)			
	Procurement of Health Sector Goods (Pharmaceuticals/Vaccines/Condoms) (Ref:G/SDB1/H/11-21)	Procurement of Health Sector Goods (Pharmaceuticals/Vaccines/Condoms) (Ref:G/EPROC/PHSG1/11-21)			
	Works				
	Standard Prequalification documents (second Edition) for Procurement of large of complex works (Ref: W/SBD/PLC5/06-17)	Procurement of Large or Complex Works (STANDARD PREQUALIFICATION DOCUMENTS) (Second Edition) (Ref; W/SBD/PLC5/03-18)			
	Procurement of Large or Complex Works (2 nd Edition) (Ref: W/SBDPL33/10-20)	Procurement of works (Large or Complex) (Ref: W/EPROC/POWLC1/10-20)			
	Procurement of works (Recommended for contracts up to a value of Rs 300M) (Ref: W/SBD 21/10-20)	Procurement of works (Up to Rs 300m) (Ref: W/EPROC/POW400M1/10-20)			
	Procurement of Works under Open National Bidding Method (Recommended for works of values up to Rs 50M)	Procurement of Works under Open National Bidding Method (to be used for online bidding for contract amount up to Rs 50 million) (Ref:W/EPROC/ONB1/10-20)			
	Procurement of Works (Recommended for Restricted Bidding for values up to Rs 5,000,000) (Ref:W:RDB8/10-20)	Procurement of Works (Restricted Bidding) (to be used for online bidding for contract amount up to Rs 5 million excluding VAT) (Ref:W/EPROC/POWRB1/10-20)			
	Informal Quotation for (Works) (Ref:W/IQ34/10-20)	Procurement of Works (Informal Quotation) (to be used for online bidding for contract amount up to Rs 500 000 excluding VAT) (Ref:W/EPROC/POWIQ1/10-20)			
	Request for Sealed Quotation (Works) (Ref:W/RFQ9/10-20)	Procurement of Works (Request for Sealed Quotations) (to be used for online bidding for contract amount up to Rs 5 million excluding VAT) (Ref:W/EPROC/POWRFQ1/10-20)			
	General Conditions of Contract (Works) (Ref: W/GCC10/10-20)				
	Design-Build and Turnkey Contracts	Design-Build			
	Design-Build and Turnkey Contracts (Single stage, one envelope) (Ref: DB/SBD23/09-20)	Design-Build for Works Contract following prequalification (Single stage, one envelope) (Ref: DB/SBD.....)			
		Design-Build for Works Contract (Single stage, one envelope) (Ref: DB/SBD.....)			
	Design-Build and Turnkey Contracts (Single stage, two envelope) (Ref: DB/SBD35/10-20)	Design-Build for Works Contract following prequalification (Single stage, two envelope) (Ref: DB/SBD.....)			
		Design-Build for Works Contract without prequalification (Single stage, two envelope) (Ref: DB/SBD.....)			
	Design-Build (Two Stage) (Ref: DB/SBD32/10-20)				
		STANDARD PREQUALIFICATION DOCUMENTS for Procurement of Design-Build (Works Contract)			
	Non-Consultancy Services	Non-Consultancy Services			
	Procurement of Non-Consultancy Services (Ref: NCS/SBD11/10-20)	Procurement of Non-Consultancy Services (Ref: NCS/EPROC/SBD1/10-20)			
	Procurement of Services (non-consultancy) (Recommended for Restricted Bidding for values up to Rs 5,000,000) (Ref: NCS/RBD12/10-20)	Procurement of Non-Consultancy Services (other than Security and Cleaning)(Ref: NCS/RBD12/10-20)			

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Request for Sealed Quotations (for services other than consultancy up to Rs 5,000,000) (Ref: NCS/RFQ13/10-20)	Procurement of Non-Consultancy Services (other than Security and Cleaning Services)(Request for Sealed Quotation) (Ref: NCS/RFQ17/.....)				
Informal Quotation (Other Services) (Ref: SCS/IQ15/10-20)	Procurement of Non-Consultancy Services (other than Security and Cleaning Services)(Informal Quotation) (Ref: SCS/IQ29/.....)				
General Conditions of Contract (Non-Consultancy Services – other than Security Cleaning) (Ref: NCS/RFQ/GCC14/10-13)					
Security & Cleaning Services	Security Cleaning				
Procurement of Security Services (Ref: SS/SBD25/11-21)	Procurement of Security Services (Ref: SS/EPROC/SBD8/11-21)				
Procurement of Cleaning Services (Ref: CS/SBD26/11-21)	Procurement of Cleaning Services (Ref: CS/EPROC/SBD26/11-21)				
Procurement of Security/Cleaning Services (Recommended for Restricted Bidding for values up to Rs 5,000,000) (Ref:SCS/RBD16/11-21)	Procurement of Security Services (Restricted Bidding)(to be used for online bidding for contract amount up to Rs 5 Million excluding VAT) (Ref: SCS/RFQ17/.....)				
	Procurement of Cleaning Services (Restricted Bidding)(to be used for online bidding for contract amount up to Rs 5 Million excluding VAT) (Ref: SCS/RBD 16/10-20)				
Request for Sealed Quotations (for services other than consultancy up to Rs 5,000,000) (Ref: NCS/RFQ17/11-21)	Procurement of Security Services (Request for Sealed Quotations)(to be used for online bidding for contract amount up to Rs 5 Million excluding VAT) (Ref: NCS/RFQ17/.....)				
	Procurement of Cleaning Services (Request for Sealed Quotations)(to be used for online bidding for contract amount up to Rs 5 Million excluding VAT) (Ref: NCS/RFQ17/.....)				
Informal Quotation for (Other Services) (Ref: SCS/IQ29/11-21)	Procurement of Security Services Informal Quotation (Ref: SCS/IQ29/.....)				
	Procurement of Cleaning Services (Informal Quotation) to be used for online bidding for contract amount up to Rs 500 000 excluding VAT) (Ref: SCS/IQ29/.....)				
General Conditions of Contract (Security/Cleaning Services) (Ref: SCS/RFQ/GCC18/11-21)					
Scavenging services	Scavenging Services				
Procurement of Street Cleaning, Refuse Collection and Disposal Services (Ref: SCRD/SBD31/12-20)	Procurement of Street Cleaning, Refuse Collection and Disposal Services (Ref: SS/EPROC/SBD11/12-20)				
Selection of Consultants	Consultancy Services				
	e-Expression of Interest for Selection of Consultants (Ref: SC/.....)				
Request for Consultants for Lump sum contract (recommend for use following shortlisting or through OAB) (Ref: SC/SRFP19-LS/07-20)	e-Standard Request for Proposal – Lump sum (new edition) (Ref: SC/SRFP19-LS/.....)				
	e-Standard Request for Proposal Small Assignment - Lump sum (Ref: SC/EPROC/SRFP/.....)				
Request for Consultants for Time-based contract (recommend for use following shortlisting or through OAB) (Ref: SC/SRFP6-TB/07-20)	e-Standard Request for Proposal –Time Based (new edition) (Ref: SC/SRFP19-LS/.....)				

	<table border="1"> <tr> <td data-bbox="489 182 943 273">Selection of Consultants (Recommended for Small/Individual Assignments) (Ref: SC/SRFP7-SIA/07-20)</td> <td data-bbox="943 182 1389 273"></td> </tr> <tr> <td data-bbox="489 273 943 325">Supply and installation of information systems</td> <td data-bbox="943 273 1389 325">Supply and installation of information systems</td> </tr> <tr> <td data-bbox="489 325 943 441">Supply and installation of information systems-Single Stage Bidding (Recommended for Complex Information Systems (Ref:SI/SBD30/02-14)</td> <td data-bbox="943 325 1389 441">Supply and installation of information systems-Single Stage Bidding (Ref: SI/EPROC/SISSSB1/12-20</td> </tr> <tr> <td data-bbox="489 441 943 556">Supply and installation of information systems-Two Stage Bidding (Recommended for Complex Information Systems (Ref:SI/SBD39/02-14)</td> <td data-bbox="943 441 1389 556"></td> </tr> </table>	Selection of Consultants (Recommended for Small/Individual Assignments) (Ref: SC/SRFP7-SIA/07-20)		Supply and installation of information systems	Supply and installation of information systems	Supply and installation of information systems-Single Stage Bidding (Recommended for Complex Information Systems (Ref:SI/SBD30/02-14)	Supply and installation of information systems-Single Stage Bidding (Ref: SI/EPROC/SISSSB1/12-20	Supply and installation of information systems-Two Stage Bidding (Recommended for Complex Information Systems (Ref:SI/SBD39/02-14)					
Selection of Consultants (Recommended for Small/Individual Assignments) (Ref: SC/SRFP7-SIA/07-20)													
Supply and installation of information systems	Supply and installation of information systems												
Supply and installation of information systems-Single Stage Bidding (Recommended for Complex Information Systems (Ref:SI/SBD30/02-14)	Supply and installation of information systems-Single Stage Bidding (Ref: SI/EPROC/SISSSB1/12-20												
Supply and installation of information systems-Two Stage Bidding (Recommended for Complex Information Systems (Ref:SI/SBD39/02-14)													
<p>(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.</p>	<p>There is a comprehensive collection of SBDs, use of which is mandatory (See note indicator 2(b)(a).</p> <p>The Standard Bidding Documents (model procurement documents) cover a wide range of procurements in terms of process, value and subject matter and are adapted to reflect the particular procurement covered. There are standard templates which reflect the legal framework and there is reference to the right to challenge and appeal (Sampled SBDs: e-SBD Open National Bidding Method for Works up to MUR 50 million Ref: W/EPROC/ONB1/10-20; e-SBD Open International Bidding for Procurement of Goods Ref: G/EPROC/POG1/01-21).</p>			<p>Criterion met</p>									
<p>(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.</p>	<p>Model procurement documents are regularly updated and new documents have been issued for use in procurements using the e-PS.</p> <p>However, updating does not always seem to pick up on all developments in the legal framework. For example, there are provisions in the PPA /PPR on abnormally low tenders but this is not fully addressed in the SBDs.</p> <p>S.7 PPA Functions of the Procurement Policy Office refers at s.7(c) to issuing of “standard forms of contracts, bidding documents, prequalification documents, requests for proposals and other similar documents for mandatory use.” S.7 (c) PPA does not explicitly refer to review and updating. There is a more generally expressed function which covers this role, at s.7(e) PPA which requires that the Procurement Policy Office shall “recommend, and facilitate the implementation of measure to improve the functioning of the procurement system...”</p>			<p>Criterion partially met</p> <p>GAP: Lack of alignment of SBDs with rest of procurement legal frameworks: There is a lack of alignment between the SBDs and the rest of the procurement legal framework, reducing clarity and consistency. This arises primarily as a result of reliance on international financing institutions’ model documents which are not fully tailored for domestic use and/or not always updated to reflect developments elsewhere in the procurement legal framework, as would be expected in a mature procurement system. For example, some terms defined in the PPA/PPR are not used in the SBDs and the introduction into the PPA of provisions on abnormally low bids are not sufficiently well reflected in SBDs.</p>	<p>Recommendation Review and update of all SBDs to fully align with the rest of the procurement legal framework.</p> <p>Suggestion for improvement Functions of the Procurement Policy Office: s.7 PPA Functions of the Procurement Policy Office do not explicitly refer to the Procurement Policy Office undertaking ongoing review and updating Consider including more explicit provisions concerning the functions of the Procurement Policy Office vis-à-vis review and updating SBDs.</p>								

2 (c) Standard contract conditions

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.</p>	<p><i>Summary: There are standard contract conditions for most common types of contracts, either included within the SBDs or incorporated by clear reference to standard contract conditions which are easily accessible to participants. The SBDs/standard contract conditions contain the basic required content specified in the PPA. Use is mandatory.</i></p>		<p>Criterion met</p>		

	<p>Part VII PPA, ss.46 to 48 concern the contents of procurement contract, payment and termination. s.46 PPA list the minimum contents of contracts including provisions on contract price, conditions of acceptance, conditions and mode of payment, price adjustment mechanisms, termination and dispute resolution. There are also detailed provisions on amendments. Public bodies must include a clause concerning remuneration and other conditions of work with reference to collective agreements, arbitration awards or regulations concerning remuneration and there is a requirement for contractors to certify compliance with these requirements as a condition for payment.</p> <p>For smaller value contracts, the SBDs include standard contract conditions. In other cases, SBDs may contain Conditions of Contract or incorporate the standard General Conditions of Contract by reference, with clear links to the Procurement Policy Office website where the General Conditions of Contract are available in electronic format to download. There is also provision for incorporation and use of Special Conditions of Contract.</p> <p>SBD for Procurement of Large or Complex Works (W/SBDPLC33/10-20) 15 October 2020 Provides that General Conditions shall be as per FIDIC Conditions of Contract for Buildings and Engineering works designed by the Employer – First Edition 1999. It shall also include the Appendix in respect of General Conditions of Dispute Adjudication Agreement</p> <p>s.7 (c) PPA, Functions of Procurement Policy Office provides that one of the functions of the Procurement Policy Office it so issued standard forms of contract, bidding documents, pre-qualification documents, requests for proposals and other similar documents for <i>mandatory use</i> by every public body implementing procurement.</p> <p>s.2 PPA defines “bidding document” as “any document” issued by a public body on the basis of which bidders prepare bids”; and this “includes any document which contains instructions to bidders, specifications, maps, designs, terms of reference, work schedules, evaluation criteria, bills of quantities, conditions of contract or similar items.”</p> <p>Circular No.8 of 2008 Compliance with the Public Procurement Act 2006 and Procurement Regulations 2008 provides, at paragraph 10 that pursuant to section 7 PPA Standard Bidding Documents issued by the Procurement Policy Office are for mandatory use by public bodies. Public bodies are required to ensure that they use the updated version of SBD, as posted on the Procurement Policy Office website.¹³⁶</p> <p>Paragraph 5, Circular No.8 provides that public bodies must not alter the sections in the SBDs dealing with Instructions to Bidders and General Conditions of Contract. The sections in the SBD concerning Bidding Data and Special Conditions of Contract are meant to be customised. Circular No, 12 of 2012 provides further information on the use of SBDs and related templates including guidance on when customisation is permitted and appropriate.</p> <p>Standard General Contract Conditions (GCC) for goods, works, non-consultancy services (Other than Security Cleaning), Security/Cleaning, which are published and available to download in Word format from the Procurement Policy Office Website SBD page. Their use is mandatory. There are also special contract conditions which are meant to be customised.</p>			
<p>(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.</p>	<p>Content of standard contract conditions are generally consistent with internationally accepted practice.</p>		<p>Criterion met</p>	
<p>(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.</p>	<p><i>Summary: For smaller value contracts, the SBDs include standard contract conditions. In other cases, SBDs may contain Conditions of Contract or, alternatively, incorporate the standard General Conditions of Contract by reference, with clear links to the Procurement Policy Office website where the General Conditions of Contract are available in electronic format to download. There is also provision for incorporation and use of Special Conditions of Contract.</i></p> <p>SBD for Procurement of Large or Complex Works (W/SBDPLC33/10-20) 15 October 2020 Provides that General Conditions shall be as per FIDIC Conditions of Contract for Buildings and Engineering works designed by the Employer – First Edition 1999. It shall also include the Appendix in respect of General Conditions of Dispute Adjudication Agreement</p>		<p>Criterion met</p>	

¹³⁶ Circular No.8 provides that, where necessary for a particular procurement ,the Procurement Policy Office will customise SBDs for sole use by the public body concerned so as to be compliant with the PPA.

	<p>In the case of consultancy services, the general conditions of contract are fully set out in the SBDs in the form of a standard Service Contract. There is also provision for Special Conditions of Contract. In the case of IT procurement, the general conditions of contract are fully set out in the SBDs. There is also provision for Special Conditions of Contract. In each case the conditions for contract applying are set out clearly in the SBDs and are available to participants in the procurement proceedings</p>			
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2 (d) User’s guide or manual for procuring entities

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.</p>	<p><i>Summary: Manuals have been published to cover procurement of goods, works and consultancy services but not other services. The manuals are not comprehensive and do not cover the whole procurement cycle.</i></p> <p>The Procurement Policy Office has published a number of guides (manuals) detailing the procedures for correct implementation of procurement. In the case of the guides published in 2012 and 2014 the focus is on evaluation.</p> <p>User’s Guide to Procurement of Works, October 2020, available to download from the Procurement Policy Office SBD page.¹³⁷ This Guide cover the procurement process from preparation and issuing of the procurement document to bid evaluation and contract award and includes reference to electronic procurement processes including submission of bids.</p> <p>Evaluation Guide (Works and Goods) Ref WG/EG38/05-14, v.22 May 2014: This Guide applies to the evaluation of bids for procurement of goods and works and prequalification of contractors. It provides step-by-step procedures for the evaluation of bids solicited through National Competition Bidding, International Competition Bidding and Restricted Bidding. In practice this covers both assessment of suitability for selection using pre-qualification and evaluation of bids. The evaluation guide includes sample reports and forms, including evaluation forms for completion. It has not been updated to include, for example, references to electronic procurement processes.</p> <p>Evaluation Guide (Consultancy Services) Ref SC/EG37/07-12 v.27 July 2012: provides step-by -step procedures for the evaluation of proposals from consultancy firms or individual consultants, following shortlisting through nationally or internationally advertised Expression of Interest or from a data base of the procuring entity. It is divided into 5 sections: 1 Evaluation principles, 2 Establishment and organization of evaluation committee, 3 Evaluation process, 4 Evaluation of financial proposal, 5 Negotiation. It includes Annexes with a sample evaluation report and individual evaluation forms. It has not been updated to include, for example, references to electronic procurement processes.</p> <p>The Procurement Policy Office has also published Guidelines including: Guidelines on Procurement of Vessels Guidelines on Rental of Office Space Guidelines on Sandbox for Innovative Technologies</p> <p>There is no user’s guide or evaluation guide for procurement of non-consultancy services.</p>		<p>Criterion partially met</p> <p>GAP: User’s guides/manuals not complete: The manuals do not cover the whole procurement cycle and do not cover all procurement, as there is no manual for other services</p>		<p>Recommendation Produce revised/new manuals (guides) to cover all subject matter of procurement and the entire procurement cycle</p>
<p>(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.</p>	<p><i>Summary: Responsibility for maintenance of the manuals lies with the Procurement Policy Office. The manuals have not been updated regularly.</i></p> <p>s.7 (b) PPA Functions of the Procurement Policy Office provides that one of the functions of the Procurement Policy Office is to formulate policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, for the implementation of the PPA.</p> <p>S.7 (b) PPA does not explicitly refer to review and updating. There is a more generally expressed function which covers this role, at s.7(e) PPA which requires that the Procurement Policy Office shall “recommend, and facilitate the implementation of measure to improve the functioning of the procurement system...”</p> <p>The guides for consultancy services and goods have not been updated recently, in particular, to refer to electronic procurement.</p>		<p>Criterion partially met</p> <p>GAP: User’s guides/manuals not updated: The procurement manuals are some years old and have not been updated recently, in particular to refer to electronic procurement.</p>		<p>Recommendation Produce revised/new manuals (guides) to align with current provisions of legal framework including use of e-PS.</p> <p>Suggestion for improvement Functions of the Procurement Policy Office s.7 PPA Functions of the Procurement Policy Office do not explicitly refer to the Procurement Policy Office undertaking ongoing review and updating user’s guides or manuals.</p>

¹³⁷ <https://ppo.govmu.org/Pages/Standard-Bidding-Documents.aspx> Not available through “procurement guidelines” tab on PO website.

					<i>Consider including more explicit provisions in s.7 PPA concerning the functions of the Procurement Policy Office vis-à-vis review and updating.</i>
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3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

3(a) Sustainable Public Procurement (SPP)

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	<p>There is currently no sustainable public procurement policy/strategy in place to implement SPP in support of broader national policy objectives.</p> <p>In the 2021 Budget process it was confirmed that the PPO will be required to “introduce a Sustainable Public Procurement Framework to ensure public bodies considers the environmental and social impact of their procurement decisions. The framework will be implemented in a phased manner, starting with the procurement of vehicles, cleaning materials, cleaning services, paper products and IT equipment as from January 2022. Thereafter, sustainable procurement for civil works and consultancy services will be implemented as from January 2023”¹³⁸</p>		<p>Criterion not met GAP</p> <p>Currently there is no policy/strategy in place to implement SPP, no implementation plan or systems and tools in place to operationalise, facilitate and monitor the application of SPP. The legal and regulatory framework does not allow for sustainability to be incorporated at all stages of the procurement cycle and legal provisions concerning well-balance application of sustainability criteria are lacking.</p>		<p>Recommendation</p> <p>PPO /GoM to implement SPP as stated in Budget Papers of 2021 and further develop SPP. This should include a clear implementation plan to cover introduction of systems/tools to operationalise, facilitate and monitor the application of SPP as well as changes to the legal/regulatory framework to allow for sustainability to be incorporated at all stages of the procurement cycle and introduction of legal provisions ensuring well-balance application of sustainability criteria.</p>
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.	<p>There is currently no sustainable public procurement policy/strategy in place to implement SPP in support of broader national policy objectives and thus no implementation plan or systems and tools in place to operationalize, facilitate and monitor the application of SPP.</p> <p>However, positive initial steps are being made (see indicator 3(a)) for preparation by the Procurement Policy Office of an SPP procurement framework and the National Audit Office is addressing sustainable development in the context of Performance Audits. According to the National Audit Office, “The principles of the UN Agenda 2030 on Sustainable Development have been incorporated in NAO’s Performance Audits. NAO will audit the implementation of national agreed targets linked to SDG [UN Sustainable Development Goal] target 12.7 which aims at promoting public procurement practices that are sustainable, in accordance with national policies and priorities. Currently performance gaps, where the root causes relate to sustainable public procurement issues, are examined and reported in different performance audit reports which are published on NAO’s website. Also, as part of its regularity audit, NAO has highlighted in its annual report, issues relating to sustainable public procurement in different Ministries and Departments”¹³⁹.</p>		<p>Criterion not met GAP - as criterion 3(a)(a)</p>		<p>Recommendation</p> <p>as criterion 3(a)(a)</p>
(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.	<p><i>Summary: The legal framework allows for life cycle costing in certain cases and FIDIC based SBDs provide for some sustainability issues to be take into account in evaluation.</i></p> <p>s.28(2) PPA Bidding documents, provides that in appropriate cases and subject to regulations to that effect, a bidding document may provide for qualification and evaluation criteria based on life cycle costing. SBDs based on standard FIDIC documents provide for some sustainability issues to be taken into account in evaluation</p> <p>s. 46 (5) 7 (6) PPA Contents of contracts, includes provision to ensure that employment rights are respected, with specific reference to a number of issues including rates of remuneration, working conditions, collective agreements etc.</p>		<p>Criterion partially met GAP</p> <p>Although the legal framework allows for life cycle costing in certain cases and FIDIC based SBDs provide for some sustainability issues to be take into account in evaluation, overall, the legal and regulatory framework does not provide for sustainability to be incorporated at all stages of the procurement cycle.</p>		<p>Recommendation</p> <p>as criterion 3(a)(a)</p>
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	<p>Legal provisions concerning application of sustainability criteria are limited (see 3(a)(c) and in practice sustainability criteria are rarely, if ever, applied.</p>		<p>Criterion partially met GAP:</p> <p>The legal provision concerning application of sustainability criteria are limited and cannot be said to support a well</p>		<p>Recommendation</p> <p>as criterion 3(a)(a)</p>

¹³⁸ Budget Measures, Explanatory Notes, Main Provisions to be Included in The Finance (Miscellaneous Provisions) Bill 2021, Part B.1 (e)(vii) https://news.edbmauritius.org/budget-newsletter/pdf/2021_22Annexbudgetspeech.pdf

¹³⁹ Input provided by National Audit Office to MAPS Assessment team, 4 October 2021.

Name/organisation:

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			balanced application of sustainability criteria to ensure value for money.		
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3(b) Obligations deriving from international agreements

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) clearly established	<p><i>Summary: The obligations related to public procurement arising from binding international agreements are clearly established and are reflected in national procurement laws and regulations.</i></p> <p>Mauritius is a party to the following Multilateral, Regional Trade Agreements and Bilateral Trade Agreements:¹⁴⁰</p> <p>Multilateral: WTO World Trade Organisation & GSP (Generalized System of Preferences) Scheme. Mauritius has been a WTO member since 1 January 1995 and Member of GATT since 2 September 1970. Mauritius is a beneficiary of the GSP Scheme. Mauritius is not a party to the GPA. It is not listed as being in the process of accession to the GPA¹⁴¹.</p> <p>Regional Trade Agreements: AGOA (Africa Growth and Opportunity Act – building on GSP providing US market access), Interim EPA (Economic Partnership Agreement) with EU, AfCFTA (African Continental Free Trade Area)¹⁴², IOC (Indian Ocean Commission), COMESA (Common Market for Eastern and Southern Africa)¹⁴³, TFTA (Tripartite FTA: COMESA-EAC-SADC), SADC FTA (Southern African Development Community), IORA (Indian Ocean Rim Association), UK-ESA (UK – Eastern Southern Africa) Economic Partnership Agreement</p> <p>Bilateral Trade Agreements: Pakistan, Turkey, USA, China, India</p> <p>COMESA Public Procurement Regulations: As noted above, Mauritius is a member of COMESA (Common Market for Eastern and Southern Africa). COMESA has specific set of Regulations concerning harmonisation of public procurement, issued pursuant to the COMESA Treaty. The COMESA Public Procurement Regulations¹⁴⁴, which apply to all regional competitive bidding otherwise than provided under those Regulations, provide a helpful example for the purposes of assessment of this sub-indicator. The public procurement legal framework in Mauritius is aligned with the requirements of those Regulations, including, for example, Procurement Policy Office Circular no.7 of 2012 which confirms that, in the case of international bidding, the invitation must also be posted on the COMESA public procurement portal through the Procurement Policy Office</p> <p>Mauritius is a signatory, has ratified or acceded to numerous multilateral conventions and treaties¹⁴⁵ including conventions and treaties giving rise to obligations in the context of sustainable public procurement. Mauritius has ratified the United Nations Convention Against Corruption¹⁴⁶, which sets mandatory minimum standards for procurement (A.9(1)). Mauritius has been a member of the International Labour Organization since 1969 and has ratified all 8 fundamental conventions¹⁴⁷ and sampling confirms that obligations derived from those conventions are clearly</p>		Criterion is met		

¹⁴⁰ Source: Mauritius Trade Agreements from Ministry of Foreign Affairs, Regional Integration and International Trade <https://foreign.govmu.org/Pages/ITD/International-Trade-Division.aspx> and Government Website Mauritius Trade Easy accessed 9 October 2021. <http://www.mauritiustrade.mu/en/trade-agreements>

¹⁴¹ WTO GPA Website accessed 9 October 2021.

https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm

¹⁴² Mauritius ratified AfCFTA on 30 November 2019. Source AfCFTA website <https://afcfta.au.int/en>

¹⁴³ <https://www.comesa.int/>

¹⁴⁴ COMESA Public Procurement Regulations, Legal Notice No.3 of 2009, COMESA Official Gazette Volume 15 No.3 of 09 June 2009.

<https://www.comesa.int/wp-content/uploads/2020/05/2009-Gazette-Vol.-15-No3.pdf>

¹⁴⁵ A list of multilateral Conventions/Treaties to signed/ratified/acceded by Mauritius is available to download from the website of the Attorney General's Office

<https://attorneygeneral.govmu.org/Documents/Documents/14-CONTREAT%20%281%29.pdf> accessed 21 September 2021

See also: Mauritius Trade Agreements from Ministry of Foreign Affairs, Regional Integration and International Trade <https://foreign.govmu.org/Pages/ITD/International-Trade-Division.aspx> and Government Website Mauritius Trade Easy accessed 6 January 2021. <http://www.mauritiustrade.mu/en/trade-agreements>

¹⁴⁶ <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

¹⁴⁷ https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:15975249111906:::P11200_INSTRUMENT_SORT:2

ILO website accessed 24 October 2021.

	<p>established. For example, in this context , the Employment Relations Act 2008 (as amended)¹⁴⁸ provides for a procedure agreement between employers and recognised trade unions specifically providing for employment rights to include rights protected by ILO conventions as well as those protected by the Constitution and laws of Mauritius. In the context of environmental considerations, Mauritius has also, for example, ratified the United Nations Framework Convention on Climate Change, Kyoto Protocol and Paris Agreement¹⁴⁹ with related national legislation such as the Climate Change Act 2020.</p> <p>Procurement Rules of Donor Organisations: There is a specific provision in the PPA concerning conflict between the provisions of the PPA and procurement rules of donor organisations, in which case the latter shall prevail: s.3(3) PPA provides that “Where any provision of this Act conflicts with the procurement rules of a donor organisation, the application of which is mandatory pursuant to an obligation entered into by Mauritius under any treaty or other form of agreement, those rules shall prevail.”</p>			
<p>(b) consistently adopted in laws and regulations and reflected in procurement policies.</p>	<p>Compliance and alignment: The role of the International Trade Division of the Ministry of Foreign Affairs, Regional Integration and International Trade includes: ensuring that trade obligations undertaken by Mauritius are taken into account in the formulation of Mauritian laws, regulation and administrative procedures; formulating and reviewing policies on trade and ensuring enforcement of relevant legislation; ensuring that Mauritius fulfils its mandatory transparency obligations vis a vis the WTO through the notification process.</p> <p>National legislation is necessary to implement international treaties/agreements into domestic law. When the Attorney General’s Office is working on the drafting for domesticating international treaties it makes sure that there is no conflict, so far as is possible, between national laws and international treaties.¹⁵⁰</p>		<p>Criterion is met</p>	

Pillar II. Institutional Framework and Management Capacity

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

4(a) Procurement planning and the budget cycle

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) 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>In accordance with Regulation 10 of Public Procurement Regulations 2008 (last updated on 26 November 2021), a public body shall engage in procurement planning in order to ensure that procurement is carried out within financial estimates allocated to it and public body shall at the beginning of every financial year prepare a master procurement plan to cover the entire life of the project. This includes multi-year planning.</p> <p>Constitution: Chapter X of the Constitution deals with finances including the Consolidated Fund, authorization of expenditure, contingencies, the appointment, payment and reporting lines for Director of Audit and whose office shall be a public office, as well as public debt.</p> <p>Finance & Audit Act 2008 (as subsequently amended) and supporting regulations: The Finance and Audit Act of 2008 has been amended on a number of occasions. This provides the basics for public financial management. The legislation is supported by a number of Financial Instructions (which have the status of a legislative instrument and Treasury and MOFEPD Circulars plus the Financial Management Manual (1990).</p> <p>Regulation 10 of PPR 2008 requires that a public body at the beginning of every financial year, prepare an annual procurement plan, publish on its website and periodically update and revise it. In accordance with</p>		<p>Criterion partially met</p> <p>Based on sample cases, a significant number of cases had no procurement plan nor evidence of market research. This may influence the choice of procurement methods and respective number of responsive bids. Out of a total number of 105 sampled cases, 53% presented procurement plans. For 47% of cases, procurement plan was not available</p>	<p>PPO to ensure through e-PS the enforcement on publication of procurement plan</p> <p>Financial Instruction No 1 of 2019 issued by MOFED to be followed to incorporate in investment project costing and budgeting, operating/recurrent cost over the project life cycle.</p>	<p><i>Suggestion for improvement</i></p>

¹⁴⁸<https://labour.govmu.org/Documents/Legislations/Employment%20Relations%20Act%202008/A%20consolidated%20versionof%20the%20ReA%202008%20as%20at%201%20March%202021.pdf?csf=1&e=bGolrY>

¹⁴⁹ <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states>

¹⁵⁰ Information provided in discussion between MAPs Assessment Team and Attorney General’s Office, 17 September 2021.

