

ANNEX 1: BLI AND CPI ASSESSMENT DATASHEET

Baseline Indicator	Status and Trend	Score	Compliance and Performance Indicator	Status	Compliance and Performance Data Source (see OECD-DAC Methodology, PART 2, for review sources)	Proposed Actions	Priority
Pillar I – Legislative and Regulatory Framework							
1) The public procurement legislative and regulatory framework.							
a) - Scope of application and coverage of the regulatory framework and public access to legislation..	The Public Procurement and Disposal Act (PPDA) of 2005 and the Public Procurement and Disposal Regulations (Procurement Regulations) of 2006 provides a comprehensive legal framework for public procurement with a clear hierarchical distinction. The PPDA and Regulations are published and widely distributed within government. The PPOA intent to publicise the Act and Regulation on its website, however, at the moment they are not widely available free of cost to the public at large as they may only be bought at the Government Printer. The PPDA and Regulations covers goods, works and services for all procurement using national funds, rf. PPDA art. 3, which defines the applicability of the PPDA and defines the notion of a “procuring entity” and the Regulations art. 3.	2	NA			Publish Act and Regulations on PPOA website	High
b) - Procurement methods.	The procurement methods are clearly established in the PPDA (PPDA Part IV-VI) and clear accountability links are established within the law. The First Schedule of the Regulations provide a full overview of the applicable thresholds. There is a need to further define the applicability of the “urgent need”-clause in Art. 74 (3). This interpretation is currently not provided in the Regulations and could be provided in a set of procurement guidelines or in a manual. According to PPDA art. 29, competitive procurement is the default method of procurement. PPDA art. 30 prohibit the fractioning of procurements. PPDA art. 71 provides for international tendering. However, the phrasing “if there will not be effective competition unless foreign persons participate” is open to interpretation, and this interpretation is not provided in the Regulations. Interpretation could be provided in a set of Guidelines.	3	Percentage of procurement (in volume and in number of contracts) carried out through open tendering.	1 percent of the total number of cases were carried out through open procurement, to a value corresponding to 17 percent of the total volume. There was considerable differences between PE:s, ranging from 70 percent of volume in open procurement, down to below 10 percent (due to large restricted procurements). During validation workshop the participants confirmed that the CPI information was in line with what they would have expected, especially regarding a very high ratio of quotations (10 percent in volume and 90 percent in numbers).	All procurements undertaken in 7 PEs from the 1st of January 2007	Research/study on underlying reasons for low number of open procurements. Explore barriers and incentives for using open procurement. Dialogue/ sensitization of PEs on preferred procurement method.	High
c) - Advertising rules and time limits.	PPDA art. 54 prescribe for public advertisement. The Procurement Regulations art. 40 establish the minimum time for preparation of tenders (defined as the period of time between whatever steps the procuring entity takes to bring the invitation to tender to the attention of those who may wish to submit tenders and the deadline for submitting tenders, cf. PPDA art. 55) as a period of 21 days. For international tendering, the Regulations art. 36 provide a 30 days time limit between advertisement and deadline for submission of international tenders (with reference to PPDA art. 71 (c)). According to PPDA art. 54, publication of open tenders shall take place at least twice in a newspaper of general nationwide circulation and on relevant websites. The standard advertising format (invitation to tender) is generally provided in the STDs	3	(a) Percentage of invitations for open tenders publicly advertised	44 percent of tenders were publicly advertised according to the PE:s surveyed. However, it is important to note that the case sampling also includes other methods of procurement.	72 procurement cases from 8 procuring entities (sample contains other methods of procurement as well).		