Regulation 10, Item (6) of PPR 2008, a public body may establish a Committee of Needs in accordance with instructions issued by the Procurement Policy Office, to plan any individual procurement identified in its annual procurement plan.

Regulation 10 of PPR 2008 requires that in planning procurement of a major contract, the public body shall *inter alia* take into account identification and assessment of the need for the procurement, conduct market research, identify amount and sources of financing, decide contracting approach and structure, possible aggregation of procurement requirements taking into account factors such as achieving economies of scale and optimizing use of procurement and contract administration resources, select appropriate procurement method including reasons for use of a procurement method other than open bidding and any possible combination of package of task or contract and determine and identify contract administration resources and responsibility.

s.50 PPA Duties of Public Bodies

(2) Every public body shall –

- (a) engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Act;
- (b) make an annual plan for budgeting purposes and plan each step of procurement for major contracts in such manner as may be prescribed.

Public Procurement (Electronic Bidding System) Regulations 2015

10. Annual procurement plan

(1) Every public body shall, not later than 30 June in a year, prepare an annual procurement plan in respect of the following financial year.

(2) An annual procurement plan using the open advertised bidding method shall, where appropriate, not later than 31 July of every year, be posted on the e-procurement system.

s.7 PPA Functions of the Procurement Policy Office

The Procurement Policy Office shall-

(e) recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the operation of annual procurement planning....

Financial Instructions No.1 of 2019, Capital Project Process Manual, MoFED, February 2019

Includes provisions on project pipelines and maintenance of a database of public sector capital projects (PSIP- Public Sector Investment Programme), provisioning in subsequent budgets (4.15), a section on projects implemented by Statutory Bodies/State-Owned Enterprises (s.5), monitoring of expenditure flows (s.8), contract changes, establishment of the Public Investment Management Unit (s.10),

Note also provisions on cost estimates recurrent costs and revenue/saving over project lifecycle (Annex V)

Based on PEFA 2015¹⁵¹ related multi -year perspective in fiscal planning, expenditure policy and budgeting Rating is C as depicted below:

Based on PEFA 2015, there is no evidence of sector or ministerial medium term strategy document being in place which reflects substantially complete costs for recurrent and investment expenditure and there is a weak link between investment budget and forward expenditure estimates related to recurrent cost (Scores of C on Indicator PI-12)

For major projects, PIMA to work with PPO and relevant ministries and departments of public bodies on refining the Procurement Planning process to prepare a Project Procurement Strategy for Development (PPSD) to consider, among other things, the market situation, operational context to develop a “fit for purpose” procurement approach. PPO to provide a detailed guidance to public bodies to use a modern set of tools and techniques to achieve best Value-for- Money (VfM).

¹⁵¹ <https://www.pefa.org/sites/pefa/files/assessments/reports/MU-Dec15-PFMPPR-Public.pdf>

Policy-based Budgeting		Methodology and Coverage		Rating	
PI-12: Multi-year perspective in fiscal planning, expenditure policy and budgeting		M2 Budgetary Central Government Dim (i) Last 2 completed FYs Dim (ii) Last 3 years before assessment Dims (iii) and (iv) Last completed budget		C	
Dimension	PEFA 2015	Summary	PEFA 2011	PEFA 2007	
(i) Multi-year fiscal forecasts and functional classifications	B	The forward estimates for year T+1 (coming budget year plus one, i.e. the first indicative estimates year) provide the base for the setting of the rolled-over budget ceilings for the following year, differences between the two are set out in internal documentation but not provided explicitly in the published budget documentation. In practice, differences between the forward estimates and subsequent ceilings in aggregate are small.	C	D	
(ii) Scope and frequency of debt sustainability analysis	B	One DSA which covered both domestic and external debt was carried out by GoM during the last three years.	A	B	
(iii) Existence of costed sector strategies	D	There are no sector or ministerial medium-term strategy documents in place which reflect substantially complete costings for recurrent and investment expenditures.	C	D	
(iv) Linkages between investment budgets and forward expenditure estimates	D	While the recurrent and investment budgets are not separate processes, investment projects are not explicitly linked to sector strategies. There is no evidence that future recurrent costs associated with investment projects are systematically included in forward estimates.	D	D	
Source: Ministry medium-term strategies, GoM Debt Sustainability Analysis, Working documents on MTF, budget submissions and internal analyse					

Source: PEFA December 2015

<p>(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).</p>	<p>As per Financial Instructions No.1 of 2019 on Capital Project Process Manual (FM KIT), MOFEPD has constituted the Public Investment Management Unit (PIMU) and the Project Planning and Monitoring Unit (PPMU). As per Project Appraisal and Process Flow Chart of this Manual, for example for major projects (defined as above Rs 100 million), the public body may start preparation of detailed design and bidding documents and proceed with land acquisition as required. Launching of bids by public body and implementation of the project will be subject to budget provisioning. Where there is significant change in project scope/nature/cost, MOFEPD may request the public body to seek cabinet approval. After Cabinet approval, MOFEPD provides financial clearance for the launching of bids and implementation of the project subject to budget provisioning.</p> <p>As indicated at 4(a) (a) above, In accordance with Regulation 10 of Public Procurement Regulations 2008 (last updated on 26 November 2021), a public body shall engage in procurement planning in order to ensure that procurement is carried out within financial estimates allocated to it and public body shall at the beginning of every financial year prepare a master procurement plan to cover the entire life of the project. This includes multi-year planning</p>		<p>Criterion met</p>		
<p>(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.</p>	<p>The Public Sector Investment Program (PSIP) is a database of public sector capital projects, kept at the level of MOFEPD, which is expected to be implemented over a 5-year period. It enumerates the Government investment plan for the next 5 years, including funded projects and those in the pipeline. Capital projects included in the PSIP should be prioritized by Public Bodies based on their state of preparedness, affordability, and financing secured.</p> <p>Project Planning and Monitoring Unit (PPMU) is required to be set up in Ministries/Departments for major spending ministries and department (currently 6 ministries/departments listed) and will be responsible, inter-alia, to: (a) prepare draft Terms of Reference (TOR) for hiring consultants; (b) assist in project preparation to be submitted to MOFEPD; (c) assist in the preparation of all relevant documents in respect of the procurement process; (d) participate in the evaluation of bids; and (e) manage and monitor project implementation.</p> <p>Project Implementation and Monitoring Agency (PIMA): MOFEPD has issued a circular on Oct 26, 2021 under the provisions of Section 22 of Finance and Audit Act setting up PIMA under MOFEPD headed by a Director, who shall be assisted by a multi-disciplinary team of professionals in fields such as architecture, engineering, quantity surveying, economics, accountancy, environment, physical planning and ICT. PIMA will work in close collaboration with ministries, public sector entities, private sector to address impediments in the</p>		<p>Criterion partially met</p> <p>However, Procurement System of the country is not well integrated with public financial management system in e-PS: There is lack integration of system from budget preparation to planning treasury operations for payments in e-PS, even though e-PS is operational since 28 September 2015 and use of e-PS is mandatory since 1 January 2021</p> <p>Lack of feedback mechanism to monitor implementation of major contracts: Lack of integration of pre-award activities with post award implementation: Related to contract implementation there appears to be a disconnect between pre-</p>		<p>e-PS and Financial Management System to be enhanced for a well-integrated system public financial management system. This will require system enhancement</p> <p>The newly constituted PIMA under MOFEPD to address impediments in the implementation of capital projects through suitable monitoring and integration of resources to undertake pre-award and post award activities to cover the Specific study required to address issues in procurement of information technology systems.</p>

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implementation of capital projects and ensure that these impediments are expeditiously dealt with and projects completed in time. Accounting Officers of public bodies are required to designate public officers to report to PIMA on the implementation status of projects/programs and budgetary measures under their purview.

Procurement process which starts from the time need is identified till need is satisfied includes facilities being put to effective use after award of contract. Based on NAO of 2019-20, "Value for Money not obtained" for various projects where several years after award of contract facilities were not put to effective use in particular for information technology systems in various ministries.

award and post award activities, where after contract award sufficient attention is not given to contract administration leading to long delays or failure of contracts as per NAO report.

4(b) Financial procedures and the procurement cycle

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	<p>In accordance with document "Procurement Structure in Public Bodies" issued by PPO (version June 2017) under Point 5 (1) as Procurement Duties of an Accounting Officer is inter alia responsible and accountable for ensuring that all the procurement proceedings of the procuring entity is conducted in accordance with the PPA and under Point 5 (2) (c) to ensure the availability of funds prior to the commencement of any procurement activity or designate officer(s) to whom this function may be entrusted;</p> <p>In accordance with document "Procurement Structure in Public Bodies at Point 4 "Establishment of Committee of Needs", a Procuring Entity should, as and when necessary, establish a Committee of Needs responsible for – (a) analyzing, consolidating, standardizing and approving the requirements of the Procuring Entity, while ensuring availability of funds, and (b) preparing the Annual Procurement Plan of the Procuring Entity</p> <p>As per Directive No. 22 of PPO dated 21 May 2015, and pursuant to Regulation 10, public bodies are required to prepare their Annual Procurement Plan at the beginning of every financial year. Due to the change in financial year from Jan/Dec to July/June, public bodies are required to submit their Annual Procurement Plan to PPO by latest 15th July of each year.</p>		Criterion met		
(b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*	<p>Regulation 62 of PPR 2008 requires prompt payment, which stipulates that (i) payments due to the supplier shall be made in accordance with the deadlines specified in the procurement contract, failing which, the supplier shall be compensated by payment of interest in accordance with the provisions of the procurement contract; and (ii) Where the procurement contract provides for a prompt payment discount, such a discount shall be applied if the public body makes payment in accordance with the terms of the prompt payment discount provision.</p> <p>PEFA 2015 on predictability of the availability of funds for commitment of expenditure indicates a score of "A", which shows full compliance. NAO report of 2019-2020, does not point out availability of funds and timely payment of invoice as a constraint in timely implementation of projects.</p> <p>Based on Annual Report of the Accountant General for Financial Year 2019-2020, as per Audit Certificate of National Audit Office that other than points in NAO's report, that "nothing has come to my attention that causes me to believe that the financial management principles laid down at Section 16 of the Finance and Audit act have in all respects, not adhered to"</p> <p>Related to any instances of delayed payment, the Report of the Director of Audit on the Accounts of the Government for Financial Year 2019-2020, the section on "Deficiencies in Contracts Management" indicates abnormally long delays in the completion of projects, and in some cases, for years and situations of non-verification of authenticity of Performance and Advance Payment securities, but not specifically to instances of delayed payment. There were instances reported by NAO on slow disbursement in some sectors.</p>		Criterion met		

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

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<p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.</p>	<p>There are no statistical data, but based on facts collected from multiple sources, there is no evidence of delayed payment This inference is based on qualitative data</p>	<p>Please see explanation in the column on the left</p>			
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5. The country has an institution in charge of the normative/regulatory function

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

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.</p>	<p><i>Summary: The legal and regulatory framework specifies the normative/regulatory functions of the Procurement Policy Office and assigns appropriate formal powers to enable it to carry out its functions.</i></p> <p>Institutional structure The key institutions established under the PPA to support public procurement are the Procurement Policy Office (PPO), Central Procurement Board (Board/CPB) and Independent Review Panel (Review Panel/IRP).</p> <p>The Procurement Policy Office is entrusted with normative/regulatory tasks described in the MAPS methodology.</p> <p>Establishment: The Procurement Policy Office (PPO) is a department under the aegis of the Ministry of Finance, Economic Planning and Development,¹⁵² established as an independent body, pursuant to s.4 PPA. The Procurement Policy Office is administered by a Director and two independent members appointed, for a three year term (renewable for one additional term) by the President of the Republic, acting in accordance with the advice of the Prime Minister after consultation with the Leader of the Opposition.</p> <p>Policy making, monitoring and independence: S.6 PPA allocates responsibility for policymaking and monitoring to the Procurement Policy Office, confirms its independent status and provides that the Procurement Policy Office is not operationally involved in conducting proceedings or resolving procurement disputes.</p> <p>The Procurement Policy Office may request information from and consult with the Central Procurement Board, Independent Review Panel and public bodies in the development of procurement policy.</p> <p>S.6(2) PPA provides that in the exercise of its functions the Procurement Policy Office shall act without fear or favour and shall not be subject to the direction or control of any other person or authority.</p> <p>Functions: The Procurement Policy Office has the following functions, listed in s.7 PPA:</p> <ul style="list-style-type: none"> (a) issue instructions to public bodies concerning the coordination of their actions with the Procurement Policy Office, the Board and the Review Panel; (aa) where appropriate, designate a public body to enter into and manage a framework agreement on its own behalf and that of other public bodies, or on behalf of other public bodies; (b) formulate policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, for the implementation of the PPA; 		<p>Criterion met</p>		

¹⁵² Procurement Policy Office listed as one of 9 Departments of Ministry of Finance, Economic Planning and Development

<https://mof.govmu.org/Pages/Departments-and-Other-Bodies.aspx>

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

Name/organisation:

Date:

	<p>(c) issue standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar documents for mandatory use by every public body implementing procurement;</p> <p>(d) collect from the Board, the Review Panel and public bodies information on procurement activities and monitor their compliance with the PPA;</p> <p>(da) act as a focal point to guide the Board and public bodies with a view to ensuring consistency in the application of the PPA and any regulations made under the PPA</p> <p>(db) attend to complaints from bidders or suppliers and advise the Board or public bodies on the appropriate course of action;</p> <p>(e) recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the operation of annual procurement planning, the introduction of information and communications technology and the dissemination of publications and the setting up of websites dedicated to procurement;</p> <p>(f) prepare and conduct training programmes for public officials, contractors and suppliers concerning procurement;</p> <p>(g) solicit the views of the business community on the effectiveness of the procurement system;</p> <p>(h) present an annual report to the Minister regarding the overall functioning of the procurement system;</p> <p>(i) communicate and cooperate with international institutions and other foreign entities on matters of procurement;</p> <p>(j) advise on and monitor foreign technical assistance in the field of procurement;</p> <p>(k) advise the Financial Secretary¹⁵³ regarding delegation of financial authority to public officers enabling them to approve contract awards and changes to contracts of a financial nature and the annual review of such delegations; and</p> <p>(l) perform such other functions as may be assigned to it by the Financial Secretary</p> <p>s.7A PPA confirms powers of the Procurement Policy Office exercisable in the discharge of its functions. S7A PPA provides, in summary that the Procurement Policy Office may, in the discharge of its functions, require information, and require and examine records and other documents from the Central Procurement Board or any public body. It may also carry out procurement audit. There are provisions requiring compliance with requests received from the Procurement Policy Office in this context and providing that failure to comply or wilful provision of false or misleading information shall constitute an offence. Where, in the discharge of its functions, the Procurement Policy Office find that there has been deliberate non-compliance with any provision of the PPA or instructions issued, the Director of the Procurement Policy Office shall refer the matter to the Head of the Civil Service recommending such action as he may deem appropriate. The Head of the Civil Service may refer any matter referred to him to the Police for enquiry.</p> <p>R.3 PPR provides that the Procurement Policy Office shall issue procedures and mechanisms for fulfilment of its functions of the Procurement Policy Office and sets out further detail the way in which the Procurement Policy Office shall fulfil its functions.</p> <p>The Procurement Policy Office has other functional roles as specified in the Build Operate Transfer Projects Act and the Public Private Partnership Act. Procurement Policy Office BOT Projects Unit: The BOT Projects Acts establishes a BOT Projects Unit in the Procurement Policy Office to deal with BOT Projects. The PPP Act also attributes functions to the BOT projects unit (see Indicator 1(l)(c) for further detail). The BOT Projects Unit was located within the Procurement Policy Office but has recently moved to the Ministry of Finance, Economic Planning and Development .¹⁵⁴</p> <p>Information The two other key institutions are the Central Procurement Board (see indicator 6(a)(b)) and the Independent Review Panel (see indicator 1(h) and Indicator 13).</p>				
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5(b) Responsibilities of the normative/regulatory function

¹⁵³ Financial Secretary is the Supervising Officer of the Ministry of Finance, Economic Planning and Development and has responsible to ensure that the functions of the Ministry are carried out economically, efficiently and effectively and its objects are duly achieved.

<https://mof.govmu.org/Pages/The-Ministry.aspx>

¹⁵⁴ Confirmed in meeting with Procurement Policy Office and Economic Development Board on 10 September 2021.

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) providing advice to procuring entities	<p>s.7 PPA provides that the functions of the Procurement Policy Office shall include: issue instructions to public bodies concerning the coordination of their actions with the Procurement Policy Office, the Board and the Review Panel; act as a focal point to guide the Board and public bodies with a view to ensuring consistency in the application of the PPA and any regulations made under the PPA.</p> <p>s.7 PPA lists the functions of the Procurement Policy Office which include the following: provision of advice, formulation, review and development of policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, issue standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar documents for mandatory use by every public body implementing procurement for the implementation of the PPA as well as monitoring, facilitation of training and supporting professionalization as well as operating the e-PS.</p> <p>The PPO is active in the fulfilment of its functions and continued its activities during the period of the Covid-19 pandemic, including responding to changed requirements for conduct of procurement due to the constraints of the Covid-19 pandemic (see Volume III, Annex for summary). The PPO provides advice to stakeholders by e-mail, letters or through meetings. During the reporting period covered by the PPO Annual Report 2019/2020: ¹⁵⁵ 298 written advices were provided to public bodies and the PPO registered 3,433 calls on the e-Procurement Help-Desk; in terms of monitoring, in October 2019, the PPO conducted desk-based compliance monitoring for Tertiary Education Commission and onsite compliance monitoring was carried out at the Mauritius Fire Rescue Service in June 2020; there were no cases of disqualification or debarment by the PPO; the PPO worked together with the Public Sector Business Transformation Bureau during the reported period to track the implementation of the e-Procurement System throughout Ministries and Departments.</p>		Criterion met		
(b) drafting procurement policies	<p>procurement, including directives, procedures, instructions, technical notes and manuals, for the implementation of the PPA;</p> <p>R.3(2)(a) PPR provides that the Procurement Policy Office shall establish procedures and mechanisms to ensure the effective and timely solicitation of viewpoints of interested parties in the development of procurement policies, regulations, procedures, documents and forms;</p>		Criterion met		
(c) proposing changes/drafting amendments to the legal and regulatory framework	<p>s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the operation of annual procurement planning, the introduction of information, solicit the views of the business community on the effectiveness of the procurement system;</p> <p>R.3(2)(a) PPR provides that the Procurement Policy Office shall establish procedures and mechanisms to ensure the effective and timely solicitation of viewpoints of interested parties in the development of procurement policies, regulations, procedures, documents and forms;</p>		Criterion met		
(d) monitoring public procurement	<p>s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: collect from the Board, the Review Panel and public bodies information on procurement activities and monitor their compliance with the PPA;</p>		Criterion met		
(e) providing procurement information	<p>s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: issue instructions to public bodies concerning the coordination of their actions with the Procurement Policy Office, the Board and the Review Panel;</p>				
(f) managing statistical databases	<p>s. 7(d) PPA provides that the Procurement Policy Office shall collect from the Board, the Review Panel and public bodies information on procurement activities and monitor their compliance with the PPA;</p> <p>R.3(1) provides that the Procurement Policy Office shall inform public bodies and end-users of the types of statistical and reporting information that are required to be furnished and the periodicity of their submission. R.3(2) provide that the Procurement Policy Office shall obtain from the Board, Review Panel and public bodies information on procurement activities. R.3(4) provides that Procurement Policy Office shall (c) maintain a database of suppliers of goods, work and services and disseminate that information (d)</p>		Criterion met		

¹⁵⁵ Annual Report of PPO for 2019/2020.

Name/organisation:

Date:

	establish a central data base for the purpose of recording the performance of suppliers in the execution of procurement contracts in order to evaluate their performance				
(g) preparing reports on procurement to other parts of government	s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: present an annual report to the Minister regarding the overall functioning of the procurement system R 3(4). PPR provides that the Procurement Policy Office shall periodically solicit the views of the business community on the effectiveness of the procurement system and make appropriate recommendations to the Minister.		Criterion met		
(h) developing and supporting implementation of initiatives for improvements of the public procurement system	s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the operation of annual procurement planning, the introduction of information and communications technology and the dissemination of publications and the setting up of websites dedicated to procurement		Criterion met		
(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement	PPA has statutory functions to support training and capacity development of staff in general, including provision of tools, documents and training programmes, generally. ICAC has an integrity/anti-corruption mandate and complementary role in support of public procurement, focussed on integrity/anti-corruption guidelines and training. s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: prepare and conduct training programmes for public officials, contractors and suppliers concerning procurement; s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the operation of annual procurement planning, the introduction of information and communications technology and the dissemination of publications and the setting up of websites dedicated to procurement ICAC, the national anti-corruption agency of Mauritius has a mandate to advise and assist public bodies as well as a wider function of anti-corruption education and securing the revision of methods of work or procedure of public bodies which may be conducive to corruption (s.20 Prevention of Corruption Act 2002). ICAC has published procurement related guidelines and delivers procurement related integrity training (see sub-indicators 14(d)(d)& (e))		Criterion met		
(j) supporting the professionalisation of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)	s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: prepare and conduct training programmes for public officials, contractors and suppliers concerning procurement;		Criterion met		
(k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate	s.7 PPA provides that one of the functions of the Procurement Policy Office shall be to: recommend, and facilitate the implementation of, measures to improve the functioning of the procurement system, including the operation of annual procurement planning, the introduction of information and communications technology and the dissemination of publications and the setting up of websites dedicated to procurement		Criterion met		

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) The normative/regulatory function (or the institutions entrusted with	Establishment: The Procurement Policy Office (PPO) is a department under the aegis of the Ministry of Finance, Economic Planning and Development, ¹⁵⁶ established as an independent body, pursuant to s.4 PPA.		Criterion met		

¹⁵⁶ Procurement Policy Office listed as one of 9 Departments of Ministry of Finance, Economic Planning and Development

<https://mof.govmu.org/Pages/Departments-and-Other-Bodies.aspx>

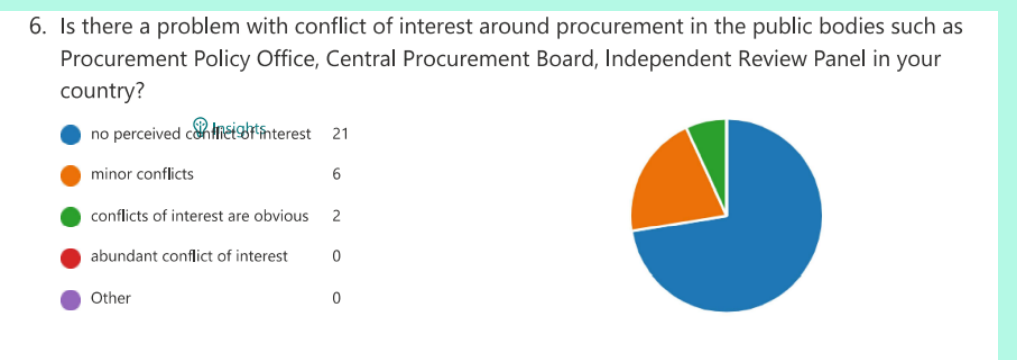
*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

<p>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.</p>	<p>The Procurement Policy Office is administered by a Director and two independent members appointed, for a three year term (renewable for one additional term) by the President of the Republic, acting in accordance with the advice of the Prime Minister after consultation with the Leader of the Opposition.</p> <p>Functions of the Procurement Policy Office are defined under Section 7 of PPA 2006 (version of 13 Sep 2021) from item (a) to (l). Based on the functional structure of PPO there are four sections (organization chart as of November 2021 is at the given link)¹⁵⁷</p> <p>Section 1- Legal matters and compliance Section 2- Capacity Building and Advisory Section 3- Procurement Template and Innovating Practices Section 4- Information Technology</p> <p>The PPO is headed by a Director, and two independent Members appointed as indicated in the PPA 2006. As for the other staff supporting the Director, they are posted at the PPO coming from different cadres such as, Administrative, Procurement and Supply and Analysts/Senior Analysts/Lead Analysts.</p>			
<p>(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.</p>	<p>The budget provision as obtained from PPO reflects only part of the salary of staff and supporting staff; for example, Analyst/Lead Analysts are paid from the budget of the MOFEPD. In order to work out a sufficient annual budget for PPO, further discussion need to be held with the MOFEPD to come up with actual figures. But budget as such is not a constraint for proper staffing as confirmed by PPO</p>		<p>Criterion met</p>	<p>Suggestions for improvement</p> <p><i>MOFEPD/PPO to carry out study on cost of doing business, sufficiency of budget and effectiveness and efficiency compared to mandate of three organizations namely PPO, CPB, IRP and benchmarking these with similar organizations in comparable economies</i></p> <p><i>Benchmark to be developed to determine effectiveness and efficiency of PPO/CPB/IRP</i></p> <p><i>Example for consideration of MOFEPD</i></p> <p><i>(i) for PPO Budget Spent compared to public procurement expenditure and customer satisfaction survey (public bodies, private sector, e- PS users, help desk users);</i></p> <p><i>(ii) for CPB - budget amount per transaction handled (each procurement case) and average turnaround time taken for review of bidding document and from bid receipt till finalization of award (plus customer satisfaction survey namely public bodies and private sector); and</i></p> <p><i>(iii) for IRP, budget amount and cost of transaction per complaint, average time to resolve complaint or within allowed period (plus customer satisfaction survey from public bodies and private sector)</i></p>
<p>(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.</p>	<p>As per Organogram of PPO of 11 Nov 2021, for the sections defined above, the senior/middle management positions are Non- Permanent Staff (or on deputation from MoFEPD) and there are several vacant positions on key tasks like Legal matters and complaints and Capacity Building Advisory. Based on clarification from PPO, it is expected that hiring for these positions will be completed soon.</p>		<p>Criterion met</p>	<p>Suggestions for improvement</p> <p><i>MOFEPD/PPO to reconfigure work environment and to equip staff for more advanced use of technology and flexible home working post COVID -19 situation and renovation and modernization of office space/facilities.</i></p>

5(d) Avoiding conflict of interest

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-</p>	<p>Private sector survey results, on the question of problems with Conflict-of-Interest show that there is not a significant level of concern as to conflicts of interest in relation to the PPO, CPB or IRP. With the BOT Projects Unit move to the MOF, PPO is not involved at any stage in procurement transactions or in resolution of complaints.</p>	<p>Please see column on the left</p>	<p>Criterion met</p>		

¹⁵⁷ <https://ppo.govmu.org/Documents/Organisational%20Structure.pdf>

<p>indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.</p>	<p>6. Is there a problem with conflict of interest around procurement in the public bodies such as Procurement Policy Office, Central Procurement Board, Independent Review Panel in your country?</p>  <table border="1"> <thead> <tr> <th>Conflict Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>no perceived conflict of interest</td> <td>21</td> </tr> <tr> <td>minor conflicts</td> <td>6</td> </tr> <tr> <td>conflicts of interest are obvious</td> <td>2</td> </tr> <tr> <td>abundant conflict of interest</td> <td>0</td> </tr> <tr> <td>Other</td> <td>0</td> </tr> </tbody> </table>	Conflict Category	Percentage	no perceived conflict of interest	21	minor conflicts	6	conflicts of interest are obvious	2	abundant conflict of interest	0	Other	0				
Conflict Category	Percentage																
no perceived conflict of interest	21																
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conflicts of interest are obvious	2																
abundant conflict of interest	0																
Other	0																

6. Procuring entities and their mandates are clearly defined

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

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Procuring entities are clearly defined.</p>	<p><i>Summary: Procuring entities (public bodies) are defined in the PPA but the drafting of the relevant provisions means that not all of the defined public bodies, in particular parastatal organisations, are not immediately and easily identifiable. Some public bodies fall within “exempt organisation” provisions, meaning that specified contracts awarded by those public bodies are not subject to the PPA but are subject to the public bodies’ internal procurement rules.</i></p> <p>s.3 PPA Application of the Act: provides that the PPA applies to any “procurement effected by a public body” other than to specified exemptions from application of the PPA listed in s.3 and for particular types of contracts procured by “exempt organisations” (see below). The Procurement Policy Office Annual Report 2019/2020 notes that there are 206 public bodies that fall under the purview of the PPA.</p> <p>Public body: s.2 PPA defines “public body” which (a) “means any Ministry or the Government department”; and (b) “includes (i) a local authority, (ii) a parastatal body and (iii) such other bodies specified in the [First] Schedule” of the PPA: (i) local authority: a municipal city council or municipal town council, district council, village councils and any new local authority created under s.6 Local Government Act and the Rodrigues National Assembly¹⁵⁸</p>		<p>Criterion not met</p> <p>GAP - Definition of public body: The way in which a “public body” is defined lacks clarity. In particular, the reference within the definition of a public body to a further definition of “parastatal body”, combined with a lack of an easily identifiable authoritative list of public bodies and/or parastatal bodies for the purposes of the PPA, means that procuring entities (public bodies) are not sufficiently defined.</p>	<p>YES</p>	<p>Recommendation – definition of public body Simplify presentation of definition of public body to improve clarity. Clarity of coverage could, for example, be significantly improved by publication on the Procurement Policy Office website of either a full list of named public bodies subject to the PPA or a list of parastatal bodies subject to the PPA. The authoritative list could be reviewed and updated annually, or more frequently as necessary.</p>

¹⁵⁸ “Local authority” is defined in s.2 PPA as having the same meaning as in the Local Government Act and includes the Rodrigues Regional Assembly. S.2 Local Government Act (LGA) 2011 No.36 of 2011 defines local authority as meaning: a municipal city council or municipal town council, district council, village councils and any new local authority created under s.6 LGA.

	<p>(ii) parastatal body: “Parastatal body” is defined in R.2 PPR as “an organisation established under an enactment whether body corporate or not and which depends wholly or partly on government funding”.</p> <p>(iii) such other bodies specified in the [First] Schedule of the PPA: [First Schedule] PPA is divided into five Parts (I to V)¹⁵⁹. Part I lists “local authorities” and the Rodrigues Regional Assembly (which also fall within the “local authority” definition in s.2 PPA). In addition, Part I lists the Mauritius Qualifications Authority and “other parastatal bodies not specified in the [First] Schedule PPA, Parts II, III, IV and V” Part II: refers to Ministries/Government departments (which also fall within the “Ministry or other Government department” description in s.2 PPA). Part II also lists 29 other public authorities, commissions, institutes, corporations and other bodies, including universities. Part III: lists 4 bodies: the Agricultural Marketing board, Mauritius Examinations Syndicate, Mauritius Institute of Training and Development and Outer Islands Development Corporation Part IV: lists 17 authorities, companies and corporations including: Central Water Authority, Airports of Mauritius Ltd; State Informatics Ltd, Road Development Authority and State Investment Corporation Ltd. Part V: lists the Central Electricity Board, Mauritius Broadcasting Corporation and State Trading Corporation</p> <p>There are currently 207 named public bodies subject to the PPA.¹⁶⁰ Cross referring to the definition of “public body” in the PPA they comprise: s. (a) PPA: 61 Ministries and Government Departments; s.2(b)(i) PPA: 12 local authorities and the Rodrigues Regional Assembly s. 2(b)(ii) PPA/R.2 PPR: 79 “parastatal” bodies not listed by name in First Schedule PPA s. 2(b)(iii) PPA: 54 public bodies listed by name in First Schedule PPA.</p> <p>State-owned enterprises (SOE): Procurement by most, but not all, state-owned enterprises, is subject to the PPA. The MAPS methodology acknowledges that countries have different definitions of state-owned enterprises and offers the following OECD definition for comparative purposes “any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership”.¹⁶¹ A significant number of the public bodies listed by name in the First Schedule PPA are entities wholly or partially owned by the Government of Mauritius. The definition of “parastatal body” in R.2 PPR as “an organisation established under an enactment whether body corporate or not and which depends wholly or partly on government funding” also captures many entities that can be regarded as “state-owned enterprises” being wholly or partially owned by the Government of Mauritius, including utilities companies. All of the public bodies listed by name in the First Schedule PPA or falling within the definition of “parastatal body” are required to comply with the PPA when procuring, save where the procurement falls within the exempt organisation provisions. Statistics Mauritius publishes a list of “Public Institutions” including “Non-Financial Public Corporations” and “Financial Public Corporations”. Some of the public corporations listed in the Statistics Mauritius List of Public Institutions 2021¹⁶² are not included on the Procurement Policy Office list of public bodies subject to the PPA. In some cases, this is because they are set up pursuant to GtoG arrangements and/or operate on a fully commercial basis, so the PPA does not apply to their procurement. In other cases, the reason given for non-inclusion is that they are jointly owned by the Government of Mauritius and private shareholders. ¹⁶³</p>				
<p>(b) Responsibilities and competencies of procuring entities are clearly defined.</p>	<p>s.50 PPA: Every public body shall be responsible for ensuring that procurement functions are carried out by persons trained and knowledgeable in procurement, in accordance with guidelines and qualification requirements prescribed or laid down by the Procurement Policy Office. R.7 PPR Bid evaluation procedures for contracts other than major contracts* (1) For the purpose of designating members of bid evaluation committees, a public body shall maintain a list of qualified evaluators.</p>		<p>Criterion met</p>		

¹⁵⁹ Parts I to V are each divided into three columns, headed: Column 1 Public Body; Column 2 Type of Contract; Column 3 Prescribed amount. Where a public body listed in Column 1 proposes to procure a contract of a type listed by its name/type in Column 2 exceeding the amount prescribed in Column 3, the procurement is subject to provisions requiring the involvement of the Central Procurement Board.

¹⁶⁰ Comprehensive list provided by Procurement Policy Office to MAPS assessment team, October 2021 (not publicly available)

¹⁶¹ OECD, 2015, OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition, OECD Publishing, Paris.

¹⁶²https://statsmauritius.govmu.org/Documents/Statistics/By_Subject/Public_Finance/List_of_public_institutions_Aug21.pdf#search=public%20institutions

¹⁶³ Information provided by Procurement Policy Office, November 2021, in response to request from MAPS assessment team.

	<p>(2) When constituting a bid evaluation committee, a public body shall take into account the proper combination of expertise required and ensure that the selected evaluators have the required competence and expertise.</p> <p>(3) The procedures to be followed by a bid evaluation committee and the manner in which the proceedings shall be carried out shall be in accordance with such guidelines issued by the Procurement Policy Office.</p> <p>(4) A public body may, at the request of a bid evaluation committee, appoint an adviser or a technical sub-committee to assist it.</p> <p>(5) The members of a bid evaluation committee may be paid such fees as may be determined by the public body.</p> <p>* see note below on responsibilities and competencies of the Central Procurement Board</p> <p>Guidelines on the Procurement Structure in Public Bodies</p> <p>The Procurement Policy Office has published Guidelines on the Procurement Structure in Public Bodies¹⁶⁴. S.3 confirms that a procuring entity is responsible and accountable for all procurement activities within its mandate and in accordance with the PPA, its regulations and established procedures.</p> <p>s.2 provides an overview of organisational set up of procurement roles in procuring entities with reference to the Accounting Officer, Procurement Committee, Procurement Unit and End User.</p> <p>s.5 sets out the procurement duties of an Accounting Officer</p> <p>ss.6 to 10 concern the establishment, powers & functions, composition, tenure and proceedings of Procurement Committees.</p> <p>ss.12 and 13 require the establishment of a Procurement Unit in every procuring entity responsible for managing all procurement activities of the procuring entity and obtain all required approvals.</p> <p>s.14 confirms that the End User is responsible for formulating requirements and budget from which the requirements will be purchased. It also lists the activities of the End User through the procurement cycle from planning to delivery and feedback.</p> <p>ss.15 7 16 provide for the establishment and operation of ad hoc bid/prequalification evaluation committees.</p> <p>Responsibilities and competencies of the Central Procurement Board</p> <p>The Central Procurement Board (the Board or CPB), established pursuant to s.8 PPA, is responsible for the approval of award of major contracts by public bodies. It also has functions and powers in respect of BOT projects and PPP projects.</p> <p>The Board comprises a Chairperson, two Vice-Chairpersons and three other persons. A summary of the Board's functions in respect of major contracts is as follows (s.11 PPA):</p> <ul style="list-style-type: none"> • establish appropriate internal procedures for the operations of the Board and ensure compliance with them; • vet bidding documents and notices submitted to it by public bodies; • receive and publicly open bids; • select evaluators, set up bid evaluation committees and oversee the examination and evaluation of bids; <i>Note: R.4 PPR requires that the Chief Executive officer of the public body concerned shall designate a member of his staff to act as Secretary to the bid evaluation committee set up by the CPB.</i> • approve the award of major contracts; and • approve or reject variation in contract value or amendment proposed by a public body. <p>S.40(2A) PPA concerning major contracts, provides that the Central Purchasing Board shall, where circumstances in s.40(2) PPA apply the CPB shall "apply, initiate and oversee the negotiation" between a public body and a selected bidder or other bidders, in accordance with such instructions as may be issued by the Procurement Policy Office.</p> <p>For BOT projects, ss.10 and 10A BOT Project Act empowers the Board, with respect to contracts above prescribed threshold of MUR 300 million, to:</p> <ul style="list-style-type: none"> • be responsible for the authorisation, approval and carrying out of pre-selection exercises of BOT projects • examine and approve the request for proposal documentation to be issued by the contracting authority; • evaluate bids in accordance with its rules and procedures; • make recommendations to the contracting authority for entering into negotiations with the preferred bidder; and • recommend the contracting authority to enter into an agreement with a private party. 				
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¹⁶⁴ Procurement Structure in Public Bodies, Procurement Office, Procurement Guidelines, June 2017

<https://ppo.govmu.org/Documents/Procurement%20Guidelines/Procurement%20Structure%20in%20Public%20Bodies.pdf>

	<p>For PPP projects, s.10 PPP Act empowers the Board, with respect to contracts above prescribed threshold of MUR 300 million, to:</p> <ul style="list-style-type: none"> ensure transparency and equity in the bidding procedures; examine and evaluate the bids received; make recommendations to the contracting authority for entering into negotiations with the preferred bidder; and it may approve the award of the project. 				
<p>(c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*</p> <p><i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c):</i></p> <p><i>- procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).</i></p> <p><i>Source: Normative/regulatory function.</i></p>	<p>s.50 PPA Duties of Public Bodies</p> <p>(1) Every public body shall be responsible for ensuring that procurement functions are carried out by persons trained and knowledgeable in procurement, in accordance with guidelines and qualification requirements prescribed or laid down by the Procurement Policy Office.</p> <p>Procurement Unit in every procuring entity</p> <p>The Procurement Policy Office has published Guidelines on the Procurement Structure in Public Bodies¹⁶⁵. ss.12 and 13 require the establishment of a Procurement Unit in every procuring entity responsible for managing all procurement activities of the procuring entity and obtain all required approvals. There are specific provisions permitting recourse to a parent ministry/other department/Procurement Policy Office for small organisations or where an organisation’s procurement volume is low, meaning that setting up a Procurement Unit is not justified. S 12(4) lists the functions of the Procurement Unit. S.13 permits the establishment of Procurement Sub-Units to carry out procurement of a certain value where such delegation would enable procurement to be effectively managed.</p> <p>Procurement Cadre in Ministries and Departments</p> <p>According to the Annual Report of PPO for 2019/2020¹⁶⁶: “The operational functions of public procurement in ministries and departments fall under the responsibility of the officers of the Procurement and Supply Cadre. This Cadre, headed by a Director and assisted by a Deputy Director, consists of some 450 officers¹⁶⁷, posted in different Ministries and Departments. The responsibility of the Cadre is to promote efficient and effective public procurement and supply systems based on international best practices; review and maintain an efficient process of warehousing and disposal; contribute to Mauritius’ economic development; provide all suppliers and bidders with equal opportunity/treatment; and ensure transparency in procedures, processes and decisions”</p>	<p>Please see data on the left</p>	<p>Criterion met</p>		
<p>(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.</p>	<p><i>Summary: There are provisions allowing for delegation of decision making within a public body for low value procurement where such delegation would enable procurement to be effectively managed. For major contracts over specified thresholds the Central Procurement Board assumes a significant role in vetting documents, conducting evaluation, overseeing negotiations (where relevant) and approval of award, although the final award decision is taken by the public body itself. The public body is accountable for the conduct of the procurement (whether carried out by the public body itself or the CPB), being the body against whom a challenge and appeal to the IRP is made, and assumes contractual responsibility where a contract is awarded. In practice, however, the manner in which the CPB operates means that the institutional arrangements and responsibilities are disjointed. In practice, for example, the CPB does not involve the public body in the evaluation process and it does not share the procurement documentation. This means that the public bodies carry the risks and both short- and long-term responsibilities for procurements and outcomes of procurement in which they have had very limited involvement. This also means that there are missed opportunities to build capacity and understanding of public bodies to improve future procurements at all stages in the procurement lifecycle.</i></p> <p>S.3 Guidelines on the Procurement Structure in Public Bodies¹⁶⁸ confirms that a procuring entity is responsible and accountable for all procurement activities within its mandated and in accordance with the PPA, its regulations and established procedures.</p>		<p>Criterion partially met</p> <p>GAP - Disjointed institutional responsibilities for conduct and decision making in the full cycle of the procurement process for major contracts: The manner in which the CPB operates and its interaction with public bodies on whose behalf it is conducting procurements, means that for major contracts, the institutional arrangements and responsibilities are disjointed and decision making is not necessarily appropriately aligned with the authority assuming the procurement and contract risk.. In practice, for example, the public bodies undertake initial preparation of bidding documents and technical specifications and</p>	<p>Yes</p>	<p>Recommendation</p> <p>Disjointed institutional responsibilities for major projects – role of CPB: Review institutional arrangements by limiting/revising the role of the CPB to one of processing major contracts as a “agent” of public bodies with, as a minimum, full access to all documentation given to the procuring public body.</p> <p>Recommendation</p> <p>Disjointed institutional responsibilities for major projects - improving accountability of public bodies and their capacity</p> <p>Increase thresholds for handling procurement major contracts by CPB so that public bodies assume active responsibility and increased accountability (consistent with the risks associated with monetary sums and ability of public bodies improved by handling such contracts</p>

¹⁶⁵ Procurement Structure in Public Bodies, Procurement Office, Procurement Guidelines, June 2017

<https://ppo.govmu.org/Documents/Procurement%20Guidelines/Procurement%20Structure%20in%20Public%20Bodies.pdf>

¹⁶⁶ Annual Report of PPO 2019/2020

¹⁶⁷ Based on further clarification by PPO in November 2021, the number is 340

¹⁶⁸ Procurement Structure in Public Bodies, Procurement Office, Procurement Guidelines, June 2017

<https://ppo.govmu.org/Documents/Procurement%20Guidelines/Procurement%20Structure%20in%20Public%20Bodies.pdf>

	<p>Procurement Unit in every procuring entity The Procurement Policy Office has published Guidelines on the Procurement Structure in Public Bodies¹⁶⁹. ss.12 and 13 require the establishment of a Procurement Unit in every procuring entity responsible for managing all procurement activities of the procuring entity and obtain all required approvals. There are specific provisions permitting recourse to a parent ministry/other department/Procurement Policy Office for small organizations or where an organization's procurement volume is low, meaning that setting up a Procurement Unit is not justified. S 12(4) lists the functions of the Procurement Unit. <i>S.13 permits the establishment of Procurement Sub-Units to carry out procurement of a certain value where such delegation would enable procurement to be effectively managed.</i></p> <p>Major contracts – Role of the Central Procurement Board The Central Procurement Board (the Board or CPB), established pursuant to s.8 PPA, is responsible for the vetting of documents, conduct of evaluation, overseeing negotiations where relevant and approval of award of major contracts by public bodies. In practice the public body has limited or no involvement in or access to the bid evaluation process conducted by the CPB or the full bid documents of all bidders. It also has functions and powers in respect of BOT projects and PPP projects. See Indicator 5(a) for more details.</p>			<p>Recommendation Disjoined institutional responsibilities for major projects – improving preparation for procurement by public bodies Public bodies need to carry out adequate needs analysis and market research before launching bids and provide an assurance that the technical specifications and qualifications requirements are broad based and not restrictive. For major contracts, the results of their analysis may be provided to CPB, to avoid back-and-forth on approval process of the technical specification bidding documents</p>
<p>(e) Accountability for decisions is precisely defined.</p>	<p>S.3 Guidelines on the Procurement Structure in Public Bodies¹⁷⁰ confirms that a procuring entity is responsible and accountable for all procurement activities within its mandated and in accordance with the PPA, its regulations and established procedures.</p> <p>Major contracts – Role of the Central Procurement Board - see analysis under 6(a)(d) The Central Procurement Board (the Board or CPB), established pursuant to s.8 PPA, is responsible for the approval of award of major contracts by public bodies. It also has functions and powers in respect of BOT projects and PPP projects.</p> <p>Accountability: It appears that there may be a wider issue in terms of accountability, in addition to the issue of major contracts discussed in 6(a)(d). According to the National Audit Office, “Accountability of Decision Making in Mauritius: There is no clearly written process put in place, from the time a ‘need is identified’ until the time when the ‘need is satisfied’. This includes Planning for the procurement, Selection of contractors, Award of contract, Contract management, Satisfactory delivery of goods/services and Clients’ satisfaction. Officials should be made responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes”. In a related context based on Annual Report of MOFED for 2019-2020, on the subject of “Improving Accountability” percentage of Ministries submitting Annual Report on Performance is just 40% against a target of 100%.</p>		<p>Criterion partially met</p> <p>There appears to be a wider issue of lack of accountability in procurement and service delivery: accountability for service delivery should be the primary responsibility of public bodies, with support from and other actors such as the PPO and CPB, to assist and enable public bodies to discharge their responsibilities. In the procurement process and contract implementation, there are “silos” of responsibility with no focus on service delivery to the public, rather on compliance.</p>	<p>Existence of “Silos” in information flow and handling of public procurement process and lack of accountability MOFED to develop an Accountability and Decision-making Mechanism (ADM) and remove “silos” of responsibilities by making public bodies/ministries fully accountable for public service delivery with other institutions like PPO and CPB to act as enablers (see above on disjoined responsibilities, comments from NAO on Oct 4, 2021).</p>

6(b) Centralized procurement body

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.</p>	<p>Summary: <i>There is no single centralized procurement function. Responsibility has been assigned to individual public bodies to conduct centralized procurement in respect of a limited of specialized products.. Centralized activity for common use products is still at the early stage of development, limited to two items. Current activity does not constitute a centralised consolidated procurement function for the purposes of assessment of sub-criterion 6(b). Framework agreements are in use.</i></p>		<p>Criterion met</p>		

¹⁶⁹ Procurement Structure in Public Bodies, Procurement Office, Procurement Guidelines, June 2017

<https://ppo.govmu.org/Documents/Procurement%20Guidelines/Procurement%20Structure%20in%20Public%20Bodies.pdf>

¹⁷⁰ Procurement Structure in Public Bodies, Procurement Office, Procurement Guidelines, June 2017

<https://ppo.govmu.org/Documents/Procurement%20Guidelines/Procurement%20Structure%20in%20Public%20Bodies.pdf>

	<p>Common use goods and services R.46 PPR provides that the Procurement Policy Office may assign the responsibility for standardization and bulk contracting of common use goods and services and the maintenance of a database of suppliers to any public body it deems appropriate. Responsibility has been assigned for limited specialized products: petroleum products, to MNIC [Ministry of National Infrastructure and Community Development]; and for firefighting equipment, to MCSAR (Ministry of Civil Service and Administrative Reforms). The MOFEPD has been appointed as lead agency for common use items, starting with two items on a trial basis.¹⁷¹</p> <p>Framework agreements The Procurement Policy Office Annual Report 2019-2020 refers to twenty-plus framework agreements implemented since 2013. The Procurement Policy Office also refers to support (collaboration) it has provided to three institutions in 2019/2020, by way of review of framework agreements.</p> <p>s.2 PPA defines a framework agreement as: an agreement or other arrangement between one or more public bodies or a lead organization and one or more suppliers which establishes the terms and conditions under which the supplier will enter into one or more contracts with the public body in the period during which the agreement or arrangement applies; The definition of “procurement contract” in the PPA includes a contract under a framework agreement. The duration of a framework agreement shall not exceed three years and, so far as reasonably practicable, a framework agreement shall be entered into with at least three suppliers.¹⁷²</p> <p>s.29A PPA Procurement under framework agreement, provides that a public body or a lead organization may enter into a framework agreement in such manner and in accordance with such terms and conditions as may be prescribed.</p> <p>s.29A PPA sets out three circumstances where a framework agreement may be used, which are, in summary: (a) repeated requirements arising over a given period of time; (b) subject matter of the procurement means the need may arise on an urgent basis during a given time period; or (c) the Procurement Policy Office considers that a particular procurement can best be undertaken through a framework agreement.</p> <p>s.7 PPA Functions of Procurement Policy Offices provides that the Procurement Policy Office shall, where appropriate, designate a public body to enter into and manage a framework agreement on its own behalf and that of other public bodies, or on behalf of other public bodies.</p> <p>Public Procurement (Framework Agreement) Regulations 2013 set out a choice of three types of framework agreements available to a public body or a lead organisation: (a) open framework agreement, which provides that a supplier other than the initial supplier(s) may be subsequently party to the agreement; (b) closed framework agreement without second stage competition, where the terms and conditions of the procurement are set out at the time the framework is entered into; (c) closed framework agreement with second-stage competition, where the terms and conditions of the procurement that could not be established with sufficient precision at the time the agreement was made are to be established or refined through a second-stage competition.</p> <p>These Regulations set out rules on the choice of procurement method, being either open advertised bidding or restricted bidding and content of the bidding document.</p> <p>R.10(5)(K) PPR provides that in planning procurement for a major contract, a public body shall take into account the availability of framework or indefinite quantity contract arrangements.</p> <p>R.45 General policy of diligence: provides that prior to awarding a contract by way of direct procurement under s.25 PPA a public body shall ascertain, inter alia, whether the item to be procurement is not available in existing stores or under any applicable framework agreement.</p> <p>Directive No 54 (2021) Clearance of bidding documents for framework agreements notes that there are no standard bidding documents for framework agreements and so public bodies are instructed to contact the PPO and discuss appropriate documents and customisation of standard bidding documents (SBD).</p>				
<p>(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following:</p> <ul style="list-style-type: none"> • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is precisely defined. 	<p>Centralised procurement body does not exist (see 6(a)(a))</p>		<p>Criterion not assessed</p>		

¹⁷¹ Information provided by Procurement Policy Office, November 2021, in response to query raised by MAPS assessment team.

¹⁷² The Public Procurement (Framework Agreement) Regulations 2013, ss.7 & 8.

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• The body and the head of the body have a high-level and authoritative standing in government.					
(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.	Centralised procurement body does not exist (see 6(a)(a))		Criterion not assessed		

7. Public procurement is embedded in an effective information system

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

The country has a system that meets the following requirements:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	<p>Procurement notices for Open Advertised Bidding are published in media of wide circulation, informing suppliers the Reference Number of the Invitation for Bid (IFB), name of public body, brief details about the procurement, deadlines for submission of bids, closing and opening and URL where the bidding documents can be downloaded.</p> <p>The notice provides information the Invitation for Bid (IFB) reference number and the URL of the e-Procurement System where more information about the IFB is available.</p> <p>Example of a notice appearing on e-Procurement System website:</p> <p>https://eproc.publicprocurement.govmu.org/docdetails?param=a1a469e3864970937c5efe83cb71e2c0</p> <div style="border: 1px solid black; padding: 5px;"> <p>Quantitative analysis covers 2020/2021 Financial Year which runs from 1 Jul 2020 to 30 June 2021. Data from e-Procurement System MIS has been extracted, cleaned and analyzed. The following are the results:</p> <ul style="list-style-type: none"> i. 83 public bodies have published IFBs on e-PS ii. 6132 IFBs (includes formal and informal procedures) were published on e-PS which generated 15,313 electronic bid submissions and 13,874 bids opened (ie completed Decryption & re-encryption) iii. Median submission per IFB for formal procedures = 3 iv. Median submission per IFB for informal procedures = 2 v. Max number of electronic submissions in an IFB = 36 vi. Number IFBs where there was no submission = 861 (14%) vii. IFB through formal procedures = 2508 viii. IFB through informal procedures = 3624 <p>The following data was obtained manually through submissions of Return of Procurement Activities (ROPA):</p> <ul style="list-style-type: none"> i. In ROPA, submissions are in two parts: Above 100,000 MUR (details of each IFB is provided) and Below 100,000 MUR (only aggregated value of procurement is provided) ii. Number of IFBs above Rs100,000 = 6,251 representing a value of 16,348,502,623 MUR iii. Aggregate value of contracts below 100,000 MUR = 1,225,100,834 MUR </div>	Please see column on the left	Criterion met		Recommended to enhance the system with the provision of data, information and documents from the different stages of procurement process to be published in machine readable format using Open Contracting Data Standard (OCDS), make the data available and accessible for the interested parties. This provides data analytics handy for the interested parties and provides information for the decision makers informed policy decisions on procurement and expenditure.

<p>(b) There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.</p>	<p>The e-Procurement System of Government of Mauritius with URL https://eproc.publicprocurement.govmu.org.</p> <p>It is centralized portal that provides information on IFB notices, Notifications, Addenda, Evaluation Report, Award, Procurement Plan for all public bodies.</p> <p>Some information is readily accessible without registration such as Procurement Notices and Bidding Documents for Open Advertising Bidding. But certain activities like preparing bidding documents and submissions are accessible after registration.</p> <p>Registration is through self-reporting information and is free. After sign up, the system automatically verifies a supplier's email address by sending an activation link which should typically be received in under an hour. After the activation, the supplier completes his registration by providing details of his company profile and business interests which are mapped to EU CPV code.</p> <p>There is also the website of the Procurement Policy Office (https://ppo.govmu.org) where all information about procurement legislations, regulations, directives are hosted.</p> <p>Public Procurement Portal (http://publicprocurement.govmu.org) – all paper-based procurement are advertised on the Public Procurement Portal. Certain public procurement exercises are still being done on paper either because the public body has not on-boarded the e-Procurement System yet or that the public body has used the Directive 47 which allows for paper-based procurement in certain cases.</p> <p>Link to Directive 47 Mandatory Use of e-Procurement System https://ppo.govmu.org/Documents/Directives/Directives%202020/Directive%20No%2047.pdf</p>		<p>Criterion met</p>	<p>Recommended to enhance the system with the provision of data, information and documents from the different stages of procurement process to be published in machine readable format using Open Contracting Data Standard (OCDS), make the data available and accessible for the interested parties. This provides data analytics handy for the interested parties and provides information for the decision makers informed policy decisions on procurement and expenditure.</p>												
<p>(c) The information system provides for the publication of: *</p> <ul style="list-style-type: none"> • procurement plans • information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions • linkages to rules and regulations and other information relevant for promoting competition and transparency. <p>// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):</p>	<p>Publication of Procurement Plan: yes Specific procurement (procurement notices): yes Contract awards: yes Amendments: yes Appeals decision: no (available on the website of PPO https://ppo.govmu.org) Links to rules and regulations: no ((available on the website of PPO https://ppo.govmu.org)</p> <p>e-Procurement System homepage (https://eproc.publicprocurement.govmu.org) provides for a section on the right-hand side of the page to display Notices and Announcements namely Annual Procurement Plans, Award Notices and Summary Evaluation Reports. User must click on More and then select the type of notice</p> <table border="1" data-bbox="504 1396 1484 1837"> <tr> <td>i.</td> <td>Procurement plans published (in % of total number of required procurement plans) = 4/83 = 5%</td> </tr> <tr> <td>ii.</td> <td>Key procurement information published along the procurement cycle (in % of total number of contracts) = NA</td> </tr> <tr> <td>iii.</td> <td>Invitation to bid (in % of total number of contracts) = NA</td> </tr> <tr> <td>iv.</td> <td>Contract awards (purpose, supplier, value, variations/amendments) = NA</td> </tr> <tr> <td>v.</td> <td>Details related to contract implementation (milestones, completion and payment)</td> </tr> <tr> <td>vi.</td> <td>Annual procurement statistics: available online through annual reports (refer https://ppo.govmu.org/Pages/Publications/Annual-Reports.aspx)</td> </tr> </table>	i.	Procurement plans published (in % of total number of required procurement plans) = 4/83 = 5%	ii.	Key procurement information published along the procurement cycle (in % of total number of contracts) = NA	iii.	Invitation to bid (in % of total number of contracts) = NA	iv.	Contract awards (purpose, supplier, value, variations/amendments) = NA	v.	Details related to contract implementation (milestones, completion and payment)	vi.	Annual procurement statistics: available online through annual reports (refer https://ppo.govmu.org/Pages/Publications/Annual-Reports.aspx)	<p>Please see data on the left</p>	<p>Criterion met</p>	
i.	Procurement plans published (in % of total number of required procurement plans) = 4/83 = 5%															
ii.	Key procurement information published along the procurement cycle (in % of total number of contracts) = NA															
iii.	Invitation to bid (in % of total number of contracts) = NA															
iv.	Contract awards (purpose, supplier, value, variations/amendments) = NA															
v.	Details related to contract implementation (milestones, completion and payment)															
vi.	Annual procurement statistics: available online through annual reports (refer https://ppo.govmu.org/Pages/Publications/Annual-Reports.aspx)															

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Date:

<ul style="list-style-type: none"> procurement plans published (in % of total number of required procurement plans) key procurement information published along the procurement cycle (in % of total number of contracts) : invitation to bid (in % of total number of contracts) contract awards (purpose, supplier, value, variations/amendments) details related to contract implementation (milestones, completion and payment) annual procurement statistics appeals decisions posted within the time frames specified in the law (in %). <p>Source: Centralised online portal.</p>	<p>vii. Appeals decisions posted within the time frames specified in the law (in %) = NA (Appeal are conducted offline at the moment)</p>				
<p>(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).</p>	<p>Full set of bidding documents are published for Open Advertised Bidding and available until the bids have been closed. After closing, full set of bidding documents remain available to bidders who started bid preparation. In the following IFB (Invitation for Bid) https://eproc.publicprocurement.govmu.org/docdetails?param=a1a469e3864970937c5efe83cb71e2c0# documents are available on the right-hand side under the buttons IFB Document, Supporting Documents and Corrigendum. These documents are uploaded by the public body during IFB preparation stage and are available free of charge.</p> <p>With respect to evaluation report, only Summary Evaluation reports are published. Example of a summary evaluation report accessible from the website using the URL below: https://eproc.publicprocurement.govmu.org/ntExportToExcel?param_briefcaseToken=10224</p> <p>No full contract documents are published.</p>		<p>Criterion partially met</p> <p>Published information on IFB, bidding document and summary of evaluation report is not in machine readable format. Currently, the e-Procurement System does not support Open Contracting Data Standard in a structured manner</p>		<p>Recommended to enhance the system with the provision of data, information and documents from the different stages of procurement process to be published in machine readable format using Open Contracting Data Standard (OCDS), make the data available and accessible for the interested parties. This provides data analytics handy for the interested parties and provides information for the decision makers informed policy decisions on procurement and expenditure.</p>
<p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e): - Share of procurement information and data published in open data formats (in %). Source: Centralised online portal.</p>	<p>Published information is not in machine readable format.</p> <p>Currently, the e-Procurement System does not support Open Contracting Data Standard(OCDS)</p>	<p>Share of procurement information and data published in open data formats (in %) = NA Open data formats are not currently available on e-PS</p>	<p>Criterion not met</p> <p>Published information is not in machine readable form and e- Procurement System does not support OCDS</p>		<p>Recommended to enhance the system with the provision of data, information and documents from the different stages of procurement process to be published in machine readable format using Open Contracting Data Standard (OCDS), make the data available and accessible for the interested parties. This provides data analytics handy for the interested parties and provides information for the decision makers informed policy decisions on procurement and expenditure.</p>
<p>(f) Responsibility for the management and operation of the system is clearly defined.</p>	<p>System is managed and operated by the Procurement Policy Office. This was authorized in a letter from Minister of Finance at the start of operations. Copy of the letter is available on file at PPO registry.</p>		<p>Criterion met</p>		