			(b) - Average number of days between invitation to tender advertisement and tender opening by type of procurement.	Average 21, Median 19. Not possible to divide into type of procurement due to lack of information.		Advertisement rules to be further spelled out in forthcoming Manual. Follow-up training of PEs to be conducted.	High

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d) - Rules on participation and qualitative selection	<p>PPDA art. 32 allows for the use of pre-qualification procedures. The Procurement Regulations art. 23 and 24 further details the procedures for pre-qualification. A standard procurement prequalification document has been developed for works, heavy equipment, supply and installation contracts providing detailed information, template application forms and instructions.</p> <p>The PPDA and Regulations are not specifying that pass/fail is the main basis for determining qualification</p> <p>Another issue related to qualification and registration is that of the registration lists maintained by the Ministry of Works (MoW). The MoW has a mandate to register contractors and consultants and is maintaining registers categorizing these depending on capacity and qualifications. Registration is mandatory for contractors and consultants wishing to work for the MoW – and other public entities. There is no specific legal framework guiding the registration committees of the MoW, however, the committees have developed their own procedural guidelines. Notably, the Procedures for Registration and Upgrading of Building Contractors allow for temporary registration of foreign companies ha</p> <p>The PPDA art. 39 prescribe the use of preferences and reservations. The Regulations art. 28</p> <p>The PPDA articles 40-43 provide exclusion clauses for corrupt, fraudulent and collusive pra</p>	0	Percentage of open tender documents that include provisions barring groups of bidders from participating for reasons other than qualifications or acceptable exclusions.	N/A		Further guidancen on the use of registraiton lists/ prequalification to be spelled out in Manual	High
e) - Tender documentation and technical specifications.	<p>PPDA art. 52 establish the content of the tender documents and prescribes that tender documents shall allow for fair competition. PPDA art. 34 require the procuring entity to prepare specific requirements that are clear and all-encompassing. Art 34 (3) prescribes that technical requirements shall relate to performance rather than to design and shall be based on national or international standards. Also, technical requirements must not refer particular trademarks, unless there is no other sufficiently precise way of describing the requirements and the equivalent are allowed.</p>	3	Percentage of tenders rejected in in each process.	37 percent of suppliers who received tender specification did not submit a tender according to the PE:s. Of the submitted tenders 29 percent was rejected in the preliminary evaluation and 45 percent in the technical evaluation. During validation workshop this was considered to be high, although not misrepresentative. In general the perception was that suppliers did not fully understand the requirements.	60 procurement cases where tender specifications have been sent out and 26 procurement cases where evaluation has been conducted	Additional guidance/ explanation to suppliers, e.g. in the form of supplier oriented manuals/ publication, which could include relevant check lists and examples. Establish a supplier hotline, where suppliers can obtain free and easy guidance. Increased dialogue with and training of suppliers to be offered by PPOA.	Medium
f) - Tender evaluation and award criteria	<p>PPDA art. 52 (3)(i) prescribes that the tender documents include the procedures and criteria to be used to compare and evaluate the tenders.</p> <p>The PPDA and the Regulations do not stipulate that a pass/fail principle should be applied when evaluating non-monetary criteria.</p> <p>The STD for selection of consultants provides clear guidance on how the technical aspects and financial aspects are to be evaluated.</p> <p>PPDA art. 44 and 45 (5) prohibits disclosure of information during the evaluation process.</p>	1	(a) Percentage of tenders including non quantifiable or subjective evaluation or post qualification criteria.	According to the surveyed PE:s 45 percent of the tenders specifications did not have specified evaluation criteria. However, this is most likely due to the high number of quotations in the sample, and relatively few open tenders. Considering that STDs are widely distributed and used, it can be assumed that the actual percentage is probably lower (for competitive tendering)	72 procurement cases from 8 procuring entities (sample contains other methods than open procurement as well).	Clearly stipulate and explain pass/fail principle in forthcoming manual.	High
			(b) Public perception of confidentiality of tender evaluation process.	N/A			
g) – Submission, receipt and opening of tenders	<p>PPDA art. 60 regulate the tender opening process. Art. 60 (3) demands public opening of tenders. Art. 60 (5) and (6) stipulates that records for bid openings are retained and available for review. PPDA art. 44 provide for confidentiality prior to bid opening and during debriefing. PPDA art. 58 define the procedures for submitting and receiving tenders.</p>	3	Percentage of open tenders opened publicly and recorded.	42 percent	72 procurement cases from 8 procuring entities (sample contains other methods than open procurement as well).		
h) – Complaints system structure and sequence	<p>PPDA Part VII regulates the administrative review of procurement proceedings and PPDA art. 25 establish the Public Procurement Complaints and Review Board (PPCRB). PPDA Part VII establishes the PPCRB as the first avenue of complaints. PPDA art. 100 establishes the right to judicial review with the High Court, and art 93 (2) by interpretation to the contrary establishes the matters that are subject to review. PPDA art 97 requires the PPCRB to complete its review within 30 days, and art. 100 (1) provide a 14 days limit for request for judicial review and art. 100 (4) require the PPCRB to finalise the judicial review within 30 days.</p>	3	Percentage of cases resolved within the terms established in the legal framework.				

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2) Implementing Regulations and Documentation							
a) – Implementing regulation that provides defined processes and procedures.	The Public Procurement and Disposal Regulations, 2006 have been issued by the Ministry of Finance. PPDA art. 9 (d) provides the PPOA with a mandate to regularly maintain and update the Regulations.	3	NA				
b) – Model tender documents for goods, works, and services.	Standard Tender Documents (STDs) have been developed and are used – including for competitive tendering. PPDA art. Assigns the responsibility to update the STDs to the PPOA.	3	Percentage of open tenders that use model tender documents or clauses.	66 percent reported by PEs also including other types of procurement. Appears to be rather high level, and indicates that the newly issued and now piloted STDs has reached the intended dissemination.	72 procurement cases from 8 procuring entities (sample contains other methods than open procurement as well).		
c) – Procedures for pre-qualification.	PPDA art. 32 establish that procuring entities may apply a pre-qualification procedure. PPDA art. 31 (3) read in conjunction with art. 31 (1) provides guidance on the pre-qualification. The Regulations art. 24 (3) further stipulate the requirements. Also, a standard procurement prequalification document has been developed for works, heavy equipment, supply and installation contracts providing detailed information, template application forms and instructions. The Regulations art. 59 (2) (c) determines that in selecting among those pre-qualified persons, who will be asked for quotation, the procuring entity shall ensure a fair and equal rotation. However, the concept of “fair and equal rotation” requires further explanation/ illustration, which could be done within a set of guidelines/ manual. The existing procedures do not specify the use of pass/fail for application of qualification criteria. The legislative framework and the STD on pre-qualification do not provide guidance on when to apply a pre-qualification procedure.	1	a) Percentage of cases for which prequalification was used appropriately as prescribed in the legal framework. b) Percentage of cases that used objective pass/fail prqualification criteria as opposed to sibjective qualitative ones.	a) 56 percent of the cases where restricted tender was used (18 cases) had used prequalification b) Of the restricted tenders where prequalification was used 50 percent used pass/fail criteria (5 cases)	18 cases of restricted tenders from sampled PEs	The concept of “fair and equal rotation” should be explained/ illustrated in the manual. The manual and STDs on pre-qualification should also provide guidance on when to apply a pre-qualification procedure.	High
d) – Procedures for contracting for services or other requirements in which technical capacity is a key criterion.	The STD for selection of consultants provide for the opportunity to use technical capacity in selection, but neither the PPDA nor the Regulations elaborate on the procedure.	1	NA			The procedure for technical capacity in selection to be spelled out in the Manual.	High
e) – User’s guide or manual for contracting entities.	The PPOA has hired a consultant to develop a procurement manual. However, at present no manual is readily available and circulated.	0	NA			Manual to be developed, widely distributed and made accessible on the PPOA website. The PPOA should use the issuance of the Manual as a vehicle for conducting further sensitisation in PEs	High
f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts.	The General Conditions for Contract (GCC) are provided in the STDs and are generally consistent with international practice, i.e. FIDIC rules, etc.	3	Percentage of tenders that use the GCC, standard clauses or templates as applicable.	N/A			

Pillar II. Institutional Framework and Management Capacity

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3) Integration and mainstreaming of the public procurement system into the public sector governance system.							