7(b) Use of e-Procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) E-procurement is widely used or progressively implemented in the country at all levels of government.*</p> <p><i>// Minimum indicator // * Quantitative indicators to substantiate assessment</i></p>	<p>There are 204 public bodies falling under the purview of the Public Procurement Act 2006. Adoption strategy targeted high spenders as they carry out most of the public procurement in volume and value.</p> <p>E-Procurement was made mandatory for 55 high spending public bodies from 1 July 2020. As from 1 Jan 2021, e-Procurement is mandatory for all public bodies falling under the purview of Public Procurement Act 2006 (refer to Directive 47 accessible on the website of the Procurement Policy Office https://ppo.govmu.org/Documents/Directives/Directives%202020/Directive%20No%2047.pdf)</p>	<p>Please see data in the left column</p>	<p>Criterion partially met</p> <p>In 2020/2021 Financial year, out of 204 public bodies, 83 public bodies used the e-Procurement System. Thus, there are several challenges still to be overcome. Of the 83 public bodies that used the e-Procurement System in 2020/2021 financial</p>		<p>Once a public body has used the e-Procurement System to publish an IFB, it should use the system up to at least award the contract (that is evaluation will have to be carried out online). This recommendation should be enabled through a directive issued by the Procurement Policy Office. The evaluators should have access to the bids online and have facility to evaluate online.</p>

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

<p>of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement - number of e-Procurement procedures in % of total number of procedures - value of e-Procurement procedures in % of total value of procedures Source: e-Procurement system.</p>	<p>i. Uptake of e-Procurement = 6,132/18,502 = 33%</p> <p>ii. Value of e-Procurement procedures in % of total value of procedures: Not available on e-Procurement System because award module is not used mandatorily. Will be available through return of procurement activities for 2021-2022</p> <p>iii. Estimate is as follows: (a) Coverage of Formal IFBs: $2508/6,251 = 0.401 \times 16,348,502,623 = 6,555,749,552$ MUR (b) Coverage of Informal IFBs: $3624/12251 = 0.300 \times 1,225,100,834$ MUR = 367,530,250 MUR</p> <p>iv. % Value of e-Procurement procedures in % of total value of procedures = $(6,555,749,552 \text{ MUR} + 367,530,250 \text{ MUR}) / (16,348,502,623 \text{ MUR} + 1,225,100,834 \text{ MUR}) = 40\%$</p>	<p>Please see data in the left column</p>	<p>year producing 6,132 Invitation for Bids that were published, there were limited of online evaluation reports and limited number of online award notices. Thus, most public bodies are using the e-Procurement System up to opening of bids whilst evaluation and award are still being done offline in many cases.</p> <p>One of the major gaps in the implementation of the e-Procurement System is that the system is operating in an information silo, the collaborative intelligence of an integrated information system cannot be realized. Integration of the e-Procurement System with other government e-services like the Company Registration, Banks, Financial Management Information System and Tax Authorities, can bring about collaborative intelligence that can facilitate verifications such as company identities, conflict of interests and bank guarantees, among others.</p> <p>Despite, the fact that modules for Procurement Request, Challenge and Appeal, Online Pre-bid meeting, Reverse Auction and Contract Monitoring have been developed and already available in the e-Procurement system, they have yet to be activated in operations. Thus, there loss of value, and the full benefits of the e-Procurement System are not being achieved.</p>		
<p>(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.</p>	<p>Resources are limited. High reliance on contractual/temporary staff within e-Procurement team</p>		<p>Criterion partially met High reliance on contractual staff impacting capacity to plan, develop and manage e-Procurement systems.</p>		<p>To reduce reliance on contractual staff by filling positions in-house facilitating sustainability in terms of technical and technology management capacity.</p>
<p>(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.</p>	<p>Many public bodies are carrying out their activities on e-Procurement System without assistance from PPO. Out of 83 public bodies that published IFBs online in the financial year, 7 required substantial assistance throughout the year. Breakdown of IFBs submitted online and total number of IFBs is not available in current ROPA It will be available in next ROPA.</p>		<p>Criterion partially met Based on discussions held in November 2021, it was seen that Central Procurement Board who have responsibility of handling award of major contracts are not fully trained or willing to fully use e-PS in evaluation</p>		<p>PPO to interact with CPB to enhance their willingness and ability to use e-PS at evaluation stage to derive full benefit and ensure digital trail</p>
<p>(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*</p>	<p>Yes, SME do participate. Currently, e-Procurement System MIS generate reports on: 1) Total number of suppliers that started preparation of bids 2) Number of local suppliers that started preparation of bids</p>		<p>Criterion partially met Percentage of bids submitted by SME is not available on e-Procurement System.</p>		<p>To enhance the functionality to identify SME's share in bids submitted and in contract awarded. E-PS should be enhanced to capture the type of the bidder, SME, MSME, Or large Enterprise. Also would be beneficial if the bidder is woman -led or disadvantaged category.</p>

<p>* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d): - bids submitted online (in %) - bids submitted online by micro, small and medium-sized enterprises (in %) Source: e-Procurement system.</p>	<p>3) Number of SME suppliers that started preparation of bids 4) Total number of bid submissions</p> <p>Thus, % of bids submitted by SME is not available on e-Procurement System.</p> <div style="border: 1px solid black; padding: 5px;"> <p>i. Bids submitted online by micro, small and medium-sized enterprises (in %) = not available on e-Procurement System</p> <p>ii. MIS report shows the number of SMEs that showed interest by entering the workflow: Total number of suppliers showing interests = 30,390 Total number of SME suppliers showing interests = 14,018 Total number of local suppliers showing interests = 27,634 Total number of submissions (online) = 15,313 (absolute)</p> <p>iii. MIS captures absolute bid submissions and does not break it down into SME.</p> </div>		<p>Registration process does not capture the information to identify if the bidder is a SME or not.</p>		
<p>(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.</p>	<p>At the strategic level, e-Procurement System was implemented without an e-Procurement roadmap and e-Procurement readiness assessment.</p> <p>At the tactical level, before each public body can onboard the e-Procurement System, an e-Readiness assessment is conducted with respect to the users that are assigned to use the system, their training needs, their available computer resources, their network resources and their Internet connectivity. This assessment is carried out by a staff of the Procurement Policy Office in collaboration with the public body. The assessment is reviewed by the Project Manager to decide whether the public body can move to the next stage of onboarding. An e-PS Kit is provided to all onboarding public bodies along with a 10-step program that they have to follow.</p>		<p>Criterion partially met</p> <p>e-Procurement System was implemented without an e-Procurement roadmap and e-Procurement readiness assessment. Additionally, the e-PS was implemented without a comprehensive Business Process Re-engineering (BPR).</p>		<p>A comprehensive BPR is recommended to be carried out for the enhancement of the e-PS.</p>

7(c) Strategies to manage procurement data

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.</p>	<p>e-Procurement System has a Management Information System (MIS) module for extracting reports about data on procurement of goods, works, consultancy and other services. Reporting functionality is basic.</p> <p>Public bodies are mandated by law to provide return of procurement activities by end of financial year. Returns are submitted via email on Excel form according to a set template. The compliance team of PPO cleans and analyses the data. Aggregate data is compiled and published in PPO's Annual Report (Annual Reports are accessible online of the website of the Procurement Policy Office https://ppo.govmu.org/Pages/Publications/Annual-Reports.aspx).</p> <p>The Public Sector Business Transformation Bureau (refer to https://civilservice.govmu.org/Pages/PSBTB/Public-Sector-Business-Transformation-Strategy-(PSBTS).aspx) which operates under the aegis of Ministry of Public Service, Administrative and Institutional Reforms measures the adoption of the e-Procurement within Ministries and Departments through the capture of the Procurement Transformation Index (PTI) of each Ministry and Departments. PTI is the ratio of the number of public procurement proceedings processed on the e-Procurement System over the total number of public procurement proceedings undertaken by the Ministry or Department over predefined period of time (usually the financial year). Circular letter (refer to circular letter E/60/28/29/14/02T of the Ministry of Public Service, Administrative and Institutional Reforms accessible from https://civilservice.govmu.org/Pages/Circulars/Circulars-2020.aspx, specifically https://civilservice.govmu.org/Documents/circulars%202020/Circular%2042%20of%202020%20-%20psbts/circular%20KPI%2010.07.20.pdf https://civilservice.govmu.org/Documents/circulars%202020/Circular%2042%20of%202020%20-%20psbts/Annex%20to%20Circular.pdf)</p>		<p>Criterion met</p>		<p>Suggestion for improvement</p> <p>Public Sector Business Transformation Bureau is currently only measuring PTI within Ministries and Departments. Thus, the PTI of other public bodies such as parastatal and government owned companies are not being measured.</p> <p>Recommended to enhance the system with the provision of data, information and documents from the different stages of procurement process to be published in machine readable format using Open Contracting Data Standard (OCDS), make the data available and accessible for the interested parties. This provides data analytics handy for the interested parties and provides information for the decision makers informed policy decisions on procurement and expenditure.</p>

	<p>PTI is captured through a Management Information System that each Ministry/Department has access through the Government Intranet Network System (GINS) (refer to https://civilservice.govmu.org/Pages/PSBTB/Public-Sector-Business-Transformation-Strategy-(PSBTS).aspx).</p> <p>It is to be noted that Public Sector Business Transformation Bureau is currently only measuring PTI within Ministries and Departments. Thus, the PTI of other public bodies such as parastatal and government owned companies are not being measured.</p>				
<p>(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.</p>	<p>MIS module on e-Procurement System provides the following reports:</p> <ol style="list-style-type: none"> 1) Supplier Registration 2) Number of extensions (addenda) 3) Items Source 4) Bidding Data (number of submissions, number of downloads of bidding document, number of bidders that started bid preparation (total, local and SME) 5) IFB processed 6) Successful and unsuccessful bidders 7) Award of IFBs (currently not operational) 8) Bid Evaluation Status Report 9) Number of suspensions, appeal and challenge 10) Procurement Request <p>Procurement Plan Processed</p>		<p>Criterion met</p>		<p>Recommended to enhance the system with the provision of data, information and documents from the different stages of procurement process to be published in machine readable format using Open Contracting Data Standard (OCDS), make the data available and accessible for the interested parties. This provides data analytics handy for the interested parties and provides information for the decision makers informed policy decisions on procurement and expenditure.</p>
<p>(c) The reliability of the information is high (verified by audits).</p>	<p>Usually a third-party independent system audit should be carried out, but such audit has not been carried out yet, except the e-PS testing by the internal team and the service provider themselves.</p>		<p>Criterion partially met Except for e-PS testing by internal team and service provider, No independent audits of the data were conducted</p>		<p>Regular and independent audit to be carried out to improve the reliability of information and system authenticity and security.</p>
<p>(d) Analysis of information is routinely carried out, published and fed back into the system. *</p> <p><i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):</i></p> <ul style="list-style-type: none"> • total number and value of contracts • public procurement as a share of government expenditure and as share of GDP • total value of contracts awarded through competitive methods in the most recent fiscal year. <p>Source: Normative/regulatory function/E-Procurement system.</p>	<p>Total number of contracts and value of contracts are available through data captured from return of procurement activities.</p> <p>It is to be noted that such data is separated into Contracts above Rs100,000 (2500 USD) and Contracts below Rs100,000. For contracts below Rs100,000, public bodies report only aggregate information on contract value and do not report on the total number of contracts.</p> <p>Such data from the e-Procurement System is not available because it is mostly not captured by public bodies as use of the evaluation module and award module is not mandatory.</p> <p>Thus, analysis like public procurement as a share of government expenditure and as share of GDP not possible on e-Procurement System</p> <p>Such information (total number and value of contracts, public procurement as a share of government expenditure and as share of GDP) is available through manually submitted return of procurement activities which is collected by the compliance team and published in the Annual Reports (accessible from https://ppo.govmu.org/Pages/Publications/Annual-Reports.aspx)</p> <div style="border: 1px solid black; padding: 5px;"> <ol style="list-style-type: none"> i. According to data published in the Annual Report 2019/2020 accessible https://ppo.govmu.org/Documents/Annual%20Reports/Annual%20Report%202019-2020.pdf ii. Total number of contracts awarded (above Rs100,000) = 6,706 iii. Total value of contracts awarded (above Rs100,000) = Rs15.63 billion (390.75M USD) iv. Total value of contracts awarded (below Rs100,000) = Rs1.16 billion (29M USD) v. Total value of all contracts awarded = Rs16.80 billion (419.75M USD) vi. Public contracts as share of government expenditure = 3.67% </div>	<p>Please see data in the left column</p>	<p>Criteria partially met</p> <p>Such data from the e-Procurement System is not available because it is mostly not captured by public bodies as use of the evaluation module and award module is not mandatory.</p>		<p>Full implementation of e-PS by all public bodies</p> <p>Recommended to enhance the system with the provision of data, information and documents from the different stages of procurement process to be published in machine readable format using Open Contracting Data Standard (OCDS), make the data available and accessible for the interested parties. This provides data analytics handy for the interested parties and provides information for the decision makers informed policy decisions on procurement and expenditure.</p>

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

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) substantive permanent training programmes of suitable quality and content for the needs of the system.	<p>Extracts from PPO circular No 10 of 2010 on Training on public procurement</p> <p>Training of procurement officials and suppliers is one of the main functions of the PPO, as stipulated in the Public Procurement Act (re. section 7(f)). It is clear that the objective of attributing the above function to one specific organization, has been to ensure that all those involved in procurement activities, - public officials as well as suppliers - have the same understanding of the provisions of the Act, the regulations and the procedures. On the other hand, in order to avoid any confusion in the interpretation of the Act and the accompanying regulations, amendments have been brought to provide for the PPO “to act as a focal point to guide the Board and public bodies with a view to ensuring consistency in the application of this Act and any regulation made under this Act” [section 7(da)]. Accordingly, with a view to attaining the above objective, it is absolutely necessary that any training in public procurement related field be organized by or be held in collaboration with the PPO. You are therefore requested to contact the PPO for any training desired or contemplated by your organization. You may wish to know that, as at date, the PPO has organized training as follows for public officials and suppliers: (i) training at the request of public bodies to meet their specific needs; (ii) adhoc training in specific fields to attend to weaknesses identified during compliance monitoring; (iii) a Certification Programme in Public Procurement, a part time training programme of 3 months duration for officials directly involved in procurement activities aimed at enhancing their knowledge and skills; (iv) a 16-hr training specially designed for officers at management level involved in procurement; and (v) sensitization of suppliers regarding the provisions of the Act and the regulations, and training in the use of SBDs; and (vi) Training in the following areas are currently being worked upon: (i) Bid Evaluation; (ii) Contract Administration; (iii) Sustainable Procurement; (iv) Life Cycle Costing (v) Framework Agreement; (vi) Contract Negotiation</p> <p>For over a decade PPO has very actively pursued this mandate of “Training Advice and Assistance” based on its available resources</p> <p>In accordance with section 7 of PPA 2006 on Functions of Policy Office, PPO is required to prepare and conduct training programs for public officials, contractors and suppliers concerning procurement</p> <p>At undergraduate level a Diploma/BSc (Hons) in Procurement and Supply Management has been developed in partnership with the University of Technology Mauritius (UTM).</p> <p>The Program is periodically reviewed to mirror changes in procurement procedures and practices. UTM also runs postgraduate courses such as MSc in Procurement and Supply Management and MBA Logistics & Supply Chain Management.</p> <p>When Mauritius started to implement reforms in Public Procurement in 2008, the Policy office in collaboration with the UTM introduced a Certification Program in Public Procurement whereby about 600 Public officers were trained.</p> <p>In view of evolution in the procurement processes, further need for running the Certification Program is felt. The modules, syllabus content, and assessment methods are being updated and it is envisaged to run the program again.</p> <p>Undergraduate Programmes - School of Business, Management and Finance (SBMF) (utm.ac.mu)</p>		<p>Criteria partially met</p> <p>Lack of capacity of public bodies (including internal and external auditors) private sector and CSOs and their training</p> <p>Lack of capacity of public bodies, private sector and CSOs</p> <p>As given in the analysis, there is need to provide sufficient amount of training to meet the needs of the system</p>		<p>The capacity issue should be addressed at the level of public bodies in the area of developing procurement plan and strategy preparation of bidding documents and technical specifications, contracts management so that they are entrusted with greater responsibility and accountability gradually.</p> <p>Private sector may be trained on how to prepare a responsive bid and bid successfully.</p> <p>Public bodies, contractors and CSO may be sensitized/trained on observing integrity in public procurement.</p> <p>Based on the available curriculum of UTM, we had observed that the program should also include contracts management and case studies based on examples in Annual Report of NAO (and possibly from CPB without identifying the case) to be used as learning material.</p> <p>Regular training conducted for Public bodies, contractors and CSO and for internal and external auditors.</p>
(b) routine evaluation and periodic adjustment of training programmes based on feedback and need.	<p>There is need to develop an evaluation and monitoring scheme to assess the effectiveness of the capacity building program against performance indicators. Presently, information gathered from NAO report, decision of the IRP, complaints and frequently asked questions are used to adjust training programs through the periodic review at the UTM. Short courses are frequently organized by the Civil Service College of Mauritius, only the topics are contained in the program</p>		<p>Criterion partially met</p> <p>No evaluation and monitoring scheme to assess the effectiveness of the capacity building program against performance in an organized manner</p>		<p>To develop an evaluation and monitoring scheme to assess the effectiveness of the capacity building program against performance</p>
(c) advisory service or help desk function to resolve questions by	<p>There is an advisory desk at the PPO which responds to request for advice from public bodies on interpretation of the law, regulation and procurement procedures.</p>		<p>Criterion met</p>		

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.	<p>In spite of the Procurement Policy Office involvement in capacity building the Office found it appropriate to approach the UTM to run more professional courses in Procurement and Supply.</p> <p>No skills gap inventory has been prepared. However, based on findings contained in the report of the National Audit Office, decisions of the IRP and compliance audit by the PPO, weaknesses are identified and addressed by updating the FAQs.</p> <p>The PPO organized training related to the use of the e-procurement system in 2019/2020</p> <p>Based on input from NAO on October 4, 2021 as follow-up of virtual implementation mission, on "Lack of competence/ skills - "Many of the shortcomings noted by NAO in the carrying out of procurement audits from a lack of competence/skills/commitment on the part of officers at different levels. Training needs were imparted to Accounting Officers and Public Officers in general in order to enhance their knowledge; and all upgrade the skills of those required to carry out procurement audits. The Procurement Policy Office may consider running short courses on procurement, in collaboration with educational/training institutions"</p>		<p>Criterion partially met</p> <p>Lack of " skills gap inventory" to match the needs of the system and need for reinforcing the training program to address capacity issues both in public bodies and private sector (and possibly CSOs)</p>	<p>To develop skills gap inventory" to match the needs of the system and need for reinforcing the training program to address capacity issues both in public bodies and private sector (and possibly CSOs)</p>

8(b) Recognition of procurement as a profession

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	<p>There is presently a Procurement and Supply Cadre operating under the aegis of the Directorate of the Procurement and Supply of the Ministry of Finance, Economic Planning and Development. The officers of the Cadre are posted at different ministries and departments to manage the procurement and supply function</p>		<p>Criterion partially met</p> <p>Procurement not recognized as a profession, akin to Accountancy. Procurement function in Mauritius is not a profession of choice akin to Accountancy (or Informational Technology). There is no evidence of procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.</p>		<p>Initiative to be undertaken by GoM to have a regulatory body of the purchasing and supply management profession with the following mandate:</p> <ul style="list-style-type: none"> to conduct professional competence examinations & issue practicing certificates to procurement professionals; confer memberships, conduct training and research, publish journals, collaborate with professional institution; and establish and monitor standards for persons employed in purchasing and supply chain management. <p>(ii) Universities and training institutions to align their curriculum to include practical case studies to deal with procurement issues in Mauritius.</p> <p>(iii) Public bodies/ PPO to facilitate "internship" on public procurement / project management to build a cadre of qualified, competent and motivated procurement work force</p>
(b) Appointments and promotion are competitive and based on qualifications and professional certification.	<p>Competitive selection exists for the first recruitment and for the grade of Deputy Director. All other promotions of the Cadre are done based on seniority provided the qualifications are met. The performance evaluation is also considered.</p>		<p>Criterion partially met</p> <p>There is no evidence that appointments and promotion are competitive and based on qualifications and professional certification. However competitive selection is there for first recruitment</p>		
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	<p>There is a Performance Appraisal System. The Staff is sponsored to follow short training courses at the Mauritius Civil Service College</p>		<p>Criterion met</p>		

8(c) Monitoring performance to improve the system

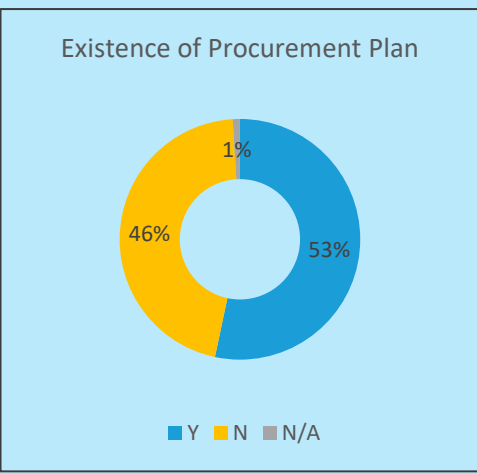
Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The country has established and consistently applies a performance	<p>There is a need for a system tool to develop KPI to assess the performance of the system</p>		<p>Criterion not met KPI not developed</p>		<p>KPI to be developed</p>

measurement system that focuses on both quantitative and qualitative aspects.				
(b) The information is used to support strategic policy making on procurement.	Presently as per information from NAO report, IRP decisions and compliance monitoring is being used to address weaknesses.		Criterion not met KPI not available and therefore there is no basis to support strategic policy making on procurement	KPI to support strategic policy making on procurement
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	Lack of performance measurement system and tool to develop KPI to assess the performance of the system		Criterion not met	Government to consider development performance measurement system that focuses both on qualitative and quantitative aspects. Recommendations of MAPS may provide a good starting point for a performance measurement system
(d) Responsibilities are clearly defined.	The team made its efforts to get strategic plan which was not available		Criterion not met	As above

Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	<p>A significant number of cases had no procurement plan nor evidence of market research. This may influence the choice of procurement methods and respective number of responsive bids.</p> <p>Out of a total number of 105 sampled cases, 53% presented procurement plans.</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p style="text-align: center;">Existence of Procurement Plan</p>  <p style="text-align: center;">■ Y ■ N ■ N/A</p> </div> <p>In 40 cases, out of 56 that had a provisioning plan, the PE stated that it had updated it</p>	Please see the column on the left	<p>Criterion partially met.</p> <p>There is no evidence of appropriate procurement planning or market research or adequate needs analysis, with a direct impact over the competitiveness of the bids.</p>		PEs to carry out adequate needs analysis and market research to design the procurement strategy. PPO may prepare provisions on how to conduct needs analysis and market research to support PEs.
(b) The requirements and desired outcomes of contracts are clearly defined.	<p>The use of PPO's SBDs has been identified in many cases, although in some cases deviation from the SBD was noticed, which did not lead to value-for-money. Requirements and desired outcomes are generally well defined</p> <p>In terms of implementation, Except for 1 case, the entire sample shows contracts successfully executed</p>	Please see data in the column on the left	<p>Criterion partially met</p> <p>The method of evaluation in few sample contracts as specified were not well defined in terms of desired outcomes and did not lead to value for-money</p>		To clearly define requirements and desired outcomes in all cases
(c) Sustainability criteria, if any, are used in a balanced manner and in	<i>sustainability criteria are rarely applied.</i>		Criterion not met		The PPO should work to ensure that sustainability criteria are used by PEs. Provisions regarding the (practical) use of such criteria

accordance with national priorities, to ensure value for money.			Sustainability criteria are rarely applied.		should be included in the PPO's SBDs as a means of encouraging practitioners to use them. Cross-refer Indicator 3 (a) as well
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9(b) Selection and contracting

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	There was not instances in use of multi-stage procedure in the same, possibly due to nature of sample selected		Criterion not met Lack of evidence of use of multi-stage procedure		Multi-stage procedure to be used for complex contract
(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	<p>The use of SBDs was identified and the adaptation of documents to the specific needs of PEs was verified. However, an analysis of the number of bids received suggests that the participation of competitors is low.</p> <p>Two contracting authorities have a process manual, albeit dated 2015, which is highly detailed and fully supports the entire procurement cycle; (v) maintaining the financial balance of the contracts, since, in more than one case, it was verified the provision of price adjustment mechanisms, set out in the bidding documents, and established with clarity and objectivity. The price adjustment mechanism is often linked to the cost variation of the raw materials, which are verified by consulting public and generally accepted benchmarks (vi) The assessment team also noticed that foreign suppliers could quote in foreign currencies and under a favourable incoterm. This may be well regarded by foreign suppliers and contribute to fostering competition; (vii)The evaluation criteria set out in the bidding documents include, in several cases, qualification criteria that favour a higher technical capacity of suppliers and enable a better output quality.</p>	There is an average of 4 received bids in the 54 sampled cases.	Criterion partially met Feedback from competition commission, private sector survey to be followed up to understand lack of competition		PPO should investigate the reasons for low participation rates and take actions to remove any potential barriers. In addition to carry out adequate needs analysis and market research before launching bids, PEs should ensure that the technical specifications and qualifications requirements are broad based and not restrictive. Cross refer Indicator 10 on private sector survey
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	Based on the samples, it was seen that chosen procurement methods are justified		Criterion met		
(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.	The assessment found extensive use of the SBDs where procedures for bid submission, receipt and opening are clearly described. Participation of civil society is not widely observed.		Criterion partially met No civil society engagement		PPO to consider engagement with civil society to monitor bid submission, receipt and opening.
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	Confidentiality is ensured throughout the bid evaluation and award process. Bidder's sensitive information- no clarity		Criterion partially met Not clear if Bidder's sensitive information is protected		To provide clarity on protection of bidder's sensitive information
(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.	The use of point system in evaluation of bids in goods and works by some agencies in single stage bidding procedures allows the price information to be known by evaluators. The method of evaluation in few sample contracts as specified did not lead to value for-money and prone to misuse		Criterion partially met The method of evaluation in few sample contracts as specified did not lead to value for-money and prone to misuse, where point system used. In other cases appropriate techniques used to get value-for-money		Discontinue the use of point system in evaluation of goods and works, which is also not in accordance with the SBDs and prone to misuse Modernization of PPA to include provisions covering Statement of underlying principles, sustainability and shift to more qualitative evaluation- Cross refer to Indicator 3 (a)
(g) Contract awards are announced as prescribed.	PPA contains provisions to determine that all contracts should be promptly publish after award.	In 90% of the sampled cases, the contracts were published	Criterion met		
(h) Contract clauses include sustainability considerations, where appropriate.	Same as 9 (a) (c).		Criterion not met.		Same as 9 (b) (f)

(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	No cases were identified where performance is incentivized through contractual clauses. On the contrary, several cases were identified where penalties for non-compliance were included. There are a considerable number of delays in the implementation of contracts, which may indicate that potential mechanisms in place are not sufficient	Criterion partially met There are no clauses to incentive for exceeding defined performance.	Standards documents and contracts can be reviewed to provide incentives for performance over specified level, where appropriate
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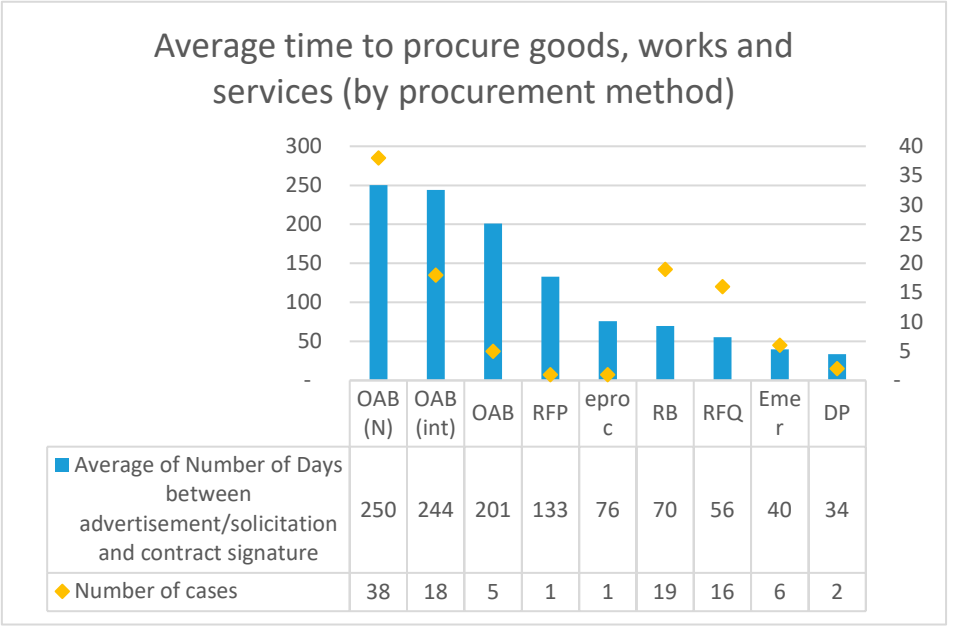
(j) The selection and award process is carried out effectively, efficiently and in a transparent way. *	Although the number of days to procure Goods, Services and Works are at an acceptable level, the percentage of responsive bids leaves room for improvement. Publication requirements are not respected in several cases and, in most procurement methods, contracts are not awarded within the initial tender/proposal/bid validity period.	Criterion partially met There is room for improvement in terms of compliance with publication requirements as well as the percentage of contracts that are awarded within the initial tender validity period (before any extension), especially in emergency procurement, where, by definition, this delay cannot occur.	Monitoring mechanisms for the number of bids received number of responsive bids and timeliness award of contracts should be implemented. An action plan to improve these issues should be drafted and implemented												
	<p>Average time to procure goods, works and services:</p> <table border="1"> <thead> <tr> <th>Category</th> <th>Average of Number of Days between advertisement/solicitation and contract signature</th> <th>Count of Number of Days between advertisement/solicitation and contract signature</th> </tr> </thead> <tbody> <tr> <td>Con</td> <td>251</td> <td>6</td> </tr> <tr> <td>W</td> <td>190</td> <td>54</td> </tr> <tr> <td>G</td> <td>135</td> <td>35</td> </tr> <tr> <td>Other services</td> <td>107</td> <td>11</td> </tr> </tbody> </table>		Category	Average of Number of Days between advertisement/solicitation and contract signature	Count of Number of Days between advertisement/solicitation and contract signature	Con	251	6	W	190	54	G	135	35	Other services
Category	Average of Number of Days between advertisement/solicitation and contract signature	Count of Number of Days between advertisement/solicitation and contract signature													
Con	251	6													
W	190	54													
G	135	35													
Other services	107	11													

***Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):**

- average time to procure goods, works and services
- number of days between advertisement/solicitation and contract signature (for each procurement method used)
- average number (and %) of bids that are responsive (for each procurement method used)
- share of processes that have been conducted in full compliance with publication requirements (in %)
- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

Source for all: Sample of procurement cases.