a) – Procurement planning and data on costing are part of the budget formulation and multiyear planning.	The PPDA art. 26 (3) (a) stipulate that “all procurement shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan”. In line with this the Regulations art. 20 and 21 provides further details on the procurement planning. Thus, Regulations art. 20 requires the annual procurement planning to be integrated with applicable budget processes and based on indicative or approved budgets. Also, “where appropriate, multi-year procurement plans may be prepared and shall be integrated into the medium term budgetary expenditure framework. Notably, Regulations art. 21 provides details on the required contents of the procurement plan	3	Percentage of contracts which are not in procurement plan aligned with budget	This item did not form part of the survey. However, the high percentage in value and number of quotations (10 percent) indicate a prevalence for ad hoc procurement rather than planned (to be compared with 17 percent open procurement)		Capacity development and sensitization within PE:s in order to improve procurement planning as stated in the legislation. PPOA to enter into dialogue with relevant departments of the MoF on how to ensure that procurement planning becomes an integrated part of the budgeting process. Make proper procurement planning an element of the Performance Contracts and Performance Assessment System of relevant senior staff in all PEs.	High
b) – Budget law and financial procedures support timely procurement, contract execution, and payment.	There are no legal provisions, procedures or guidelines on the time limits for appropriation of funds, the processing of invoices and payments.	0	(a) Percentage of late payments (e.g. exceeding the contractually specified payment schedule).	N/A		Provision should be made in procurement guidelines or in PFM Regulations to also include issues related to late payment and strengthen linkage to budget allocation and execution. Could also be amended to existing regulations in order to provide a more solid legal base.	High
			(b) Average number of days in arrears.	N/A			
c) – Procurement actions not initiated without budget appropriations.	PPDA art. 26 (6) determines that a procurement may not be initiated “until it is satisfied that sufficient funds have been set aside in its budget to meet the obligations of the resulting contract.” The current “votebook-system” as well as IFMIS (where properly rolled out) provides for a system ensuring enforcement of the law.	3	NA				
d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.	The current procurement system does not provide for systematic feedback into the financial management and budgetary system on the completion of all major contracts. IFMIS has this feature, but it is currently not applied.	0	a) Percentage of major contracts with completion reports. b) Average time after final contract liquidation within which completion reports are finalized.	Information gathered on this CPI relates to the existence of completion reports of the procurement process as such, hence it is not clearly linked to the BLI. In the surveyed PE:s it was reported that 40 percent of the tenders had a completion report (several procurement processes were still ongoing).	72 cases, from 8 PE's.	Guidelines and procedures should be developed to enable a systematic reporting, preferably by a standardised format which should be made mandatory. Again linkage should be made to the performance assessment system already in place.	High
4) Normative and regulatory functions.							

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a) – Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework.	The PPDA, art. 8.(1) establishes the Public Procurement Oversight Authority (PPOA) as the normative/regulatory body. Its functions are defined in PPDA, art. 9.	3	NA				
b) – The responsibilities include at least those required in this sub indicator (see description of the indicators and sub – indicators)	The PPDA, art. 9 defines the responsibilities of the PPOA. The functions include all the responsibilities outlined under the indicator with the exception of managing statistical databases.	2	NA			Responsibilities regarding development, management and maintenance of databases should be made clear within the procurement system.	Low
c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b).	PPDA art 10.(2) prescribes that the Director-General of the PPOA shall be appointed by the Public Procurement Oversight Advisory Board with the approval of Parliament. The PPOAB itself is established as an unincorporated body (PPDA, art. 21) with its members being appointed by the Minister and approved by Parliament (PPDA, art. 22.(1)). The PPDA, art. 18 establish the financial arrangements for the PPOA. Funds are secured in the Act, art. 18.(5) through a combination of sources, including money appropriated by Parliament for the running of the PPOA.	3	Percentage of surveyed actors that perceive the function being performed as competently and timely.	It is generally perceived that the function PPOA is still very new and under formation (will be formally inaugurated during 2007) and therefore most stakeholders consider it too early to give an opinion on the functioning of PPOA		The PPOA should intensify its promotion and branding efforts towards its client-base. The main message should continuously be that the PPOA is established to help the clients - i.e. the PEs in their reform/development efforts. In order to follow up on this, the performance management system to be established should also measure on the level of satisfaction among the clients with the services provided by the PPOA.	Medium
d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.	The PPDA and the Regulations do not include provisions addressing PPOA's role in execution of procurement transactions. The functions and responsibilities assigned to the PPOA de facto do not include execution of any procurement transactions.	3	Percentage of surveyed actors that perceive the regulatory function being independent from procurement operations.	See above			