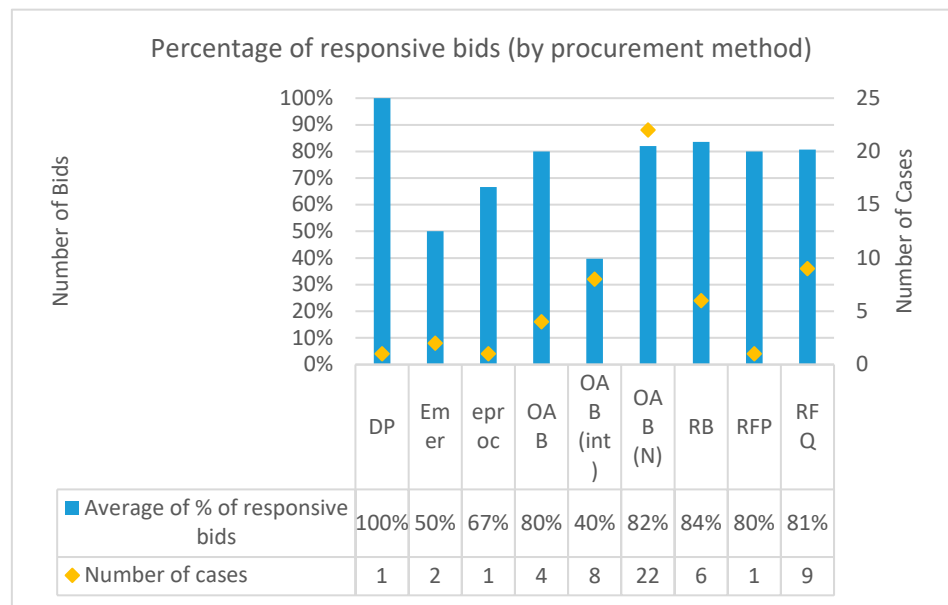
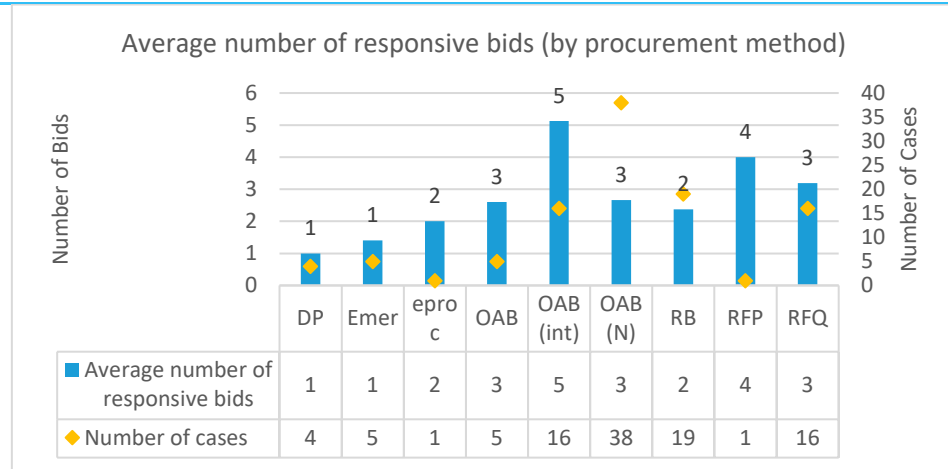
Number of days between advertisement/solicitation and contract signature:



Average number of bids that are responsive:

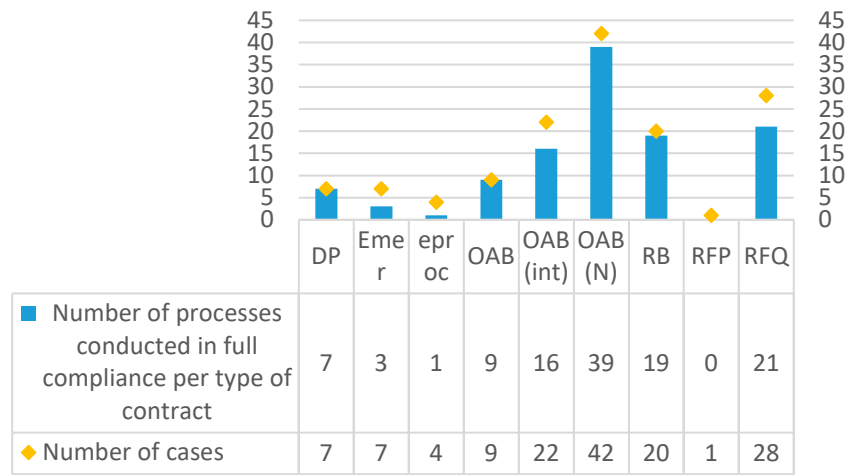
Please see column on the left

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

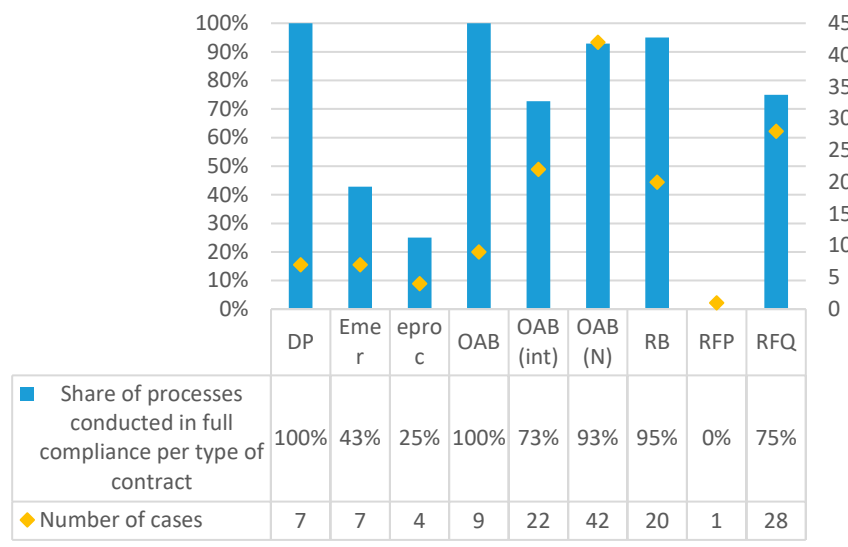


Share of processes that have been conducted in full compliance with publication requirements

Number of processes conducted in full compliance with publication requirements per type of contract

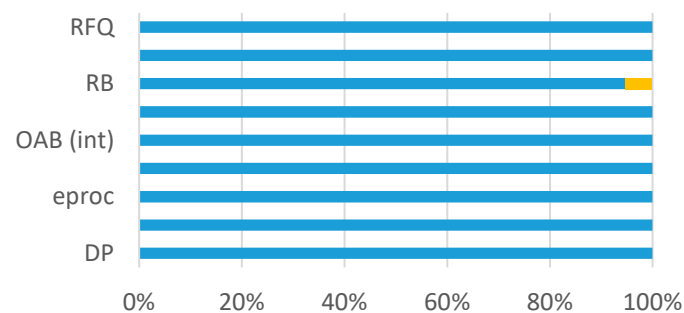


Share of processes conducted in full compliance with publication requirements



Number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

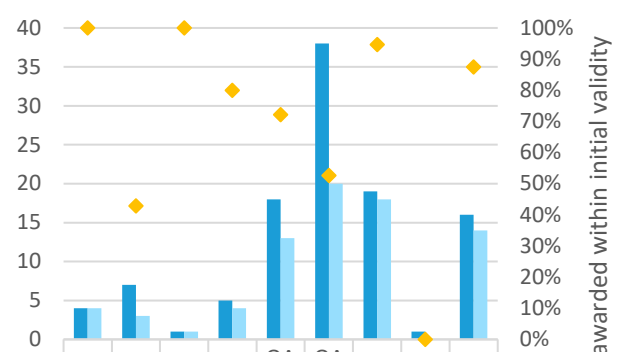
Number and percentage of successful processes



	DP	Emer	eproc	OAB	OAB (int)	OAB (N)	RB	RFP	RFQ
■ Successfully awarded (S)	4	7	1	5	18	38	18	1	16
■ Cancelled (C)	0	0	0	0	0	0	1	0	0
■ Failed (F)	0	0	0	0	0	0	0	0	0

Contracts awarded withing initial validity:

Contracts awarded within initial validity



	DP	Emer	eproc	OAB	OAB (int)	OAB (N)	RB	RFP	RFQ
■ Number of processes	4	7	1	5	18	38	19	1	16
■ Awarded within initial validity	4	3	1	4	13	20	18	0	14
◆ % of contracts awarded within initial validity	100%	43%	100%	80%	72%	53%	95%	0%	88%

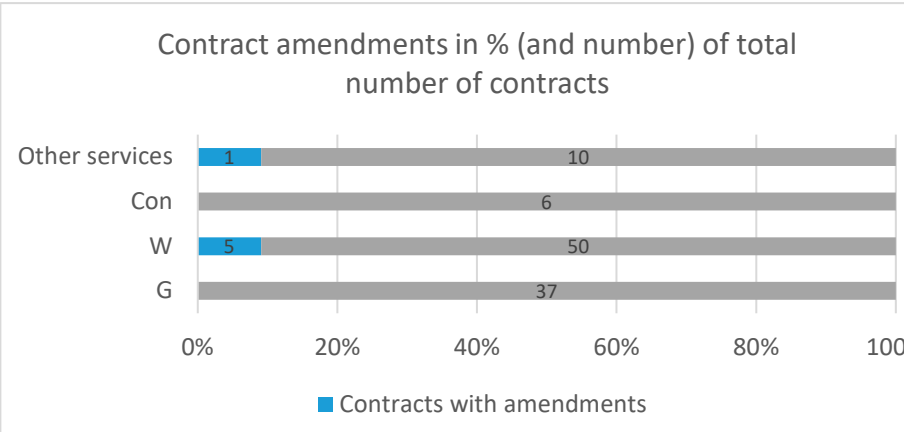
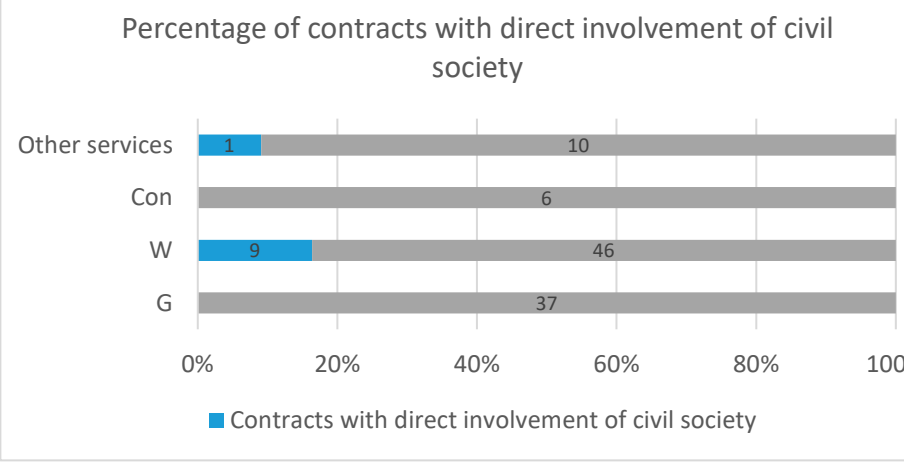
9(c) Contract management

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Contracts are implemented in a timely manner.*</p> <p>Recommended quantitative indicator to substantiate</p>	<p>There is a large number of contracts whose execution exceeded the initially planned deadline For works In 44% of contracts there was time overruns</p>	<p>Please see column on the left</p>	<p>Criterion partially met</p> <p>Despite the period under review, which includes periods of lock down due to the global pandemic caused by COVID-19, there is a large number of contracts (44% for Works) whose execution exceeds the initially planned deadline. This</p>		<p>Implement a Contract Monitoring System, also in conjunction with PIMA by MOFED</p> <p>Improve PEs' capacity in contract management through adequate staffing and training.</p>

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

<p>assessment criterion (a): time overruns (in %; and average delay in days)</p>	<p style="text-align: center;">Time overruns by type of contract</p> <table border="1" style="margin-top: 10px;"> <thead> <tr> <th></th> <th>G</th> <th>W</th> <th>Con</th> <th>Other service</th> </tr> </thead> <tbody> <tr> <td>Timely implemented contracts</td> <td>27</td> <td>16</td> <td>2</td> <td>6</td> </tr> <tr> <td>Contracts implemented with time overruns</td> <td>1</td> <td>24</td> <td>1</td> <td>1</td> </tr> <tr> <td>Contracts with no or unclear data regarding time overruns</td> <td>9</td> <td>15</td> <td>3</td> <td>4</td> </tr> </tbody> </table>		G	W	Con	Other service	Timely implemented contracts	27	16	2	6	Contracts implemented with time overruns	1	24	1	1	Contracts with no or unclear data regarding time overruns	9	15	3	4		<p>fact associated with the absence of incentive measures for the timely implementation of contracts, and the virtual absence of contract amendments, may indicate a deficient contract management and monitoring system</p>	
	G	W	Con	Other service																				
Timely implemented contracts	27	16	2	6																				
Contracts implemented with time overruns	1	24	1	1																				
Contracts with no or unclear data regarding time overruns	9	15	3	4																				
<p>(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)</p>	<p>In the sample under analysis, around 50% of services contracts contemplated quality control provisions. This figure rises to nearly 70% in Works contracts and to almost 90% in Goods contracts.</p> <p style="text-align: center;">Percentage (and number) of contracts with quality control measures</p>	<p>Please see column on the left</p>	<p>Criterion partially met</p> <p>Quality control is key for contract implementation to the extent that it ensures the value-for-money target envisaged during the pre-award stage and included in the contract provisions is met in practice for majority of cases</p>	<p>A quality control procedure should be designed and implemented, and monitoring mechanism should be put in place for 100 % cases</p>																				
<p>(c) Invoices are examined, time limits for payments comply with good international practices, and</p>	<p>Payments are processed on a timely basis based on analysis given at sub-indicator 4 (b) (b)</p>		<p>Criterion met</p>																					




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

<p>payments are processed as stipulated in the contract.</p> <p>Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).</p>																			
<p>(d) Contract amendments are reviewed, issued and published in a timely manner.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)</p>	<p>In the sample analyzed (103 cases), there were only 6 contract addenda, with lack of data on addenda which may be justified by a relatively weak contract management, given such a high rate of time overruns.</p>  <table border="1"> <caption>Contract amendments in % (and number) of total number of contracts</caption> <thead> <tr> <th>Category</th> <th>Contracts with amendments (%)</th> <th>Total number of contracts</th> </tr> </thead> <tbody> <tr> <td>Other services</td> <td>1</td> <td>10</td> </tr> <tr> <td>Con</td> <td>6</td> <td>6</td> </tr> <tr> <td>W</td> <td>5</td> <td>50</td> </tr> <tr> <td>G</td> <td>37</td> <td>37</td> </tr> </tbody> </table>	Category	Contracts with amendments (%)	Total number of contracts	Other services	1	10	Con	6	6	W	5	50	G	37	37	<p>Please see column on the left</p>	<p>Criterion not met Very limited evidence of contract amendments reviewed, issued and published in a timely manner also an indication of weak contracts management</p>	<p>Contract management system to be improved though training and monitoring</p>
Category	Contracts with amendments (%)	Total number of contracts																	
Other services	1	10																	
Con	6	6																	
W	5	50																	
G	37	37																	
<p>(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.</p>	<p>PPO publishes annual reports with some statistics with few compliances audit to improve the system</p>		<p>Criterion partially met</p>	<p>Complete roll-out of the e-procurement system to all public bodies, incorporate features of Open Contracting Data Standards for better transparency</p>															
<p>(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.</p>	<p>There is a very limited number of contracts with involvement of civil society, where only 9 out of 55 Works contracts had civil society participation.</p>  <table border="1"> <caption>Percentage of contracts with direct involvement of civil society</caption> <thead> <tr> <th>Category</th> <th>Contracts with direct involvement of civil society (%)</th> <th>Total number of contracts</th> </tr> </thead> <tbody> <tr> <td>Other services</td> <td>1</td> <td>10</td> </tr> <tr> <td>Con</td> <td>6</td> <td>6</td> </tr> <tr> <td>W</td> <td>9</td> <td>46</td> </tr> <tr> <td>G</td> <td>37</td> <td>37</td> </tr> </tbody> </table>	Category	Contracts with direct involvement of civil society (%)	Total number of contracts	Other services	1	10	Con	6	6	W	9	46	G	37	37	<p>Please see column on the left</p>	<p>Criterion not met Refer Indicator 11 (a) and (c)</p>	<p>Engage with Civil Society in all phases to collect feedback and evaluate impact/results</p>
Category	Contracts with direct involvement of civil society (%)	Total number of contracts																	
Other services	1	10																	
Con	6	6																	
W	9	46																	
G	37	37																	
<p>(g) The records are complete and accurate, and easily accessible in a single file.*</p> <p><i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-</i></p>	<p>The assessment found several sampled cases where full information is not available, in some cases even for the PE (processes above the threshold).</p> <p>Records are not in a single file in any case (based sample contracts)</p>	<p>Please see column on the left</p>	<p>Criterion not met Records are not in a single file.</p>	<p>Same as 9 (c) (e). With the mandatory use of e-procurement since 1 Jan 2021, this situation may significantly improve.</p>															

indicator 9(c) Assessment criterion (g): - share of contracts with complete and accurate records and databases (in %) Source: Sample of procurement cases*					
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10. The public procurement market is fully functional

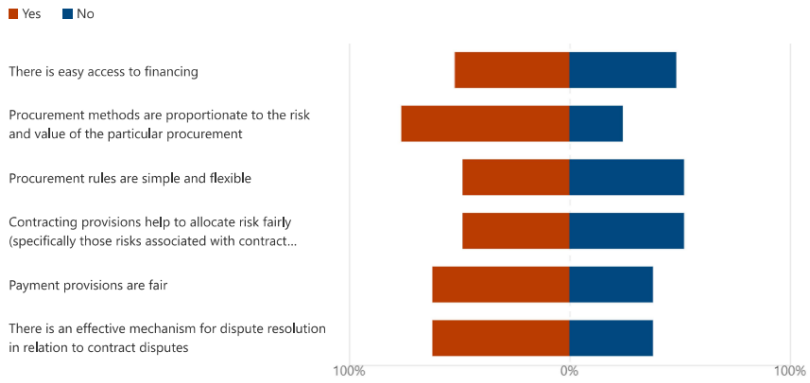

10(a) Dialogue and partnerships between public and private sector

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a): - perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.</p>	<p>The response from private sector is characterized by a weak response (only 29 out of 100 respondents) despite several follow-ups. Discussions were held with representatives of private sector in November 2021. The response to question that for more than 50% respondents the government was not getting in touch to communicate changes to the legal procurement framework</p> <p>12. Does the government get in touch with private associations to communicate changes to the legal procurement framework?</p> <div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;"> <ul style="list-style-type: none"> ● Always 6 ● Mostly 8 ● Not really 12 ● Not at all 3 </div>  </div> <p>13. Do you find the changes to the legal procurement framework difficult to follow?</p> <div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;"> <ul style="list-style-type: none"> ● Always 1 ● Mostly 3 ● Not really 23 ● Not at all 2 </div>  </div> <p>14. Do you have the resources to keep up with the changes made to the legislative framework?</p> <div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;"> <ul style="list-style-type: none"> ● Always 8 ● Mostly 14 ● Not Really 6 ● Not at all 1 </div>  </div>	<p>Please see data in the left column</p>	<p>Criterion partially met</p> <p>Based on survey for more than 50% respondents the government was not getting in touch to communicate changes to the legal procurement framework</p> <p>Based on discussions with private sector</p> <p>Lack of trust – a perception that technical specifications and qualifications requirements are tailored to specific entities leading to lack of interest.</p> <p>Transparency and communication - More transparency and communication required especially regarding the e-Procurement System.</p>		<p>PPO/Public Bodies to engage with private sector on a regular basis (outreach) to remove constraints and increase confidence of private sector in bidding for public bodies</p>
<p>(b) The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.</p>	<p>Based on survey question, the response is as under;</p>		<p>Criterion partially met</p> <p>Limited opportunities for capacity building among private companies and SMEs</p>		<p>PPO to include private sector and in particular SMEs in their training and capacity building programs</p>

	<p>15. Does the government help you keep pace with procurement reforms? Are you aware of training, guidelines, helplines, programs/support being provided by the government for private contractors and for SMEs?</p> <p>Insights</p> <ul style="list-style-type: none"> Yes: 17 No: 12  <p>16. How</p> <p>17 Insights</p> <p>Responses</p> <p>Latest Responses</p> <p>"Mail update, press and social media"</p> <p>5 respondents (29%) answered mails for this question.</p> 			
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10(b) Private sector's organisation and access to the public procurement market

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p> <ul style="list-style-type: none"> number of registered suppliers as a share of total number of suppliers in the country (in %) share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) total number and value of contracts awarded to domestic/foreign firms (and in % of total) <p>Source: E-Procurement system/Supplier Database.</p>	<p>Major issues based on survey and discussions</p> <ul style="list-style-type: none"> Technical issues - The E procurement system / access portal should be reviewed because bidders often have issues with the system with regards to digital certificates or encountering technical issues. Procurement rules are not simple & flexible. Contracting provisions do not help to allocate risks fairly. Time frame - Reasonable timeframe for delivery is required – Impact of COVID-19 in the disruption of the supply chain to be considered. <p>Based on the Annual Report of PPO for 2019/2020, the share in the value of public contracts awarded to SMEs was 10.01% in the reported period as compared to 19.24% in the financial year 2018/2019</p> <p>The feedback from private sector shows that about 30-40% of instances conditions of public procurement market is not met including in about 50% of respondents stating that introduction of e-Procurement has not led to reduction in corruption</p> <p>All data not available</p>	<p>Please see data in the left column</p>	<p>Criterion partially met</p> <p>Decreasing share of SME in public procurement market as per analysis provided in the Annual Report</p>		<p>Issues faced by SME in the context of supply chain disruption post COVID-19 and loss of business to be assessed. This requires further analysis by the government</p>
<p>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):</p> <ul style="list-style-type: none"> perception of firms on the appropriateness of conditions in the public procurement market (in % of 	<p>Based on survey response there are major systemic constraint as depicted below:</p>	<p>Please see data in the left column</p>	<p>Criterion partially met</p> <p>The feedback from private sector shows that about 30-40% of instances conditions of public procurement market (like access to financing, procurement methods, allocation of risk, payment provisions, dispute resolution) is not met including in about 50% of respondents stating that introduction of e-Procurement has not led to reduction in corruption</p>		<p>To remove constraints on conditions of public procurement This require further study and analysis by the government</p>

<p>responses). Source: Survey.</p>	<p>20. Do you think that the following conditions in the public procurement market are met for participation in competition for public contracts?</p>  <p>26. What according to you, should be improved with respect to the conditions in the public procurement market as far as private companies / bidders are concerned?</p> <p>Insights 29 Responses</p> <p>Latest Responses <i>"Incentives for early completion of project - working on a pain / gain ..."</i> <i>"Fair competition, even for Government to Government Contract, parti..."</i> <i>"Time frame of delivery to be reasonable. Invitation to tender should b..."</i></p> <p>5 respondents (17%) answered tender for this question.</p> 				
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10(c) Key sectors and sector strategies

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Key sectors associated with the public procurement market are identified by the government.	Key sector strategies are not identified by the government		Criterion not met No sector strategies or identification of risk to develop procurement policy objectives.	Yes	Based on government's priority spending areas, key sectors associated with the procurement of goods, works and services to be identified. This information needs to be used to conduct targeted assessment of relevant sector markets with participation by the private sector
(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 sector not assessed		Criterion not met Risks associated with sector not assessed		Risks associated with sectors and opportunities to influence sector markets to be assessed by the government

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

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

11(a) Enabling environment for public consultation and monitoring

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	Based on discussions held with two CSOs, MACOSS (Mauritius Council of Social Services) on September 14, 2021 as part of virtual mission and Transparency International (TI), Mauritius, in the implementation -cum-validation mission in November 2021, it was noted that PPO had limited consultations with CSOs in December 2008, to engage in survey to assess the effectiveness of the public procurement system in Mauritius. There was some interaction and contact with CSOs between 2009- March 2021. As per MACOSS, civil society raised deep concerns regarding public procurement during COVID-19/lockdowns PPO requested on March 4, 2021 nomination of a representative to form MACOSS to form part of MAPS Steering Committee PPL or regulations do not mandate consultations with CSOs		Criterion partially met PPL or regulations do not require consultations with CSOs		Legal framework to enable consultation with CSO
(b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.	Section 7 (f) of PPA 2006 under Functions of Policy Office, require PPO to prepare and conduct training programs for public officials, contractors, and suppliers concerning procurement. This does not include CSOs. The Annual Report of PPO for 2019/2020 does not mention any capacity building or training programs for CSOs.		Criterion not met CSOs consulted during the mission expressed need for training and capacity building of CSOs		CSO training and capacity building to be carried out by PPO
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	Based on discussions, CSOs do not consider that their views are taken into account while formulating changes to public procurement system		Criterion not met CSO views/feedback not taken in consideration in formulating procurement policy changes		Government to seek feedback from CSOs while formulating changes to procurement policy

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	Based on feedback from CSO, the website of PPO provide lot of information on the public procurement, in particular their regular Annual Reports. However, there is absence of Open Contracting Data Standard, which needs to be part of e-PS enhancement.		Criterion partially met Lack of complete and structured Open Contracting Data Standard, which does not lead to adequate and timely access to information and requires enhancement Adoption of OCDS could improve better access by all stakeholders		Need for enhancement of e-PS to include Open Contracting Data Standard Accessibility of information could be improved to further enhance effective participation with suggested measures including presentation of legal materials in machine-readable format and better IT interfaces (see indicator 1(a)), publication of applications for appeal (see indicator 13) and publication of information using world-class open data standards (OCDS)(see indicator 7(a))

11(c) Direct engagement of civil society

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award	The legal/regulatory and policy framework does not allow citizens to participate in procurement process		Criterion not met The legal/regulatory and policy framework does not allow citizens to participate	Yes	The legal/regulatory and policy framework should allow citizens to participate

Name/organisation:

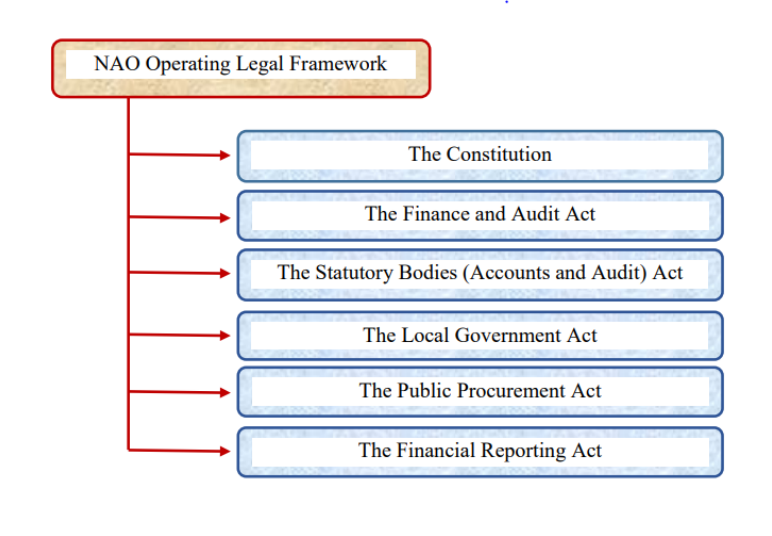
Date:

(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.	There is not much evidence of participation of citizens in procurement processes through consultation, observation and monitoring. As part of MAPS stakeholder consultations in November 2021, feedback from TI Mauritius which was under: "Mauritius does not have a Freedom of Information (or Right to Information act) though TI would submit that the website of the PPO provides a lot of information. However, very often the technical aspects of the information appeal mostly to professionals or those who have a direct interest with a particular contract. All public officials are subject to the Official Secrets Act which prevents them from communicating to the media (or other parties such as CSOs) unless being authorized specifically by the Head of the ministry or with the blessing of the Minister. There is no specific legislation pertaining to Whistleblowers' protection. Section 49 of the Prevention of Corruption Act provides protection to public officers who report corruption to the ICAC. Last year, after the first Covid-19 pandemic lockdown, there have been many allegations with regards to emergency procurement. One of the first reaction of the Government was to start an investigation for leakage of information. Such initiatives create fear among public officers and eventually discourage honest officers from exposing malpractices or corruption".		Criterion not met CSO and citizens not engaged in procurement process and in contract implementation through consultation, observation and monitoring.	CSO and citizens to be engaged in procurement process and in contract implementation through consultation, observation and monitoring. Need for enacting Freedom of Information (or Right to Information act)

12. The country has effective control audit systems

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

The system in the country provides for:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies	<p>National Audit Office (NAO), operates within legal framework which comprises of Constitution and several laws of Mauritius, as depicted in the following diagram</p>  <p>Source: National Audit Office, Mauritius, Annual Report on Performance for FY ending 30 June 2021 NAO is the Supreme Audit Institution [SAI] of Mauritius and is headed by the Director of Audit. Section 110 of the Constitution of Mauritius establishes the Office of the Director of Audit and lays down his powers and independence as follows: -</p> <ul style="list-style-type: none"> The public accounts of Mauritius and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorized by him in that behalf shall have access to all books, records and other documents relating to those accounts. In the exercise of his functions under the Constitution, the Director of Audit shall not be subject to the direction or control of any other person or authority 		Criterion is met		

Name/organisation:

Date:

	<p>The website of NAO: Services (govmu.org)</p> <p>This constitutional mandate and associated powers of the Director of Audit (and ipso facto the NAO) are further amplified in the Consolidated Finance and Audit Act (2008) as amended. FINANCE AND AUDIT (govmu.org). These are: (i) Finance and Audit Act – A consolidated version of 25 July 2019 and (ii) Statutory Bodies (Accounts and Audit) Act of 25 July 2019</p> <p>The Act, together with the Financial Management Tool Kit (2011) and a series of Financial Instructions, prescribes the function and responsibilities of the Minister responsible for Finance (through whom the Director of Audit reports to the Legislature), the method of control and management of public funds, and the responsibilities of the designated Accounting Officers and the various accounts to be kept.</p> <p>Regarding audit of Ministries and Government Departments, as per Finance and Audit Act, the duties of the Director of Audit are spelt out at Section 16 (1) of the Act. This subsection states that the Director of Audit shall satisfy himself:</p> <p>(a) that all reasonable precautions have been and are taken to safeguard the collection of public money;</p> <p>(b) that all laws, directions or instructions relating to public money have been and are duly observed;</p> <p>(c) that all money appropriated or otherwise disbursed is applied to the purpose for which Parliament intended to provide and that the expenditure conforms to the authority which governs it;</p> <p>(d) that adequate directions or instructions exist for the guidance of public officers entrusted with duties and functions connected with finance or storekeeping and that such directions or instructions have been and are duly observed; and</p> <p>(e) that satisfactory management measures have been and are taken to ensure that resources are procured economically and utilized efficiently and effectively. Section 16(1A) further requires the Director of Audit to carry out Performance Audit and to report on the extent to which a Ministry, Department or Division is applying its resources and carrying out its operations economically, efficiently and effectively.</p> <p>The Internal Control Unit, an independent unit functioning under the MOFED, carries out internal audit reviews for all ministries and departments as elaborated at Criterion (b)</p> <p>Details on external audit given at criterion (d) below</p>			
<p>(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations</p>	<p>The Internal Control Unit, an independent unit functioning under the MOFED, carries out internal audit reviews for all ministries and departments. The unit is a member of the Institute of Internal Auditors, USA, and uses International Internal Auditing (IAA)-Standards to perform its internal audits.</p> <p>The National Audit Office (NAO), under the Director of Audit, undertakes a comprehensive independent annual financial audit of the government financial statements. The scope of audit coverage for central government is broad, and covers the headquarter units of all ministries, departments and the majority of their divisions/subdivisions and extra budgetary units (EBUs), although some delays are experienced with the audits of some EBUs and special funds due to late submission of their accounts. The core audits are, however, completed in a timely fashion, and in accordance with International Standards of Supreme Audit institutions (ISSAIs).</p> <p>Section 7A (1) of the Public Procurement Act, under the Powers of PPO, it is stipulated that PPO in the discharge of its functions may – (a) request for such information, records and other documents as it may require from the Board or any public body; (b) examine such records or other documents; and (c) carry out procurement audit.</p> <p>Regulation 69 of The Public Procurement Regulations (2008), last updated 26 November 2021, provides that the report and the register of procurement proceedings, as well as the documents generated in the planning and procurement proceedings and implementing procurement contracts, shall be made available for inspection to the Policy Office and the Director of Audit.</p> <p>Based on the Annual Report 2019/2020 of PPO, as part of compliance monitoring PPO relied on the data gathered on public procurements falling under the purview of the Public Procurement Act and the Return on Procurement Activities submitted by the public bodies; either on six-month basis or on a yearly basis depending on the procurement spend, and data submitted by the Central Procurement Board. As an example, PPO conducted a desk compliance monitoring for Tertiary Education Commission on Expression of Interest in October 2019. Furthermore, an onsite compliance monitoring was carried out by the PPO at the Mauritius Fire Rescue Service in June 2020.</p> <p>Section 42 of the Public Procurement Act provides that the auditor of every public body shall state in his annual report whether the provisions of Part V of the Act regarding the Bidding Process have been complied with.</p> <p>Based on the content of the Audit Report for the Financial Year 2019-20, that the Report contains a summary of the most significant audit observations that may have significant impact on finances, resources and service delivery, or that may adversely affect financial governance and controls, if not corrected</p>		<p>Criterion is met</p>	

	<p>The key issues highlighted in the Audit Report of 2019-20 <i>inter alia</i> include lapses in procurement management, deficiencies in contract management, non-compliance with legislations and non-enforcement of rules, value for money not obtained from significant expenditure incurred</p>			
<p>(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation</p>	<p>In accordance with PEFA 2015, robust management of cash flows facilitates budget execution by ministries and departments, and an active internal audit process exists, focusing to a large extent on systemic issues. The institutional structure of Procurement Policy Office and its mandate under Section 7 A of PPA 2006 ensures an independent oversight and compliance monitoring by PPO.</p> <p>Related PEFA 2015 assessment Report remains a useful reference point for noting developments since 2015 and provides context for several reform initiatives in public financial management by GOM (There is need to carry out an updated PEFA, but that is the decision of the government)</p>		<p>Criterion is met</p>	
<p>(d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management</p>	<p>Legal provisions have to be laid down for SAIs to have the functional and organizational independence they require to accomplish their tasks. It is indispensable that SAIs has the required independence and are protected against outside influence so that they undertake their auditing functions objectively and effectively.</p> <p>Based on NAO's Annual Report on Performance for FY ending June 30, 2021, the situation on independence is depicted as under:</p> <p>Strategic Goals</p> <p>Goal 1: Maximising the value of NAO as a Supreme Audit Institution by strengthening its independence</p> <p>Independence of the SAI is crucial to retain and build citizens' trust and confidence in the institution's ability to ensure public sector transparency and accountability.</p> <p>As per the Lima Declaration of Guidelines on Auditing Precepts (the Lima Declaration) and ISSAI 10 - Mexico Declaration on SAI Independence, for SAIs to carry out their public audit function objectively and effectively, they must be independent of the audited entity and be protected against outside influence. Currently, NAO does not meet all the provisions of the Lima and Mexico Declarations on SAIs independence (Annexes IIIA and IIIB).</p> <p>A new performance indicator, "Supreme Audit Institution (SAI) Independence", was introduced in PEFA 2016 Framework for assessing public financial management under Pillar 7: External Scrutiny and Audit to assess the independence of the SAI from the executive. PEFA 2016 replaces PEFA 2011 as the framework to be applied for all new PEFA assessments. Currently, NAO does not meet all the requirements for an A rating under that indicator on SAI independence (Annex IV).</p> <p>We shall engage with the authorities for the review of existing legislations and policies to a view to strengthening NAO's independence according to the precepts of the Lima and Mexico Declarations on SAIs independence</p> <p>Source NAO Annual Report on Performance for FY ending 30 June 2020</p> <p>While the Director of Audit himself does not believe there is a significant impact related to independence, theoretically, the independence of the Director of Audit is negatively affected by the fact that the department budget is not decided separately as dictated by good practice: the budget is determined as part of the normal budgeting process led by the Ministry of Finance. In addition, the department's channel for reporting is through the Minister of Finance, rather than directly to the National Assembly as required by good practice. This is however mitigated by the fact that none of the NAO's findings can be tampered with or altered in any way.</p> <p>Further, specific provisions are made in the Constitution of Mauritius and in the Finance and Audit Act to ensure the independence of the Director of Audit, namely, for his appointment, removal from office, security of tenure and protection from liability against legal proceedings, in the execution of his functions. Further as per Section 17A of the Finance and Audit Act, no action shall lie against the Office of the Director of Audit, the Director of Audit or any officer of his staff, in respect of any act done or omitted to be done by the Office of the Director of Audit and by the Director of Audit or any officer of his staff during</p>		<p>Criterion partially met</p> <p>Based on NAO's Annual Report on Performance for the year ending June 30, 2021 in the section on way forward as strategic direction "The National Audit Office will strive, for the next 3 years (2021-2024), to: I. Strengthen the independence of the Office to become a model Supreme Audit Institution in the region and to contribute in enhancing the value of the country's financial system.</p> <p>Based the statement of NAO in their Annual Report, there is a need to engage with the authorities for the review of existing legislations and policies with a view to strengthening NAO's independence according to the precepts of the Lima and Mexico Declarations on SAIs independence. Thus, this gap is recognized by NAO.</p>	<p>To engage with the authorities for the review of existing legislations and policies with a view to strengthening NAO's independence according to the precepts of the Lima and Mexico Declarations on SAIs independence</p>

	<p>or after his appointment, in the execution in good faith, of its or his functions under the Act. This shall be in addition to and not in derogation of the Public Officers' Protection Act</p> <p>However, based on NAO's Annual Report on Performance for the year ending June 30, 2021 in the section on way forward as strategic direction "The National Audit Office will strive, for the next 3 years (2021-2024), to: I. Strengthen the independence of the Office to become a model Supreme Audit Institution in the region and to contribute in enhancing the value of the country's financial system. We shall engage with the authorities for the review of existing legislations and policies with a view to strengthening NAO's independence according to the precepts of the Lima and Mexico Declarations on SAIs independence</p>				
<p>(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)</p>	<p>Although the NAO, during subsequent audits, follows up implementation of prior audit findings, and the Finance and Audit now requires Ministries and Agencies to formally prepare and implementation plan for remedial actions and for preventing the recurrence of previously identified audit shortcomings, compliance with this requirement is still low, and many audit recommendations are repeated in subsequent audit reports. Parliament's Public Accounts Committee (PAC) religiously reviews the Director of Audit's annual report, which process is satisfactory, but there is limited legislative scrutiny of the audits of those EBUs that suffer delays in their submissions, as well as limited PAC focus on any performance audits conducted. Lastly, even at the PAC level, there appears to be limited impact as the PAC's reports and recommendations are not always followed-up, nor are corrective actions taken religiously or penalties applied.</p>		<p>Criteria partially met</p> <p>There is limited legislative scrutiny of the audits of those EBUs that suffer delays in their submissions, as well as limited PAC focus on any performance audits conducted. Lastly, even at the PAC level, there appears to be limited impact as the PAC's reports and recommendations are not always followed-up, nor are corrective actions taken religiously or penalties applied.</p>		<p>To enhance compliance to PAC report</p>
<p>(f) clear mechanisms to ensure that there is follow-up on the respective findings.</p>	<p>The Audit Report, covering the year to June 30, 2020, was completed and submitted by the Director of Audit to the Minister of Finance on 24 February 2021, for presentation to Parliament. This was within the statutory reporting timelines. As in previous years, the report noted instances of non-submission of financial statements for audit, observing that as of 19 February 2021, 46 Statutory Bodies had not yet submitted a total of 145 financial statements to the NAO for audit purposes, of which 102 related to financial years prior to 2019-20. Also, 174 financial statements in respect of 74 Statutory Bodies had been certified by NAO but were yet to be laid before the National Assembly. The report noted constraints caused by the ongoing pandemic, as well as staffing shortages, with the NAO operating at approximately 75 per cent capacity mainly due to unfilled vacancies and limited budget to fill the vacancies.</p>		<p>Criterion partially met</p> <p>174 financial statements in respect of 74 Statutory Bodies had been certified by NAO but were yet to be laid before the National Assembly. The report noted constraints caused by the ongoing pandemic, as well as staffing shortages, with the NAO operating at approximately 75 per cent capacity mainly due to unfilled vacancies and limited budget to fill the vacancies</p>		<p>To address staffing shortages</p>

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.</p>	<p>In accordance with Financial Management kit (Volume VI)¹⁷³ – Internal Audit Policy and Operations Manual (April 2013) The Internal Control Cadre (ICC) falls under the aegis of the Ministry of Finance and Economic Development and is responsible for the internal audit function in all the Departments of Government. Internal Audit is an independent and objective appraisal service to Accounting Officers by providing reasonable assurance on governance, risk management and control processes. VI.1.2 The objectives of internal audit are to- (a) evaluate control systems; (b) ensure compliance to rules, procedures and regulations; (c) evaluate organizational efficiency and effectiveness; (d) assess accuracy and reliability of department's reporting processes, (e) evaluate effectiveness of Department's accountability framework, and the extent of adherence to ethical standards; and (f) recommend courses of action that add value to the organization.</p> <p>FM kit volume VI contains Internal Audit Policy & Operations Manual and Internal Audit Standards Operations Procedure Manual.</p>		<p>Criterion met</p>		
<p>(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.</p>	<p>There is no separate manual for procurement audit. Procurement Audit is carried out as part overall Performance Audit by NAO based on established procedures and manuals. Based on discussions held with NAO on Sep 15, 2021, whereas procurement audit is carried out as part of overall financial and performance audit, NAO has an independent role and a mutually reinforcing audit in the opinion of NAO would be a conflicting situation. However, both NAO and PPO welcomed any new initiative on preparation of manual on specialized procurement audit with the assistance of PPO, without affecting the independent role of NAO.</p>		<p>Criterion partially met</p> <p>Procurement audit is carried out as part of overall financial and performance audit. NAO has an independent role and a mutually reinforcing audit in the opinion of NAO would be a conflicting situation .Though there is need to prepare manual on specialized procurement audit with the assistance of PPO, without affecting the independent role of NAO</p>		<p>To prepare manual on specialized procurement audit with the assistance of PPO, without affecting the independent role of NAO.</p>
<p>(c) There is evidence that internal or external audits are carried out at least</p>	<p>Based on the report of NAO it is seen that internal and external audits are carried out annually and includes performance-based audit that includes procurement. But separate data on specialized procurement audit is not available</p>	<p>This data is not available</p>	<p>Criterion met</p>		

¹⁷³ <https://mof.govmu.org/Pages/Volume-VI.aspx>

Name/organisation:

Date:

<p>annually and that other established written standards are complied with.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):</p> <ul style="list-style-type: none"> - number of specialised procurement audits carried out compared to total number of audits (in %). - share of procurement performance audits carried out (in % of total number of procurement audits). <p>Source: Ministry of Finance/Supreme Audit Institution.</p>					
<p>(d) Clear and reliable reporting lines to relevant oversight bodies exist.</p>	<p>The breaches in laws and regulations are reported to oversight bodies. Cases relating to Fraud and Corruption are reported to ICAC as covered under Indicator 14.</p> <p>Based on PPA 2006, in accordance with Section 7A Powers of Policy Office, where, in the discharge of its functions, the Policy Office finds that there has been a deliberate non-compliance with any provision of this Act or instructions issued, the Director shall refer the matter to the Head of the Civil Service recommending such action as he may deem appropriate. The Head of the Civil Service may, where he considers appropriate, refer any matter referred to him to the Police for enquiry.</p> <p>Similarly, related to the powers of Central Procurement Board, in accordance with Section 12 of PPA 2006, where it comes to the knowledge of the Board that a contract has been awarded or is about to be awarded in breach of this Part, the Board shall forthwith report the matter to the Head of the Civil Service, with a copy to the Director, recommending such action as it may deem appropriate. The Head of the Civil Service may, where he considers appropriate, refer any matter reported to him under to the Police for enquiry.</p>		<p>Criterion met</p>		

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Recommendations are responded to and implemented within the time frames established in the law.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a):</p> <ul style="list-style-type: none"> - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). <p>Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>Based on PEFA 2015 report, the situation on effectiveness of Internal Audit is as under:</p>	<p>Please see data in the left column</p>	<p>Criterion partially met</p> <p>This shows need for improvement for a higher rating in PEFA (Based on discussions with NAO on Sep 15, 2021 situation has improved over the last 5-6 years)</p> <p>PEFA 2015 assessment Report remains a useful reference point for noting developments since 2015 and provides context for several reform initiatives in public financial management by GOM</p>		<p>Need for new PEFA Assessment in collaboration with MoFED, as these scores are dated</p>

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

Predictability and Control in Budget Execution		Methodology		Rating	
PI-21 Effectiveness of internal audit		M1 BCG Latest Available financial and operational information		C+	
Dimension	PEFA 2015	Summary	PEFA 2011	PEFA 2007	
(i) Coverage and quality of the internal audit function	B	The internal audit function is established in 16 major ministries/departments of BCG with the remaining departments covered by a roving team based in MoFED. These remaining departments may not all be covered on an annual basis. In carrying out the internal audit function, some IIA standards are applied but there is limited quality assurance and lack of a legislative mandate. Work is focused on systemic issues for an estimated 80% of staff time.	B	B	
(ii) Frequency and distribution of reports	C	Internal audit reports are issued regularly and are distributed to the audited entity's Accounting Officer and MoFED. The reports are not issued to the SAI (the DoA), which is a requirement for a higher rating.	A	A	
(iii) Extent of management response to internal audit findings	C	In 2013 and 2014 72% and 62%, respectively, of recommendations by the internal control cadre were addressed but there is a reported delay in resolving some issues. There is no evidence that action taken is "prompt and comprehensive", which would be required for a higher rating.	B	B	

Source: Interview with the Directors of Internal Control Cadre and his officials, Annual Report for the Unit 2014, Director of Audit reports, Internal Audit Policy Operations Manual 2013, Internal Audit Standards Operating Manual 2013, Audit Charter, Interview with OPSG officials, Audit Committee report 2014 by OPSG.

The situation on External Audit as per PEFA 2015 is depicted as under:

External Scrutiny and Audit		Methodology		Rating	
PI-26 Scope, nature and follow-up of external audit		M1 CG Dims i and iii: Last FY audited Dim ii: Last annual audit report submitted to legislature		C+	
Dimension	PEFA 2015	Summary	PEFA 2011	PEFA 2007	
(i) Scope/nature of audit performed	B	The annual financial statement for budgetary central government is audited annually using ISSAs. For central government as a whole, not all EBUs and special funds have been audited annually due to late submission of their accounts. Since BCG represents 75% of total central government expenditures, central government entities representing at least 75%, but less than 100%, of total central government expenditures are audited annually. A wide range of audits is carried out and these appear to be focused on significant and systemic (risk-based) issues.	A	B	
(ii) Timeliness of audit reports to legislature	C	Audited financial statements for the public accounts of ministries and departments (representing at least 75% of central government) for the most recently audited fiscal year (2013) were submitted to the National Assembly within 4 months of their receipt by the NAO. The annual audit report on central government budget execution for 2013 was submitted within 9 months of the end of the fiscal year. ¹²⁰	A	A	
(iii) Evidence of follow up on audit recommendations	B	Accounting officers' formal and detailed responses are attached to the management letter in a timely manner, i.e. at the time of finalising the Director of Audit's report. However, during the year, there is no evidence of systematic follow up by the Executive. Some (but not necessarily all) of the recommendations are repeated in subsequent DoA's reports.	B	B	

Source: Director of Audit's annual reports for 2012, 2013 and 2014; NAO working documents; NAO website; NAO

(b) There are systems in place to follow up on the

Based on Annual Report on Performance of NAO for year 2020-21 (October 2021), the position of NAO is as under: "Despite resource and time constraints, NAO fulfilled our statutory obligations and provided independent assurance to the National Assembly on the proper accounting and use of public resources.

Criterion met

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Date:

<p>implementation/enforcement of the audit recommendations.</p>	<p>We submitted our Audit Reports on Government and RRA accounts for the financial year 2019-20 in February 2021, that is, within the required statutory time frame. NAO also issued three Performance Audit Reports. These reports were laid in the National Assembly and made available to stakeholders and the public at large through our website. In addition, during year 2020-21, NAO issued 196 Audit Reports to Statutory Bodies, Local Authorities and other public sector bodies” These actions are considered sufficient to conclude that a system in place for follow-up</p>			
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12(d) Qualification and training to conduct procurement audits

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</p> <ul style="list-style-type: none"> - number of training courses conducted to train internal and external auditors in public procurement audits. <p>Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</p> <ul style="list-style-type: none"> - share of auditors trained in public procurement (as % of total number of auditors). <p>Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>NAO’s capacity development plan is depicted as under:</p>  <p>Source: NAO Annual Report on Performance 2020-2021 (Oct 2021)</p> <p>Based on NAO report of Oct 2021, Capacity Development Committee was set up at NAO with a view to identifying potentials for capacity development for all grades of officers at the NAO. Selections of topics/themes as well as selection of attendees/participants are carried out by the Committee on the basis of clearly documented internal procedures. Up to now, NAO staff has always been given opportunities to undergo both overseas and local trainings in a significant number of fields such as Performance Audit, Project Management, Accounting and Auditing standards (refresher and updates), Procurement, Information Technology, and Anti Money Laundering Framework.</p> <p>Examples of Local Training based on NAO report of October 2021 is as under:</p>	<p>Please see data on the left</p>	<p>Criterion met</p>		

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

Local Training

Examples of Local Training Sessions during 2020-21

Course Title	Organising Body	Period	No. of Participants
1. Training Programme on Statutory Interpretation	Civil Service College Mauritius (CSCM)	11 & 13 Aug 20	12
2. Quickbooks for Beginners Training	Quick Focus	15 & 16 Sept 20	3
3. Awareness Session on Anti Money Laundering/Combating Financing of Terrorism	NAO in collaboration with CSCM	07 Oct 20	138
4. Online Basic Communication Skills: Intrapersonal and Interpersonal Communication Skills	CSCM/Ministry of Public Service and Administrative Reforms	Self-paced & Flexible	26
5. Public Responsibility in Good Governance	CSCM	09 May 21	2
6. Procurement: Evaluation & Bid Committee	CSCM	03 June 21	3

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The above table shows relevant training related to procurement: Evaluation & Bid Committee

Most of the internal audit officers have been trained in public procurement, internal audits with a focus on compliance. Many State-owned bodies have internal audit units themselves

<p>(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>	<p>As per discussion held with NAO ¹⁷⁴, PPO has conducted training for all Stakeholders and workshops were held 2015-16 to train auditors on the Procurement Policy, Rules and Regulations. This was carried out with collaboration of Civil Service College</p> <p>There is a need to hold new round of training to carry specialized procurement audit by External Auditors (NAO) This training should be extended to Internal Auditors as also private sector auditors to address skill gap</p> <p>PPO and NAO to collaborate on conducting such a training on specialized procurement audit, based on a ToR to be developed by PPO</p>		<p>Criteria partially met</p> <p>Based on the feedback of NAO, there is need to sensitize and train decision-makers who are designated “ Accounting Officers”, with authority to incur expenditure in accordance with section 21(1) of the Finance and Audit Act. This need also stems from the fact that such “Accounting Officers” are sometimes new for the position, and there is an assumption that they are aware of procurement laws, regulation and auditing standards, which may not be true.</p> <p>There is need to collaborate on conducting such a training on specialized procurement audit, based on a ToR to be developed by PPO, with a requirement that selection of auditor to include knowledge of specialized procurement audit</p>	<p>PPO and NAO to collaborate on conducting training on specialized procurement audit, based on a ToR to be developed by PPO, with a requirement that selection of auditor to include knowledge of specialized procurement audit</p>
<p>(c) Auditors are selected in a fair and transparent way and are fully independent.</p>	<p>Based on discussions held with NAO on Sep 15, 2021, Auditors are qualified and hired in a transparent manner¹⁷⁵</p>		<p>Criterion met</p>	

¹⁷⁴ Virtual meeting with NAO with the Assessment Team on September 15, 2021

¹⁷⁵ Virtual meeting with NAO with the Assessment Team on September 15, 2021

13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Decisions are rendered on the basis of available evidence submitted by the parties.</p>	<p><i>Summary: Decisions on challenges and appeal are rendered on the basis of available evidence submitted by the parties, which in practice, in the case of appeal to the IRP includes an oral hearing. There are provisions in the legal framework setting out requirements for submission of relevant information.</i></p> <p>Conduct of the challenge process by the public entity under s.43 PPA Form to be completed: R.48(1) PPR requires that a challenge under s.43 PPA shall be made in the form set out in the Second Schedule. The Second Schedule sets out the content of a simple form for completion requiring details of the bidder, the public body and procurement reference. The bidder is required to list the “Specific Act of Omission in relation to the procurement” and the “Bidder’s ground for challenge”. A note at the bottom of the form states that the completed form shall be submitted to the Chief Executive Officer of the public body.</p> <p>Major contracts – information from the Board: R.48(3) provides that where the challenge concern any aspect of the procurement process prior to the award of the contract the Chief Executive Officer shall in the case of a major contract, obtain all relevant information from the Board</p> <p>Conduct of the review process to and by the IRP under s.45 PPA Form to be completed: R.49 PPR requires that a challenge under s.45 PPA against a decision by a public entity shall be made writing in the form set out in the Third Schedule. The Third Schedule sets out the content of a simple form for completion requiring details of the bidder, the public body and procurement reference, date of decision of public body, date of filing. The applicant is required to set out the ground for review, statement on economic interest, special measures sought, relief requested, reasons for require for specific documents to support the application, and the reason for a request for hearing. A note at the bottom of the form states that a copy of the application shall be sent to the Chief Executive Officer of the public body.</p> <p>In most cases the initial form is submitted by the bidder in person, rather than legal representative of the bidder. In practice it is rare for cases to be rejected for lack of relevant documents as at the time a request for review is submitted, the IRP will go back to the bidder and ask for missing documents to be submitted within the time limits.¹⁷⁶</p> <p>Conduct of the review process R.53 & 54 PPR concerns disclosure of information by the public body on request from the Independent Review Panel and includes a general requirement on the public body to send all communications promptly.</p> <p>R.55 PPR requires the public body to provide a reply and comments to the Independent Review Panel, in response to the application for review and accompanying documents, no later than 7 days from receipt (public body’s response). The public body must provide a copy of the public body’s response to the applicant. The applicant may then submit a reply and comments on the public body’s response within 7 days of receipt.</p> <p>Hearings R.57 PPR. The applicant has a right to request a hearing. The Independent Review Panel may also, where it deems appropriate, conduct a hearing. Timing of the hearing: A hearing shall be completed within 7 days of receipt of the applicants reply and comments on the public body’s response. In the absence of such a reply and comments, the hearing shall be completed with 14 days from the date of receipt of the public body’s response shall request the applicant and the public body to attend.</p> <p>It may restrict attendance during all or part of the proceedings where it considers appropriate. In practice all requests for review which are accepted will proceed to hearing(s) which may continue for more than one sitting. All proceedings shall be recorded and transcribed.</p> <p>IRP Decisions: Sampled IRP decision demonstrate that decisions are rendered on the basis of available evidence submitted by the parties.</p>		<p>Criterion met</p>		
<p>(b) The first review of the evidence is carried out by the entity specified in the law.</p>	<p><i>Summary: The first review of evidence is carried out by the public body concerned in response to a challenge made pursuant to s.43 PPA on the basis of the written request submitted. In any subsequent appeal to the IRP, the IRP undertakes a detailed review of evidence, including oral evidence where a hearing is held and oral evidence is given.</i></p>		<p>Criterion met</p>		

¹⁷⁶ Information on submission and processing of request for review in practice, provided by IRP at MAPS assessment team meeting with IRP and PPO, 20 September 2021.

	<p>Form to be completed: R.48(1) PPR requires that a challenge under s.43 PPA shall be made in the form set out in the Second Schedule. The Second Schedule sets out the content of a simple form for completion requiring details of the bidder, the public body and procurement reference. The bidder is required to list the “Specific Act of Omission in relation to the procurement” and the “Bidder’s ground for challenge”. A note at the bottom of the form states that the completed form shall be submitted to the Chief Executive Officer of the public body.</p> <p>Major contracts – information from the Board: R.48(3) provides that where the challenge concern any aspect of the procurement process prior to the award of the contract the Chief Executive Officer shall in the case of a major contract, obtain all relevant information from the Board</p> <p>The subsequent appeal and detailed review of evidence, in cases accepted for consideration, is carried out by the IRP in response to an appeal made pursuant to s.45 PPA.</p> <p>Directive No.38 (2019) Procedures to be followed in the cases of complaints to the Independent Review Panel, provides that the Central Procurement Board and public bodies concerned shall consult the Procurement Policy Office regarding the mandatory procedures to be followed where there have been cases of complaints to and rulings made by the Independent Review Panel.</p>			
<p>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p> <p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.</p>	<p><i>Summary: The IRP may order one or more of the four remedies listed in the PPA. Only one of the remedies is expressed in a manner so as to be absolute (binding). Other remedies are recommendations and not binding. The IRP is an administrative body without powers of enforcement and there is no formal enforcement mechanism to guarantee compliance.</i></p> <p>The IRP issues decisions and may order one or more of four remedies listed in the PPA but only one of these remedies is binding and enforceable (see 13(b)(f)).</p> <p>The IRP, as an administrative body, does not have powers to enforce the orders it makes and there is no formal enforcement mechanism available to guarantee compliance.</p> <p>There is a combination of procedural safeguards and monitoring process aimed at ensuring compliance, as outlined below¹⁷⁷:</p> <p>Notice to the Independent Review Panel and Procurement Policy Office: R.59 PPR requires the public body to promptly notify the Independent Review Panel and the Procurement Policy Office of the action it has taken in response to the decision of the Independent Review Panel. Failure to comply with this requirement may result in disciplinary measures.</p> <p>Monitoring implementation: The PPO has a role in monitoring the implementation by public bodies of orders made by the Independent Review Panel and may take action in the event of failure by a public body to implement orders made by the IRP.</p> <p>S.7 (d) PPA Functions of the Procurement Policy Office provides that the Procurement Policy Office shall “collect from the Board, the Review Panel and public bodies information on procurement activities and monitor their compliance” with the PPA.</p> <p>s.7A confirms powers of the Procurement Policy Office in the discharge of its functions. S7A provides, in summary that the Procurement Policy Office may, in the discharge of its functions require information, and require and examine records and other documents from the Central Procurement Board or any public body. It may also carry out procurement audit. There are provisions requiring compliance with requests received from the Procurement Policy Office in this context and providing that failure to comply or wilful provision of false or misleading information shall constitute an offence. Where, in the discharge of its functions, the Procurement Policy Office find that there has been deliberate non-compliance with any provision of the PPA or instructions issued, the Director of the Procurement Policy Office shall refer the matter to the Head of the Civil Service recommending such action as he may deem appropriate. The Head of the Civil Service may refer any matter referred to him to the Police for enquiry.</p> <p>The Procurement Policy Office has confirmed that, in practice, its monitoring team will investigate non-compliance of a public body with decisions/orders made by the IRP, prepare a report and discuss it with the public body and where appropriate send the report to the Secretary to the Cabinet, ICAC or other body as appropriate for legal action. The MAPS Assessment team understands that IRP are, in practice, for the most part complied with.</p> <p>This sub-indicator is not met from a legal perspective as most types of decisions of the IRB are not legally enforceable.</p>	<p>No data on enforced decisions Please see remarks in the left column</p>	<p>Criterion not met</p> <p>GAP - IRP does not issue enforceable decisions: The PPA/PPR do not provide specific powers for the IRP to enforce the orders it makes and there is no formal enforcement mechanism available to guarantee compliance.</p>	<p>Recommendation</p> <p>In order to enhance the credibility of the review mechanism, review establishment and powers of IRP and/or put in place mechanisms to ensure that the IRP issues decision which are enforceable.</p>

¹⁷⁷ Information in this paragraph provided in discussions with Procurement Policy Office and [State Law Office/Office of the Attorney General], November 2021.