5. Institutional development capacity.							
a) – System for collecting and disseminating procurement information and accessibility.	PPOA is currently in the process of developing a web-based system for collecting and disseminating procurement information, including tender invitations, request for proposals, and contract award information for all central government contracts above 5,000,000 KSh. When officially launched the system will enable all interested parties to easily and at very low cost access procurement information. As the system is however not yet launched, awareness of the webpage among stakeholders (including the procuring entities) is at present very restricted, in practice resulting in limited accessibility.	1	NA.			Effort need to be invested to launch website, as well as development of a system to capture the relevant information from PEs. It will furthermore be required that some form of dissemination activity is undertaken in order to raise awareness among stakeholders	High

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b) – Systems and procedures for collecting and monitoring national procurement statistics.	The Government is currently implementing an electronic Integrated Financial Management Information System (IFMIS) at the central government level, which includes a procurement module recently rolled out in 24 ministries. The system enables users to collecting and monitoring procurement information and statistics at all stages in the procurement process. Being only recently implemented, however, the reliability of data collected through IFMIS yet remains untested, and the tool is not being broadly used for analysis of information by the procuring entities. In addition, when rolled out IFMIS will only target the central government level.	1	Number of days by which the information is outdated.	N/A		A system for collecting and monitoring procurement statistics should be developed. Currently a pilot is planned using the OECD-DAC framework exercise to initiate the development of such a system, with the aim of connecting a monitoring system to also follow up and provide management information on performance	Medium
c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity.	At the time of writing, no complete training and capacity building strategy is in place, although initial sensitisation sessions for government and private sector participants have been held. The PPOA is currently in the process of developing a comprehensive training and capacity building strategy, including training programmes.	0	(a) Number of procurement officers in the central government that receives formal training in the year. (b) Average waiting time to get in a formal training event.	N/A		Finalisation and roll-out of capacity development strategy in order to meet urgent training needs should be prioritised.	High
d) – Quality control standards and staff performance evaluation for capacity development.	Performance Contracting was introduced in Kenya in 2003, spelt out in the Economic Recovery Strategy for Wealth and Employment Creation and led by the Performance Contracts Steering Committee. The Performance Contracts currently cover all parts of the central government as well as a number of pilot state corporations and local authorities. Within all areas, including procurement, the Performance Contracts are based on processes of performance target setting, performance planning, performance monitoring and reporting, and performance appraisal. Kenya won the United Nations Public Service Award 2007 for implementing Performance Contracting. In addition to the Performance Contracts, a Performance Appraisal System (PAS) applicable to all categories of staff in the Public Service has been introduced in 2006. PAS provides for work planning and setting of performance targets, assessment of staff competencies and values assessment, performance appraisal, and completion of a staff Performance Appraisal Report Form targeting the responsibilities and job functions of the individual officer	3	NA	N/A		It should be explored to which extent the potential value of the Performance Appraisal System as a key incentive mechanism among procurement officers is fully utilised. In addition, the potential for integrating performance contracts and performance monitoring and management should be further explored and a strategy for its utilisation developed.	High
Pillar III. Procurement Operations and Market Practices							
6. Efficiency of procurement operations and practices.			Average number of days for procurement cycle from tender advertisement to contract award	58 days average, 39,5 median. Since the case sample consists of cases from january-july and not only open procurements, there is a large variation within the sample, manifested in the large difference between median and average. During validation workshop it was generally considered to be too low, which was attributed to the large number of quotations.	Average based on 34 cases from 8 PE:s.		