<p>(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.</p>	<p><i>Summary: The time frames specified for the submission and review of challenges and for appeals and issuing of IRP decisions are short. The time frames do not unduly delay the procurement process or make an appeal unrealistic.</i></p> <p>Challenge under s.43 PPA - public body 5 to 7 days for submission of challenge: s.43(3) PPA provides that a challenge must be submitted within short timescales, being 5 or 7 days of specified deadlines 7 day deadline for issuing the written decision: R 48(4) PPR requires the written decision to be issued within 7 days of the filing of the application.</p> <p>Review by the IRP 7 day deadline for Application for review: R.48(5) provides that the application for review to the independent review panel must be filed within 7 days of receipt of the decision of the public body or the time when that decision should have been received.¹⁷⁸ 5 day deadline for Application for review to the Independent Review Panel after entry into force of the procurement contract: R48(7) PPR provides that an application for review after the entry into force of a procurement contract the value of which is above MUR 30 day time frame for determining an application for review and consequences of failure to determine an application within the required time frame: s.45(8) PPA concerns time frames for determining the application for review, with reference to regulations prescribing time frames. R.57A PPR provides that the Independent Review Panel shall determine an application for review within 30 days of the application. The IRP complies with the statutory time limits save in exceptional cases where, for example, there are problems with participants arranging for personal attendance at hearings.¹⁷⁹</p>		<p>Criterion met</p>		
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13(b) Independence and capacity of the appeals body

The appeals body:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions</p>	<p><i>Summary: the Independent Review Panel is not involved in any capacity in procurement transactions or in the process leading to contract award decisions.</i></p> <p>The Independent Review Panel (IRP), is established pursuant to s.44 PPA, to review procurement proceedings before entry into force of a procurement contract following an application for review by an aggrieved bidder. The IRP comprises a Chairperson, a Vice-Chairperson and four other persons (IRP members). An IRP member must have wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters. R.80 PPR requires every member and officer, on assumption of duty, to take the oath specified in the Fourth Schedule which includes a declaration of confidentiality. R.81 PPR requires every member and officer to file with the Secretary of the Cabinet within 30 days of appointment and upon termination of appointment a declaration of assets and liabilities as specified in the Fifth Schedule</p>		<p>Criterion met</p>		
<p>(b) does not charge fees that inhibit access by concerned parties</p>	<p><i>Summary: fees charged by the IRP do not inhibit access by concerned parties.</i></p> <p>S.45 PPA includes provisions concerning the payment of a non-refundable fee and a [security] deposit for filing an application for appeal Non-refundable fee: Applicants are required to pay a non-refundable fee for processing the application (s.45(3) PPA). R.51(2) PPR provides that the non-refundable processing fee is MUR 50,000 (MUR fifty thousand) Security Deposit: Applicants are required to pay a [security] deposit for filing the application: this shall be forfeited entirely where the Independent Review Panel determines that the application was frivolous</p>		<p>Criterion met</p>		

¹⁷⁸ IRP considers this provision to be unclear – see Decision 20/2019, Compagnie Régionale de Services et de L'Environnement Ltée v. Ministry of Social Security, National Solidarity and Environment and Sustainable Development (Environment and Sustainable Development Division) (Solid Waste Management Division).

¹⁷⁹ Confirmed at MAPS assessment team meeting with IRP and PPO, 20 September 2021

	<p>or 50% forfeited where the Independent Review Panel determines that the application was not merited (s.45(3) PPA) R.51(2) PPR provides that the security deposit is</p> <ul style="list-style-type: none"> • MUR 100,000 (MUR one hundred thousand) where the application relates to the bid opening process or the award of a major contract; or • MUR 25,000 (MUR twenty five thousand) in any other case. 																																																																																																							
<p>(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available</p>	<p><i>Summary: The IRP follows the detailed procedural rules for submission, handling and decisions on applications for review (appeal), which are set out in the legal framework and publicly available.</i></p> <p>The procedures for submission and resolution of complaints are set out in the PPA and the IRP applies these procedures. Decisions published by the IRP quite often deal with procedural issues concerning the conduct of the appeal process as well as substantive legal issues.</p>	<p>Information publicly available</p>	<p>Criterion met</p>																																																																																																					
<p>(d) exercises its legal authority to suspend procurement proceedings and impose remedies</p>	<p>s.45(4)PPA provides for the automatic suspension of the procurement proceedings until the appeal is determined by the Independent Review Panel, subject to the Independent Review Panel being satisfied that there is a prima facie case for review. There are provisions permitting the procurement proceedings to continue in limited cases where there are urgent public interest considerations. The IRP makes orders imposing remedies available under the PPA. See data below.</p> <p>Data from Procurement Policy Office Annual Report 2019-2020</p> <p>Table 12: Cases filed and determination by IRP Panel</p> <table border="1" data-bbox="507 863 1374 1339"> <thead> <tr> <th>Details</th> <th>2012</th> <th>2013</th> <th>2014</th> <th>2015</th> <th>2016 (Jan-June)</th> <th>2016/ 2017</th> <th>2017/ 2018</th> <th>2018/ 2019</th> <th>2019/ 2020</th> </tr> </thead> <tbody> <tr> <td>No. of cases</td> <td>40</td> <td>35</td> <td>44</td> <td>38</td> <td>15</td> <td>32</td> <td>25</td> <td>16</td> <td>22</td> </tr> <tr> <td>Merit</td> <td>10</td> <td>7</td> <td>20</td> <td>15</td> <td>3</td> <td>12</td> <td>11</td> <td>8</td> <td>4</td> </tr> <tr> <td>No merit</td> <td>13</td> <td>10</td> <td>8</td> <td>9</td> <td>2</td> <td>7</td> <td>8</td> <td>3</td> <td>8</td> </tr> <tr> <td>Withdrawn</td> <td>6</td> <td>13</td> <td>4</td> <td>5</td> <td>6</td> <td>8</td> <td>3</td> <td>4</td> <td>5</td> </tr> <tr> <td>Cases dismissed</td> <td>4</td> <td>2</td> <td>9</td> <td>2</td> <td>0</td> <td>0</td> <td>0</td> <td>1</td> <td>4</td> </tr> <tr> <td>Set aside</td> <td>5</td> <td>3</td> <td>3</td> <td>7</td> <td>3</td> <td>5</td> <td>2</td> <td>-</td> <td>1</td> </tr> <tr> <td>Cancelled by Public Body</td> <td>1</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> <td>-</td> <td>-</td> </tr> <tr> <td>Outside delay</td> <td>1</td> <td>0</td> <td>0</td> <td>0</td> <td>1</td> <td>0</td> <td>0</td> <td>-</td> <td>-</td> </tr> <tr> <td>Application Not entertained</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>1</td> <td>-</td> <td>-</td> </tr> </tbody> </table> <p>Source: Independent Review Panel (IRP) (e&oe)</p>	Details	2012	2013	2014	2015	2016 (Jan-June)	2016/ 2017	2017/ 2018	2018/ 2019	2019/ 2020	No. of cases	40	35	44	38	15	32	25	16	22	Merit	10	7	20	15	3	12	11	8	4	No merit	13	10	8	9	2	7	8	3	8	Withdrawn	6	13	4	5	6	8	3	4	5	Cases dismissed	4	2	9	2	0	0	0	1	4	Set aside	5	3	3	7	3	5	2	-	1	Cancelled by Public Body	1	0	0	0	0	0	0	-	-	Outside delay	1	0	0	0	1	0	0	-	-	Application Not entertained							1	-	-		<p>Criterion met</p>	
Details	2012	2013	2014	2015	2016 (Jan-June)	2016/ 2017	2017/ 2018	2018/ 2019	2019/ 2020																																																																																															
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Application Not entertained							1	-	-																																																																																															
<p>(e) issues decisions within the time frame specified in the law/regulations* // Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (e): - appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %)</p> <p>Source: Appeals body.</p>	<p>Timeframe for issuance of decision by Independent Review Panel</p> <p>ss.45(8) PPA concerns time frames for determining the application for review, with reference to regulations prescribing time frames. R.57A PPR provides that the Independent Review Panel shall determine an application for review within 30 days of the application. The IRP was unable to provide consolidated data to the MAPS Assessment team in response to this indicator. The MAPS Assessment team discussed this issue with the IRP who confirmed that IRP complies with the statutory time limits save in exceptional cases where, for example, there are problems with participants arranging for personal attendance at hearings.¹⁸⁰ Sampled decisions reviewed by the MAPS Assessment team show timelines demonstrating that decisions are issued within specified timescales.</p>		<p>Criterion met</p>																																																																																																					

¹⁸⁰ Confirmed at MAPS assessment team meeting with IRP and PPO, 20 September 2021

<p>(f) issues decisions that are binding on all parties</p>	<p><i>Summary: The IRP has power to order four types of remedies listed in the PPA. The IRP can issue binding orders (decisions) in relation to only one of the listed remedies. Other orders (decisions) are recommendations and are not binding.</i></p> <p>s.45(10) PPA provides that the Independent Review Panel may dismiss an application for review or may, if it determines there is merit in it, order one or more of the following remedies:</p> <p>(a) prohibit the public body from acting or deciding in an unauthorised manner or from following an incorrect procedure;</p> <p>(b) recommend the annulment in whole or in part of any unauthorised act or decision of the public body;</p> <p>(c) recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation; or</p> <p>(d) recommend payment of reasonable costs incurred in participating in the bidding process where a legally binding contract has been awarded which, in the opinion of the Review Panel, should have been awarded to the applicant.</p> <p>A decision (order) made by the IRP pursuant to s.45(1)(a) is a prohibition and is absolute (binding) on the public body concerned.</p> <p>Decisions (orders) made by the IRP pursuant to ss.45(1) subsections (b),(c) or (d) are recommendations. Being advisory in nature these decisions (orders) in theory may, or may not, be complied with by the public body concerned and thus are not binding.</p>		<p>Criterion partially met</p> <p>GAP - The IRP does not issue binding decisions in all cases: The IRP issues binding orders (decisions) in relation to only one of the listed remedies. Other orders (decisions) for remedies are recommendations only and are not binding.</p>	<p>Recommendation</p> <p>Review the powers of IRP in respect of the nature of the orders it can make. If possible, within the constraints of the legal system, all orders of the IRP should be binding on all parties.</p>
<p>(g) is adequately resourced and staffed to fulfil its functions.</p>	<p>The Independent Review Panel (IRP), is established pursuant to s.44 PPA, to review procurement proceedings before entry into force of a procurement contract following an application for review by an aggrieved bidder.</p> <p>The IRP comprises a Chairperson, a Vice-Chairperson and four other persons (IRP members). An IRP member must have wide experience in legal, administrative, economic, financial, engineering, scientific or technical matters.</p> <p>Staff/support</p> <p>The IRP has office facilities, computers, laptops, photocopiers, telephones. Hearings are recorded and transcribed by shorthand writers. IT provision is basic and no wi-fi is available. Both physical and electronic files are used for the receipt and conduct of appeals. e-PS has a module for Challenge & Appeal which is not yet operational and IT provision for IRP will need to be compatible to ensure smooth operation.</p> <p>The IRP is supported by a Secretary, part-time office management executive, two shorthand writers, one word processor operator and one management support officer.</p>		<p>Criterion partially met</p> <p>Staff resources and general support is adequate but up to date IT (including wi-fi) provision appears inadequate.</p>	<p>Recommendation</p> <p>Assess resources of IRP, in particular available IT and to ensure compatibility with e-PS on activation of Challenge and Appeal module.</p>

13(c) Decisions of the appeals body

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) based on information relevant to the case.</p>	<p><i>Summary: There are clear procedures governing the evidence and decision-making process of the IRP and decisions of the IRP are rendered on the basis of information relevant to the case.</i></p> <p>Conduct of the review process to and by the IRP under s.45 PPA</p> <p>Form to be completed: R.49 PPR requires that a challenge under s.45 PPA against a decision by a public entity shall be made writing in the form set out in the Third Schedule. The Third Schedule sets out the content of a simple form for completion requiring details of the bidder, the public body and procurement reference, date of decision of public body, date of filing. The applicant is required to set out the ground for review, statement on economic interest, special measures sought, relief requested, reasons for request for specific documents to support the application, and the reason for a request for hearing. A note at the bottom of the form states that a copy of the application shall be sent to the Chief Executive Officer of the public body.</p>		<p>Criterion met</p>		

	<p>R.53 & R.54 PPR concerns disclosure of information by the public body on request from the Independent Review Panel and includes a general requirement on the public body to send all communications promptly.</p> <p>Conduct of the review process</p> <p>R.53 & 54 PPR concerns disclosure of information by the public body on request from the Independent Review Panel and includes a general requirement on the public body to send all communications promptly.</p> <p>R.55 PPR requires the public body to provide a reply and comments to the Independent Review Panel, in response to the application for review and accompanying documents, no later than 7 days from receipt (public body's response). The public body must provide a copy of the public body's response to the applicant. The applicant may then submit a reply and comments on the public body's response within 7 days of receipt.</p> <p>Hearings</p> <p>R.57 PPR. The applicant has a right to request a hearing. The Independent Review Panel may also, where it deems appropriate, conduct a hearing. The Independent Review Panel</p> <p>IRP Decisions: Sampled IRP decision demonstrate that decisions are rendered on the basis of available evidence submitted by the parties.</p>				
<p>(b) balanced and unbiased in consideration of the relevant information.*</p> <p>Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b):</p> <ul style="list-style-type: none"> - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey. 	<p><i>Summary: IRP Decisions: sampled IRP decisions appear balanced and do not demonstrate obvious bias.</i></p> <p>Quantitative assessment</p> <p>Private sector survey (small sample)</p> <p>There were 19 responses to the question "Do you feel the system was trustworthy and fair?". The responses were: 10 "yes" and 9 "no". This question relates to both challenge and appeal.</p> <p>There were 10 responses to the question "Did you believe the appeal decision was consistent?" The responses were: 9 "yes" and 1"no".</p> <p>The response from private sector data was mixed and not reliable. There is no evidence that IRP decisions are biased or unbalanced</p>	<p>Data in the column on the left</p>	<p>Criterion met</p>		
<p>(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c):</p> <ul style="list-style-type: none"> - outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body. 	<p><i>Summary: The IRP issues decisions and the remedies available include correcting the implementation of the process or procedures. Data confirms that the IRP avails itself of the range of available remedies.</i></p> <p>s.45(10) provides that the Independent Review Panel may dismiss an application for review or may, if it determines there is merit in it, <u>order</u> one or more of the following remedies:</p> <ul style="list-style-type: none"> (a) prohibit the public body from acting or deciding in an unauthorised manner or from following an incorrect procedure; (b) recommend the annulment in whole or in part of any unauthorised act or decision of the public body; (c) recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation; <p>Bid costs where legally binding contract has been awarded</p> <p>The IRP may also recommend payment of reasonable costs incurred in participating in the bidding process where a legally binding contract has been awarded which, in the opinion of the Review Panel, should have been awarded to the applicant.</p> <p>See Indicator 13(b)(d) for data from Procurement Policy Office Annual Report 2019-2020 on cases filed and determined by the IRP</p>		<p>Criterion met</p>		
<p>(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*</p>	<p><i>Summary: Decisions are published promptly on the PPO website and are publicly available.</i></p> <p>Publication of Decisions of the Independent Review Panel: IRP decisions are published and available to download free of charge from a dedicated tabbed page on the Procurement Policy Office Website.¹⁸¹ In practice, decisions are published promptly¹⁸² but no timescales for publication are set out in the legal</p>		<p>Criterion met</p>		

¹⁸¹ For example: 2021 Decisions: <https://ppo.govmu.org/Pages/Independent%20Review%20Panel/Decisions-2021.aspx> accessed 26 September 2021.

Name/organisation:

Date:

<p>// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %). Source: Centralised online portal.*</p>	<p>framework (Lack of statutory timescales for publication of IRP decisions is identified as a Gap under Indicator 1(h)(e))._</p> <p>A decision of the Independent Review Panel is part of record of procurement proceedings: R.58 PPR provides that any decision by the public body or Independent Review Panel pursuant to s.45 PPA shall be made part of the record of the procurement proceedings.</p> <p>Publication of IRP decisions Samples of decisions published in early 2021 demonstrate that they were published promptly – Decision 01_21 9 February 2021 and Decision 02_21 15 February both available when website checked on 21 February 2021</p>				
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14. The country has ethics and anticorruption measures in place

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

The legal/regulatory framework provides for the following:

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations				
<p>(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.</p>	<p>References in PPA/PPR- Summary s.51 PPA Conduct of Public Officials R.77 PPR Disclosure of offer of inducement or other corrupt, fraudulent or coercive practices s.52 PPA Conduct of Bidders and Suppliers R.75 PPR Undue Influence S.53 PPA Suspension, debarment and disqualification of bidders and suppliers</p> <p>Role of the Independent Commission Against Corruption (ICAC): ICAC has as core functions to lead, implement and administer the prevention, education and enforcement elements of the national strategy to fight corruption as per the Prevention of Corruption Act (PoCA) 2002. It also investigates and prosecutes money laundering offences by virtue of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) 2002. Other laws which have been enacted to reinforce the fight against corruption and money laundering also include the Declaration of Assets (DoA) Act 2018, Asset Recovery Act (ARA) 2011 and the Good Governance and Integrity Reporting Act 2015, among others.</p> <p>Definition of corruption: Corrupt conduct and practices are criminalized under the PoCA 2002. As per Section 2 of the PoCA 2002, an act of corruption is defined as follows: <i>'(a) means an act which constitutes a corruption offence; and</i> <i>(b) includes -</i> <i>(i) any conduct whereby, in return for a gratification, a person does or neglects from doing an act in contravention of his public duties;</i> <i>(ii) the offer, promise, soliciting or receipt of a gratification as an inducement or reward to a person to do or not to do any act, with a corrupt intention;</i> <i>(iii) the abuse of a public or private office for private gain;</i> <i>(iv) an agreement between 2 or more persons to act or refrain from acting in violation of a person's duties in the private or public sector for profit or gain;</i> <i>(v) any conduct whereby a person accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification for inducing a public official, by corrupt or illegal means, or by the exercise of personal influence, to do or abstain from doing an act in the exercise of his duties to show favour or disfavour to any person'</i></p> <p>Prohibited practices in procurement: Part II of the PoCA 2002 provides for the different corruption offences under Sections 4 to 17 as listed below:</p> <table border="1" data-bbox="489 1858 1448 1883"> <thead> <tr> <th>Section</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Section	Description				<p>Criterion met</p>		
Section	Description								

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

4	Bribery by public official
5	Bribery of public official
7	Public official using his office for gratification
8	Bribery of or by a public official to influence the decision of a public body
9	Influencing public official
10	"Trafic d'influence"
11	Public official taking gratification
12	Bribery for Procuring Contract'
13	Conflict of interests
14	Treating of public official
15	Receiving gift for a corrupt purpose
16	Corruption of agent
6	Taking gratification to screen offender from punishment
17	Corruption to provoke a serious offence
17A	Offence committed by legal person

Section 12 of the Act specifically pertains to 'Bribery for Procuring Contract'. However, most of the above-mentioned Sections can be applied for prosecuting a person for a corruption offence linked with procurement.

Legally binding international anti-corruption agreements: The United Nations Convention against Corruption (UNCAC), to which Mauritius is signatory and has ratified, provides a framework for shaping national public procurement legislation. The UNCAC calls for the establishment of appropriate systems of public procurement based on the fundamental principles of transparency, competition, professionalism and objective criteria in decision-making. As per Article 9 paragraph 1 of the Convention:

'Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

- (a) *The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*
- (b) *The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;*
- (c) *The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;*
- (d) *An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;*
- (e) *Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.'*

In line with the above, corruption offences in procurement are covered under the PoCA 2002. With regard to public procurement, the legal framework is consistent with Article 9 paragraph 1 and is governed primarily by the Public Procurement Act (PPA) 2006 and its Regulations. The institutional framework, on the other hand, includes the Procurement Policy Office (PPO), the Central Procurement Board (CPB) and the Independent Review Panel (IRP).

Moreover, procurement is decentralized at the level of individual Ministries, Government departments and parastatal bodies. High-value procurement (depending on the category in which the public body is

listed in the Schedule of the PPA 2006) is carried out by the CPB. On the other hand, unsuccessful bidders can challenge procurement decisions before the IRP.

(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.

Penalties for government employees and private firms or individuals found guilty of corruption or other prohibited practices in procurement

Criterion met

As mentioned above, government employees and private firms or individuals found guilty of corruption offences would be convicted under Sections 4 to 17 of the PoCA 2002. The list of corruption offences together with the penalties are as follows:

Section	Description	Penalty
4	Bribery by public official	Penal servitude for exceeding 10 years
5	Bribery of public official	
7	Public official using his office for gratification	
8	Bribery of or by a public official to influence the decision of a public body	
9	Influencing public official	
10	"Trafic d'influence"	
11	Public official taking gratification	
12	Bribery for Procuring Contract'	
13	Conflict of interests	
14	Treating of public official	
15	Receiving gift for a corrupt purpose	
16	Corruption of agent	
6	Taking gratification to screen offender from punishment	
17	Corruption to provoke a serious offence	Sentenced to penal servitude for exceeding 10 years
17A	Offence committed by legal person	Fine of up to Rs 1 million

Individual responsibility

The PPA 2006 and the Public Procurement Regulations 2008, more specifically Part VIII of the PPA 2006, also make provision to uphold procurement integrity by addressing the conduct of public officials and conduct of bidders and suppliers. Thus, as per Part VIII:

- public bodies are not allowed to artificially divide the modalities of procurement in such a way to avoid necessary formal tendering;
- public officials shall not commit any corrupt or fraudulent practice;
- bidders having a close relative or someone with substantial interest working in a public body are not eligible to bid or to be awarded a procurement contract; and
- public officials shall avoid conflict of interests in carrying out their duties.

The different Sections under Part VIII of the PPA 2006 are as follows:

Section 49	Artificial division
Section 50	Duties of public bodies
Section 51	Conduct of public officials
Section 52	Conduct of bidders and suppliers
Section 53	Suspension, debarment and disqualification of bidders and suppliers

Addressing aspects that are meant to promote transparency, accountability and fairness

Sections in Part IX (Miscellaneous) of the PPA 2006 address aspects that are meant to promote transparency, accountability and fairness and prevent malpractices/corruption within the procurement system. They are as follows:

Section 55	Disclosure of interest
Section 56	Declaration of assets
Section 58	Undue influence

Sections contained in the Procurement Regulations 2008 include pertinent issues that aim at minimizing malpractices/corruption in the procurement activity. They include the following:

Section 72	Identification of activities of public body subject to conflict-of-interest restriction
Section 73	Avoidance of conflicts of interest in consultant services
Section 74	Restrictions outside employment and interests
Section 75	Undue influence

Different Sections of the PPA 2006 aim at achieving a sound procurement system in public bodies. A sound system requires compliance to the Act and ensuring transparency and integrity at every stage of the procurement cycle in terms of choice of procurement methods, maintenance of records, evaluation systems, appeal procedures and contract management, amongst others.

(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.

Conflict of interests in the PoCA 2002: Section 13 of the PoCA 2002 pertains to conflict of interests. Conflict of interests may be described as a situation in which a public official, while in the exercise of his public duties, has a personal/direct or indirect interest or where his relative or an associate of his has a direct or indirect interest in a decision that he or the public body has to take and which can improperly influence the public official in discharging his functions. Such direct or indirect interest could be termed as the private interest. Section 13 of the PoCA 2002 which pertains to conflict of interests reads as follows:

(i) *Where:*

(a) *a public body in which a public official is a member, director or employee proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of his has a direct or indirect interest; and*

(b) *that public official and/or his relative or associate hold more than 10 per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,*

that public official shall forthwith disclose, in writing, to that public body the nature of such interest.

(2) *Where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.*

(3) *Any public official who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.'*

In line with the ICAC's corruption prevention and education mandate, public officials are reminded that conflict of interests is a corruption offence. As such, public bodies must set up a proper mechanism to manage conflict of interests. They must develop and communicate to all concerned parties including staff involved in procurement, clear policies and procedures to manage situations of conflict of interests so that officers:

Criterion met

Name/organisation:

Date:

- can recognize situations of conflict of interests;
- shall disclose in writing any conflict of interests that may arise; and
- shall not participate in the decisions in line with Section 13 of the PoCA 2002.

It is essential that the organization keeps records of situations of conflict of interests

For more information on conflict of interests, the revised version of the handbook "Managing Conflict of Interests" is available on the ICAC's website www.icac.mu

Conflict of interests in the PPA 2006: Section 51 of the PPA 2006 pertains to the conduct of public officials and also lays emphasis on conflict of interests. As per Section 51 (1) (c), a public official involved in planning or conducting public procurement proceedings or contract administration, shall avoid conflict of interests, and the appearance of conflict of interests, in carrying out his duties and conducting himself. In Section 51 (2) (a) of the PPA 2006, it is also mentioned that: *'No public official, or his close relative, shall participate as a bidder in procurement proceedings of that public body and no award of a procurement contract shall be made directly to such official or to anybody in which he or his close relative, is employed in a management capacity or has a substantial financial interest.'*

Cooling-off period for public officials: The procurement legislation does make certain provisions that prohibit the intervention of public officials for a reasonable period after leaving office in procurement matters in ways that benefit them. In Section 51 (1) (f) of the PPA 2006, it is mentioned that a public official involved in planning or conducting public procurement proceedings or contract administration shall for a period of 2 years after leaving the public service not accept a position of authority in any private concern with which he had official dealings.

14(b) Provisions on prohibited practices in procurement documents

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.	<p>As per the PPA 2006, the functions of the PPO is clearly defined in Section 7. As such, it shall:</p> <p>(a) <i>'issue instructions to public bodies concerning the coordination of their actions with the Policy Office, the Board and the Review Panel.....'</i></p> <p>(b) <i>formulate policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, for the implementation of this Act;</i></p> <p>(c) <i>issue standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar documents for mandatory use by every public body implementing procurement.....'</i></p> <p>Other Legislation: The Prevention of Corruption Act 2002, as amended, provides for the prevention and punishment of corruption and fraud. It sets out comprehensive definitions of acts of corruption and corruption offences (ss.2 to 17), including specific provisions on bribery for procuring contracts, gratification, conflict of interests, and receipt of gifts. [Mauritius signed the UN convention Against Corruption in 2003.]</p> <p>Note also, in particular</p> <p>Financial Intelligence and Anti-Money Laundering Act 2002 Prevention of Terrorism Act ICAC publications including:</p> <ul style="list-style-type: none"> • Code of Conduct for Public Officials involved in procurement • Corruption Risk Management Manual • Best Practice Guide Management of Works • Guidelines on Direct Procurement <p>PO Guidelines Procurement Structures in Public Bodies, June 2017 Included in SBDs, use of which is mandatory – see 14(a)(a)</p>		Criterion met		<p>Areas of Improvement</p> <p>Based on discussions held with competition commission on September 27, 2021 to harmonize definition of terms like " collusive practices" between PPA and Competition Act and also look at the oligopolistic or monopolistic situation based on share of winning bids like in road sector contracts (including from international bidders) that tends to reduce competition and increase contract price, Competition Commission was of the <i>that the provisions of the PPA 2006 relating to collusion (section 52(3)) is couched in wide terms to cover the different forms of bid rigging (as presently falling within the scope of our current Competition Act 2007). Similarly, the provisions on abuse of monopoly also apply to bidding markets to cover situations as abnormally low bid prices resulting in the exit of competition and future exploitative conducts by remaining players</i></p>

	<p>Extract from SBD for Procurement of Goods, November 2021 (Ref: G/SBD1/11-21//e-SBD Procurement of Goods (Ref: G/EPROC/PSG1/11-21), November 2021 for use in Open Advertised Bidding and Restricted Bidding Section 1, 4 Fraud and Corruption</p>	
<p>(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.</p>	<p>Extract from SBD for Procurement of Goods, November 2021 (Ref: G/SBD1/11-21//e-SBD Procurement of Goods (Ref: G/EPROC/PSG1/11-21), November 2021 for use in Open Advertised Bidding and Restricted Bidding Section 1, 4 Fraud and Corruption</p> <p>4.1 It is the policy of the Government of the Republic of Mauritius to require Public Bodies, as well as bidders, suppliers, and contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and suppliers, observe the highest standard of ethics during the procurement and execution of contracts. [1] In pursuance of this policy, the Government of the Republic of Mauritius:</p> <p>(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <p>(i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party [2];</p> <p>(ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; [3]</p> <p>(iii) “collusive practice” is an arrangement between two or more parties [4] designed to achieve an improper purpose, including to influence improperly the actions of another party;</p> <p>(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party [5] or the property of the party to influence improperly the actions of a party;</p> <p>(v) “obstructive practice” is</p> <p>(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Purchaser’s investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or</p> <p>(bb) acts intended to materially impede the exercise of the Purchaser’s inspection and audit rights provided for under sub-clause 4.2 below.</p> <p>[1] In this context, any action taken by a bidder, supplier, contractor, or any of its personnel, agents, sub-consultants, sub-contractors, service providers, suppliers and/or their employees to influence the procurement process or contract execution for undue advantage is improper.</p> <p>[2] “Another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Purchaser’s staff and employees of other organizations taking or reviewing procurement decisions.</p> <p>[3] “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.</p> <p>[4] “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, noncompetitive levels.</p> <p>[5] “Party” refers to a participant in the procurement process or contract execution.</p>	<p>Criterion met</p>


14(c) Effective sanctions and enforcement systems

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.</p>	<p>Notification and reporting of corruption offence: Individuals and public officials are required to report allegations of corruption to the ICAC, and there is a clear procedure in place for doing this. For example, Section 43 the PoCA 2002 makes mention of the following:</p> <p>(1) <i>‘Any person may- (a) without disclosing his identity; and (b) orally or in writing, notify the Commission or an officer of the existence or possible existence of a corruption offence.</i></p> <p>(2) <i>The Commission shall take all steps that may be necessary to facilitate the notification to the Commission of the possible existence of an act of corruption’.</i></p> <p>Moreover, an officer of a public body has the duty to report acts of corruption offences. As per Section 44:</p> <p>(1) <i>‘Where an officer of a public body suspects that an act of corruption has been committed within or in relation to that public body, he shall forthwith make a written report to the Commission.</i></p> <p>(2) <i>The Commission shall issue such guidelines as it considers appropriate to ensure compliance with subsection (1)’.</i></p> <p>To report a case of corruption to the ICAC, the complainant (whether being a public official or not) can:</p> <ul style="list-style-type: none"> • report in person any alleged case of corruption and money laundering to the Complaint and Advice Processing Unit (CAPU) or • write to the Commission by email or by using the ‘on-line’ form available on the ICAC’s website www.icac.mu. If the person chooses to report in writing, he can do so without disclosing his identity or • phone on the ICAC’s Hotline to make his complaint. <p>Guidelines have also been issued by the ICAC to officers of public bodies with regard to the above. These are accessible on the ICAC’s website www.icac.mu</p> <p>Referrals to the Commission: Notwithstanding Sections 43 and 44 (as mentioned above), Section 45 (1) and (2) of the PoCA 2002 lays emphasis on ‘Referrals’ and reads as follows: <i>‘where in the exercise of his functions-</i></p> <ol style="list-style-type: none"> <i>a Judge or Magistrate;</i> <i>the Ombudsman;</i> <i>the Director of Public Prosecutions;</i> <i>the Director of Audit; or</i> <i>the chief executive of a public body,</i> <p><i>is of the opinion that an act of corruption or a money laundering offence may have occurred, he may refer the matter to the Commission for investigation.</i></p> <p>2. <i>Where in the course of a Police enquiry –</i></p>		<p>Criterion met.</p>		

	<p>a. <i>it is suspected that an act of corruption or a money laundering offence has been committed; and</i></p> <p>b. <i>the Commissioner of Police is of the opinion that the matter ought to be investigated by the Commission,</i></p> <p><i>the Commissioner of Police may notwithstanding the Financial Intelligence and Anti-Money Laundering Act 2002 and subject to subsection (3) refer the matter to the Commission for investigation.'</i></p>				
<p>(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.</p>	<p>Annual Report 2018/19 of ICAC</p> <p>The ICAC's stresses on transparency and accountability with regard to its mandate and responsibilities. As such, evidence is duly provided in the ICAC's Annual Reports. For example, as reported in the Report 2018/19, there has been 1777 complaints registered at the CAPU. 680 have been referred for Preliminary Investigation (PI) whilst the rest has been set aside at the very outset. Out of the 680 PI, 480 are corruption cases while the rest pertains to money laundering.</p> <p>Annual Reports are available on the ICAC's website.</p>		<p>Criterion met</p>		
<p>(c) There is a system for suspension/debarment that ensures due process and is consistently applied.</p>	<p>As far as debarment of suppliers is concerned, Section 53 of the PPA 2006 makes provision for the suspension and debarment of suppliers. Debarment procedures are mainly under the responsibility of the PPO.</p> <p>As per Section 53 (1), subject to subsection (2), the Director may, under such conditions as may be prescribed, suspend, debar or disqualify a potential bidder or supplier from participation in procurement on the following grounds</p> <p>As per Subsection 53 (2), a suspension, debarment or disqualification of a bidder or supplier under subsection (1) shall not be effected unless the Director - (a) reviews and considers the factual record developed by the public body that proposes the action; (b) gives reasonable notice to the bidder or supplier involved of the basis for the proposed action; and (c) gives reasonable opportunity to the bidder or supplier to respond to the proposed action.</p> <p>And as per subsection 53 (3) a period of suspension, debarment or disqualification under subsection (1) shall not exceed 5 years.</p> <p>The PPO also has a list of suspended/debarred/disqualified suppliers with details pertaining to the period for which suppliers will be ineligible and the reasons for their suspension, debarment or disqualification.</p>		<p>Criterion met</p>		
<p>(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d): - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory</p>	<p>Annual Report 2018/19 of ICAC</p> <p>Information pertaining to prosecution and punishment for corrupt practices is available in the ICAC's Annual Reports. For example, in the Report 2018/19, the following have been duly reported, among others:</p> <ul style="list-style-type: none"> • Cases sent to the Office of Director of Public Prosecutions • Cases disposed by the Intermediate Court • Provisional Charges handled • Cases lodged before the Intermediate Court <p>Moreover, in the Report 2018/19, the Corruption Investigation Division inquired over procurement matters. A section in the Report 2018/19 pertaining to 'Corruption in Procurement by White Collar Individuals' reads as follows: <i>'One particular complaint on the supply of fake medicines by a supplier resulted in the refund of around Rs. 3 million</i></p>	<p>Data in the column on the left</p>	<p>Criterion met</p>		

Name/organisation:

Date:

<p>function/anti-corruption body. - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body. - Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). Source: Survey.</p>	<p>to the Ministry of Health, whose attention was also brought to loopholes in its control systems that allowed the reported fraud in the instance. Another investigation revealed the criminal collusion between doctors involved in bid evaluation and suppliers of stents, whereby selected suppliers were given contracts by the Ministry of Health for stents at the unit price of Rs. 80,000. The same doctors used stents priced at Rs. 30,000 in private health care. Additionally, it has also been reported to the ICAC about some specialist doctors drafting specifications for medical consumables favoring specific doctors, and obtaining foreign vacation as reward. These investigations have brought the arrest and provisional charge of the suspects.’ Results of Private sector Survey</p> <p>48. Do you consider that companies are expected to give a gift to secure a contract in the private sector?</p>  <table border="1" data-bbox="519 661 801 724"> <tr> <td>Yes</td> <td>3</td> </tr> <tr> <td>No</td> <td>26</td> </tr> </table>	Yes	3	No	26				
Yes	3								
No	26								

14(d) Anti-corruption framework and integrity training

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.*</p> <p>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a): - percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey.</p>	<p>The legal and institutional framework for fighting corruption and money laundering ICAC is the national anti-corruption agency of Mauritius and the anti-corruption and anti-money laundering framework comprises the following legislations:</p> <ul style="list-style-type: none"> • The PoCA 2002; • The FIAMLA 2002; and • The DoA Act 2018. <p>The ICAC adopts a 3-pronged approach in its fight against corruption which includes:</p> <ul style="list-style-type: none"> • Investigation - Enforcement of the laws against corruption. • Prevention - Elimination of opportunities for corruption from systems and procedures. • Education – Education of the public at large on the dangers of corruption and mobilisation public support. <p>The structure of the ICAC is briefly described as below: The Corruption Investigation Division: The Corruption Investigation Division is responsible for investigating alleged cases of corruption and money laundering. The purpose of an investigation is to determine what has occurred or is occurring and whether the conduct of any person amounts to a corruption offence.</p> <p>The Legal Division: Besides providing legal advice to the Commission, the Legal Division supports the investigation process and prosecutes corruption and money laundering cases before the various courts in Mauritius.</p>		<p>Criterion met</p>		

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

	<p>The Corruption Prevention and Education Division: The Corruption Prevention and Education Division is responsible for educating members of the public on the dangers of corruption. It also examines systems and procedures of public bodies in order to facilitate the discovery of acts of corruption and malpractices.</p> <p>The DoA Unit: With the enactment of the DoA Act 2018, the ICAC has been mandated with additional powers, functions and responsibilities to receive and process declaration of assets forms, public disclosure of declarations as per the law, issue of penalties for late submission, verify and monitor declaration of assets and liabilities of any declarant for the purpose of detecting and investigating corruption and money laundering offences or illicit enrichment.</p>		
<p>(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.</p>	<p>Corruption Risk Assessments (CRA): CRA are taken on board through the implementation of the Public Sector Anti-Corruption Framework (PSACF). The PSACF is meant to assist public bodies in adopting a strategic approach in the fight against corruption. Implementing organizations are called upon to:</p> <ul style="list-style-type: none"> • set up Anti-Corruption Committees (ACCs) and designate Integrity Officers to drive and coordinate its implementation; • develop Anti-Corruption Policies to demonstrate a zero-tolerance stance towards corruption; • conduct CRA exercises to devise appropriate anti-corruption strategies and integrate corruption prevention principles in organizational policies, systems, procedures and practices; and • review and monitor implementation of anti-corruption measures to ensure effectiveness. <p>To further provide guidance and duly assist public bodies in the implementation of the Framework, the ICAC has developed a manual on Corruption Risk Management (CRM). Some 110 public bodies have already set up their ACCs with 120 CRA exercises conducted in different risk areas, including 35 on procurement.</p> <p>Key Performance Indicators (KPIs): Moreover, consultation of the ICAC with the Ministry of Public Service Administrative and Institutional Reforms led towards the setting-up of a reporting and monitoring mechanism for the evaluation of the implementation of the PSACF in public bodies. Subsequently, further consultation has led to a Cabinet decision dated 03 July 2020, making it mandatory for public bodies to undertake CRAs and to come up with corruption prevention measures pertaining to their identified risk areas. Key Performance Indicator (KPI) set by the Ministry of Public Service, Administrative and Institutional Reforms has called for two CRAs to be conducted per year by Ministries/Government departments. This decision has been implemented by the Public Sector Transformation Bureau under the Ministry of Public service Administrative and Institutional Reforms and is being monitored by both the Ministry and the ICAC.</p> <p>Other KPIs and extension of CRAs to parastatal bodies, local authorities and state-owned enterprises: In a view to promote a corrupt-free service, the Government in September 2021 has adopted new KPIs and has requested all Ministries/Government departments to ensure that 75% of the corruption prevention measures and recommendations in line with their CRA exercises be implemented. Moreover, the conduct of the 2 CRA exercises have also been extended to parastatal bodies, local authorities and state- owned enterprises.</p>		<p>Criterion met</p>
<p>(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and</p>	<p>2019-20 Annual Report The ICAC publishes its Annual Report annually and statistical information pertaining to achievements, including legal proceedings and convictions are duly</p>		<p>Criterion met</p>

<p>convictions are compiled and reports are published annually.</p>	<p>compiled. For example, as at June 2021, convictions have been secured in 227 corruption and money laundering cases involving 271 persons convicted.</p>			
<p>(d) Special measures are in place for the detection and prevention of corruption associated with procurement.</p>	<p>Over and above CRA exercises, the ICAC conducts Corruption Prevention Reviews (CPR) to minimise opportunities for corruption inherent in the practices and procedures of public bodies. As at September 2021, more than 50 CPRs have been conducted in public bodies on procurement.</p> <p>The recommendations generally pertain to the following, among others:</p> <ul style="list-style-type: none"> • Implementation of documented policies and procedures • Enhancement of the procurement record management system • Implementation of proper procurement plans to mitigate the risks of corruption and malpractices • Strengthening transparency and fairness in the selection of suppliers • Reinforcement of control over confidentiality of information • Enhancement of oversight and internal control with regard to procurement activities • Promotion of ethics among public officials and suppliers • Management of conflict of interests • Implementation of gift policies. <p>The CPRs conducted are based on weaknesses highlighted in audit reports and media or follows from requests by public bodies. The Commission also refers CPRs on a recurrent basis following investigations. These refer mostly to cases where no corruption offence has been detected.</p> <p>Guides on procurement The ICAC has developed several best practice guides in order to empower public officials in performing their work in an ethical, transparent, accountable and fair manner. With regard to procurement and contract management, two guides have recently been developed and published namely:</p> <ul style="list-style-type: none"> • Guidelines for Public Bodies – Corruption Prevention in Direct Procurement; and • Management of Contract Works for Public bodies. <p>Other Guides: Other best practice guides have also been issued. They include the following:</p> <ul style="list-style-type: none"> • Guidelines - Exercise of Discretionary Powers; • Guidelines on gifts and gratifications for public officials; • Integrity management toolkit; and • Managing conflict of interests. <p>The publications are available on the ICAC’s website.</p>		<p>Criterion met</p>	<p>Suggestion for improvement: Public Bodies, Central Procurement Board do not exercise discretionary power so that value-for-money is achieved. An enabling environment is required to reward officials/ public bodies who use discretion in the best public interest following ICAC Guidelines for Exercise of Discretionary Power rather than postponing or avoiding decision- Accountability and Decision-Making Mechanism to be instituted</p>
<p>(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.</p>	<p>In line with its prevention and education mandate, the ICAC conducts regular training and empowerment sessions with its stakeholders. The sessions mainly emphasize on the dangers of corruption, corruption offences and ethical behaviors to be adopted to promote integrity. The procurement aspect is regularly taken into consideration during the sessions to alert stakeholders on the</p>		<p>Criterion met</p>	

	<p>corruption risks associated with this high-risk area. Some examples of training conducted include:</p> <ul style="list-style-type: none"> • specific training on corruption prevention in procurement. For instance, an empowerment workshop was organized in 2019 for management and staff of the Ministry of Health and Wellness involved in procurement with a view to empower them on the importance of adopting a zero stance to corruption and malpractices; • a training programme on procurement with Board Members and Management of the Central Electricity Board. This programme was conducted in March 2020; • a half day workshop which was conducted in December 2020 with officials involved in public procurement so as to enhance integrity in procurement; and • regular training to public officers to further the implementation of the PSACF. Such training is meant to help officers understand the concepts of CRM and empower them to undertake CRA in corruption risk areas including procurement and contract management. Further, an e-learning course on CRM has been developed by the ICAC and is available on its e-Learning platform. Officers from different public sector organizations have also been trained on their role and responsibilities as Integrity Officers. <p>ICAC regularly participates in the training programme for Pharmacy Store Managers of the Ministry of Health and Wellness and training that focuses on procurement integrity and corruption prevention principles, among others, is dispensed.</p>				
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14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) There are strong and credible civil society organisations that exercise social audit and control.</p>	<p>As per ICAC Civil society is considered as an important sector by the ICAC in the fight against corruption. It has become a strong coalition against corruption and assists the ICAC in reinforcing integrity at all societal levels. The ICAC, as such, regularly organises activities with the civil society in order to increase social control and bolster the fight against corruption. Those working closely with the ICAC include trade unionists, women, senior citizens and Board members of cooperatives, among others.</p> <p>However, the Assessment Team could not find any evidence of credible civil society organization providing support to strengthen integrity in procurement</p>		<p>Criterion not met</p> <p>PPA to provide enabling provision (cross refer Indicator 11) No evidence of credible civil society organization for support to strengthen integrity in procurement</p>	<p>YES</p>	<p>Cross refer Indicator 11 Legal framework to enable consultation with the Civil Society Organization</p>
<p>(b) There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.</p>	<p>As per ICAC To promote and engage civil society in the fight against corruption, the ICAC has set-up different platforms/networks with which it works closely, such as the</p> <ul style="list-style-type: none"> • Trade Union Action against Corruption; • Civil Society Network against Corruption; • Comite Anti-Corruption; and • Anti-Corruption Academic Forum 		<p>Criterion not met</p> <p>No evidence and an enabling environment in the area of procurement by CSOs or third-party monitors</p>	<p>YES</p>	<p>Cross Refer Indicator 11 Legal framework to enable consultation with the Civil Society Organization</p>

	<p>However, the Assessment Team could not find any evidence and an enabling environment in the area of procurement by CSOs or third-party monitors</p>				
<p>(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil society organisations (CSOs), including national offices of international CSOs actively providing oversight and social control in public procurement. Source: Survey/interviews.</p>	<p>There are no civil society groups in Mauritius that have a procurement focus within their agendas and/or actively provide oversight and exercise social control that will improve integrity in public procurement.</p> <p>However, the press/media plays an important role as watchdog over public procurement exercises and will ring the alarm whenever it suspects an alleged malpractice/corrupt practice. There is also Transparency Mauritius which is an independent and non-political organisation which raises the alarm whenever it suspects an alleged malpractice/corrupt practice.</p> <p>Feedback from TI Mauritius received by the Assessment Team on Nov 12, 2021(also Cross refer Indicator 11) “Mauritius does not have a Freedom of Information (or Right to Information act) though TI would submit that the website of the PPO provides a lot of information. However, very often the technical aspects of the information appeal mostly to professionals or those who have a direct interest with a particular contract. All public officials are subject to the Official Secrets Act which prevents them from communicating to the media (or other parties such as CSOs) unless being authorized specifically by the Head of the ministry or with the blessing of the Minister. There is no specific legislation pertaining to Whistleblowers’ protection. Section 49 of the Prevention of Corruption Act provides protection to public officers who report corruption to the ICAC. Last year, after the first Covid-19 pandemic lockdown, there have been many allegations with regards to emergency procurement. One of the first reaction of the Government was to start an investigation for leakage of information. Such initiatives create fear among public officers and eventually discourage honest officers from exposing malpractices or corruption”</p>		<p>Criterion not met</p> <p>Based on feedback as quoted Mauritius does not have a Freedom of Information (or Right to Information act and no opportunity for CSO to shape and improve integrity in procurement</p>	<p>YES</p>	<p>Cross Refer Indicator 11</p> <p>Government policy to enable participation by CSO to shape and improve integrity in procurement</p>
<p>(d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.</p>	<p>The ICAC works closely with business associations such as Business Mauritius, Mauritius Chamber of Commerce and Industry and the Mauritius Institute of Directors, among others. In 2012, a Public Private Platform Against Corruption (PPPAC) was set to ensure collective actions against corruption. It groups representatives of the above-mentioned institutions, the public sector and other volunteers from private businesses. The PPPAC was set up to move the fight against corruption to a higher gear and ensure sustained collective action. The purpose of this platform is to provide for a consultative action against corruption while fostering interaction between public and private sector for a corrupt free Mauritius. The objectives of the PPPAC are to:</p> <ul style="list-style-type: none"> • identify and prioritize corruption risks areas which require robust actions from both sides and work towards the elimination of those inadequacies; • share, synergize and sustain anti-corruption initiatives in each sector; • ensure collective anti-corruption initiatives from public bodies and private businesses and organisations; • make recommendations to relevant parties for enhancing integrity; • discuss and make proposals for amendments to anti-corruption legislations; and • give recognition and visibility to anti-corruption initiatives. <p>Internal compliance measures: The PPPAC duly identified several corruption prone areas and prioritised procurement and contract management as major risk areas. A subcommittee was set up to identify risks and corrective measures in these risk areas. Recommendations for the private sector were, for example, to:</p> <ul style="list-style-type: none"> • Ensure employees’ compliance to company’s Code of conduct/ethics. 		<p>Criterion met</p>		

	<ul style="list-style-type: none"> Place anti-corruption messages on company website for the attention of external stakeholders. Encourage whistle blowing of malpractices in the organization. Develop and implement anti-corruption programmes to prevent corruption within the private sector and in dealings with public officials. Cross refer to feedback from CSO and private sector 				
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14(f) Secure mechanism for reporting prohibited practices or unethical behaviour

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.	As per above, the procedures to report an alleged act of corruption is already described in sub-indicator 14 (c), which is Notification and reporting of corruption offence: Individuals and public officials are required to report allegations of corruption to the ICAC, and there is a clear procedure in place for doing this as per Section 43 the PoCA 2002. All information pertaining to these cases are treated with strict confidentiality. As per Section 81 of the PoCA 2002, every member of the Board and every officer shall take the oath of secrecy. Every Member of the Board and every officer shall also maintain confidentiality and secrecy of any matter, document, report and other information relating to the administration of the Act that becomes known to him, or comes in his possession or under his control ¹⁸³ .		Criterion met		
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	The PoCA 2002 makes provision of the ‘protection of informers’ and ‘protection of witnesses’ as per Sections 48 and 49 respectively. Guidelines have also been issued by the ICAC to public officers with regard in this respect and these are available on the website.		Criterion met		Suggestion for improvement GOM to consider bringing new legislation on the lines of other countries as Whistle-blower Protection Act and Right to Information Act
(c) There is a functioning system that serves to follow up on disclosures.	<p>CAPU is the specialized unit of the ICAC that receives and processes alleged complaints. All complaints registered are taken into consideration. The computerization of the Unit, coupled with the modernization of its processes, has led to an increased effectiveness in the discharge of its functions.</p> <p>Complaints which do not pertain to the mandate of the ICAC is set aside at the very outset. For the other cases, there will be the conduct of corruption and money laundering investigations at Preliminary Investigation and Further Investigation stages, depending on circumstances of the cases.</p> <p>Based on input from Competition Commission on cooperation on reporting of prohibited practices and unethical behavior it was reported that the Commission has completed 1 cartel investigation further to a referral from CPB, which started as bid rigging case but the theory evolved to collusive JV agreement between bidders. initiated 1 cartel investigation recently into a potentially collusive JV received 3 more referrals from PPO and/or CPB, which are presently at enquiry level</p> <ul style="list-style-type: none"> Inter-agency cooperation between the Commission – CPB – PPO, through the setting up of a tripartite committee regrouping officials of the three institutions, is delivering positive outcomes in terms of referrals of suspicious issues as well as in terms of policy changes favorable to stronger detection/enforcement against collusion in procurement. For instance, PPO/CC have advocated on the need for a change of confidentiality / disclosure provisions in the PPA 2006 to enable sharing of (confidential) bidding proceedings/bidder information to the Commission by procurement authorities, bodies, officials without the onerous 		<p>Criterion partially met</p> <p>A workable referral system has yet to be put in place with public procurers themselves. Competition Commission can advocate to such bodies against bid rigging / how to spot red-flag signs of bid rigging as much as we want but without officials having confidence in the system and goodwill from the officials, the referral system will not work in practice.</p>		Stronger Inter-agency cooperation between the Commission – CPB – PPO, through the setting up of a tripartite committee regrouping officials of the three institutions, is delivering positive outcomes in terms of referrals of suspicious issues as well as in terms of policy changes favorable to stronger detection/enforcement against collusion in procurement.

¹⁸³ https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Mauritius_Anti%20Corruption%20Act_2002_

	<p>procedure (for the Commission) of seeking a Court Order. The PPO/CC are also working on two other projects involving –</p> <ul style="list-style-type: none"> ○ access to the e-PS data through the creation of a systemic interface (information portal) connecting CC IT system and PPO E-PS to enable automated retrieval of such data in the future, which would facilitate the conduct of bid screening for collusion detection; ○ the possibility of integrating a collusion screening tool/software within the e-PS system to detect (based on economic filters) from e-PS procurement data the likelihood of bid rigging/collusion happening in any one procurement exercises. The PPO has in the context of tripartite committee sessions informed that PPO has applied for the World Bank's assistance (through GovTech programme) in this sense. <ul style="list-style-type: none"> • The Competition Act 2007 (Sec. 51A) affords Whistle-blower protection for informers providing leads on suspected restrictive business practices including bid rigging cases. the identity and information provided by an informer having been granted S. 51A statutory protection are generally non-disclosable even in proceedings before Court. Similar statutory protection could be afforded in procurement laws together with full-proof anonymous reporting mechanism to instill confidence in officials. • Need for an anonymous reporting channel within procurement. Avoid the need for such referrals to receive the vetting/approval of higher-ranking officials within reporting line of procurement officials to incentivize whistleblowing by such officials of potential collusion. 				
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14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a): - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.</p>	<p>The Independent Commission Against Corruption (ICAC) has published a code of conduct and guidelines of direct relevance to public procurement,¹⁸⁴ in particular: Revised Code of Conduct on Procurement for Public Officials, December 2015. Prepared in collaboration with the Procurement Policy Office, the Code of Conduct addresses the following key elements: transparency in decision making processes; accountability regarding roles and responsibilities; equity and fairness in actions; management of situations of conflicts of interest; and, use of confidential and proprietary information.</p> <p>Guidelines on Corruption Prevention in Direct Procurement, December 2020. Prepared in collaboration with the Directorate of the Procurement and Supply Cadre of the Ministry of Finance, Economic Planning and Development. ICAC notes, in the introductory section of these Guidelines that “as demonstrated by the various corruption prevention exercises conducted by the [ICAC], Direct Procurement is not adequately regulated and contains relatively few safeguards against corruption and fraudulent purchases.” ICAC acknowledges that the mandatory use of e-PS in all public sector bodies will assist but that it is only one of the ways to minimise corruption risks, The Guidelines are intended as guidance to establish appropriate management systems to fight corruption and malpractices when using Direct Procurement.</p> <p>Corruption Risk Management Manual, October 2020. To assist in Corruption Risk Management, using examples in the public procurement arena.</p> <p>Best practice guide on Management of Contract Works for Public Bodies, December 2020. This detailed guide aims to guide and empower public bodies to assess corruption risk and establish best management systems and control to reinforce integrity in the management of public works.</p>		<p>Criterion met</p>		

¹⁸⁴ <https://www.icac.mu/publications/> accessed 2 February 2021

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

Name/organisation:

Date:

<p>(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.</p>	<p>The Code addresses, among others, the following key elements pertaining to behavior, actions and practices of officials involved in public procurement:</p> <ul style="list-style-type: none"> • Transparency in their decision-making processes; • Accountability regarding their roles and responsibilities; • Equity and fairness in their actions; • Management of situations of conflict of interests; and • Use of confidential and proprietary information. <p>Disclosure required for officials involved in public procurement to include those who are preparing technical specification and qualification requirement, bid document preparation, evaluation and award and contract implementation, inspection and certification of acceptance goods, works and services including consulting services, irrespective of level/grade</p> <p>Accountability and Decision -making Mechanism (ADM) required to empower decision making and for improved accountability (suggestion for improvement)</p>		<p>Criterion met</p>		
<p>(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</p>	<p>The Code makes provision of an acknowledgment form where the public official certifies that he has taken cognizance of and understood the provisions contained in the Code and agree to fully comply with the Code of conduct.</p>		<p>Criterion met</p>		
<p>(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.</p>	<p>There has been no specific training with regard to the Code but there are regular training sessions which are carried out by the ICAC meant for public officials. Essential elements as contained in the Code are duly addressed during these sessions with emphasis laid on aspects linked to transparency, accountability, fairness and integrity, among others</p>		<p>Criterion partially met no specific training with regard to the Code</p>		<p>Specific training with regard to the Code to be conducted</p>
<p>(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision makers to prevent corruption risks throughout the public procurement cycle.</p>	<p>The Code makes provision of a conflict-of-interest declaration form. If there is any conflict of interests, the public official must make a statement of all his reportable interests and also acknowledges by (signing the form) that he is aware of the consequences of any false or incorrect information given.</p> <p>To include all officials involved in procurement process irrespective of level/grades</p> <p>Other tools, such as self-declarations by suppliers, compliance checklists, etc.</p> <p>As mentioned in indicator 14(b), recommendations contained in CPRs also emphasize on the ethics and integrity aspect of suppliers. As such, the ICAC recommends to public bodies the integration of statements of business ethics for suppliers involved in procurement to promote ethical standards. Existing bidders and new suppliers need to sign and agree to abide by the statement which will ensure that they act in an ethical and professional manner. A model of the statement is provided to public bodies is as at Annex I.</p> <p>Financial disclosure requirements for public officials</p> <p>Declarations of Asset</p> <p>The DoA Act 2018 provides for a new legal framework governing declaration of assets in the public sector in Mauritius. With the enactment of this legislation, the ICAC has been mandated with additional powers, functions and responsibilities, among others, to:</p> <ul style="list-style-type: none"> • be the recipient and custodian of the declarations; • disclose to the public declarations in accordance to Section 7 of the Act; • monitor the assets and liabilities of declarants for the purpose of detecting and investigating corruption and money laundering offences or illicit enrichment pursuant to Section 9 of the Act; and 		<p>Criterion partially met</p> <p>The provision of Section 3 of the DoA Act 2018, certain categories of persons have an obligation to submit the declaration of assets form to the ICAC is based on grades and does not apply as for example to those below grades who could be members of Bid Evaluation Committees, those preparing technical specifications and qualification requirements and officers involved in the management of contracts including certification of acceptance of goods/ works/services and payments</p> <p>Disclosure of Asset Act to apply for those involved in procurement, as for example, members of Bid Evaluation Committees, those preparing technical specifications and qualification requirement, bid document preparation, evaluation and award and contract implementation, inspection and certification of acceptance goods, works and services including consulting services, irrespective of level/grade</p>		<p>To include all officials involved in procurement process for financial disclosure</p>

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

Name/organisation:

Date:

	<ul style="list-style-type: none"> • verify the declarations for the purpose of detecting offences under Section 11 of the Act. <p>The enactment of the DoA Act 2018, not only repealed the DoA Act 1991 but extended the scope of coverage of assets to be declared and the categories of persons who shall make a declaration to the Commission.</p> <p>As per Section 3 of the DoA Act 2018, the following categories of persons have an obligation to submit the declaration of assets form to the ICAC:</p> <ul style="list-style-type: none"> • Every member of the National Assembly, including the Speaker and very Minister; • Every member of the Rodrigues Regional Assembly, including the Chairperson and every Commissioner; • Every Councillor of a Municipal City Council, Municipal Town Council or District Council; • Every Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, Chairperson and Vice-Chairperson of a Municipal City Council, Municipal Town Council or District Council, as the case may be; • Every senior public officer; • Every Chief Executive of a Municipal City Council, Municipal Town Council or District Council, and every officer of such councils drawing salary at the level of Deputy Permanent Secretary and above; • Every Chairperson and Chief Executive Officer of Statutory bodies, and every officer of such Statutory bodies drawing salary at the level of Deputy Permanent Secretary and above; and • Such other persons as may be prescribed. 				
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