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a) – Adequacy of procurement competence among government officials.	<p>Skills and knowledge profiles for specialised procurement jobs are defined in the Revised Scheme of Service for Supply Chain Management Personnel, issued by the Office of the President. The Scheme contains clear provisions for the qualifications, skills and experience required for appointment.</p> <p>The Scheme is systematically applied in the selective recruitment of procurement staff led by the Public Service Commission.</p> <p>The knowledge – or access to knowledge – existing among staff required to undertake procurement activities on an ad hoc basis vary between different types of procuring entities. In general, however, the knowledge and access to knowledge does not fulfil the need for specialised procurement knowledge</p>	2	NA			This is linked to the capacity development strategy under development, and should be taken into account when implementing training.	High
b) –Procurement training and information programs	<p>Procurement training programmes at BSc and MSc levels are offered by a number of public and private institutions. These courses primarily target the public sector, from which the vast majority of students are recruited. The training offered is generally considered to match the needs of the system, and the course content is regularly updated based on analyses of the public sector demand and feedback from the public servants enrolled on the courses. The frequency of these courses is reported to be sufficient, the main barrier being high admission fees often payable by the students out of their own pockets.</p> <p>Training programmes for private sector participants are very limited, although some training institutions report that a shift towards delivery of short term courses target this is group is underway.</p> <p>The PPOA is currently not offering training programmes, although a series of sensitisation sessions targeting both public and private sector participants have been held. Many stakeholders report that this type of information programmes is in short supply.</p>	1	NA			Increase efforts of sensitisation to a broader spectrum of stakeholders, and to engage in a dialogue with potential partners such as universities, business schools on procurement training.	High
c) – Norms for the safekeeping of records and documents related to transactions and contract management.	<p>The PPDA, art. 45 and the Regulations, art. 34 establish the norms for the safekeeping of records and documents related to procurement transactions and contract management. The PPDA, art. 45.(2) outlines the documents required to be included in each record. The document retention policy is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles. No security protocols to protect records either physically or electronically have yet been established.</p>	2	Percentage of contracts found with incomplete records as per the list given for this sub indicator keeping.	It was reported from PE:s that 11 percent of the cases surveyed did not have complete records. It was also manifested by the fact that much information for the CPI assessment was not readily available, thereby also perceived as a burden by the surveyed PE:s .	72 cases, from 8 PE's. (Information has not been independently verified, during validation exercise it was generally believed to be too positive)	Guidelines and best practices should be developed to enable a systematic and functional safekeeping and archiving of procurement related information.	High
d) – Provisions for delegation of authority.	The PPDA, art. 26.(1) give provisions for a decentralised procurement process. Delegation is regulated by law (PPDA, art. 26), and accountability for decisions is precisely defined (PPDA, art. 27).	3	NA				
7. Functionality of the public procurement market.							
a) – Effective mechanisms for partnerships between the public and private sector	<p>The main forum for government and private sector inter-action on procurement is the Public Procurement Oversight Advisory Board (PPOAB) established by PPDA art. 21. The PPOAB consists of 9 members appointed by a range of private sector institutions listed in the Regulations art. 5. Also, the PPDA art. 134 regulates the annual consultative meeting between the public and the private sector for the purpose of joint consultations.</p> <p>The dialogue between the government and the private sector is generally open, and private sector organisations were invited to comment on the PPDA and Regulations when the legislation was in the making. Thus, the private sector asserted their influence directly on the current version of the legislation (in particular on the preference issue).</p> <p>This being said, there is no established government program to help build procurement capacity for private companies.</p> <p>Not is there currently a legal framework for public-private partnership (PPP).</p>	1	Percentage of favorable opinion on effectiveness of mechanisms by relevant organizations or agencies.	The private sector representatives interviewed generally expressed satisfaction with the interaction with government and the general level of involvement. However, the private sector repeatedly voiced the need for a stronger government focus on SME development, including the inclusion of SMEs in the procurement processes.		Sensitisation and awareness raising efforts should be undertaken, among PEs as well as private sector (preferably via existing organisations and associations), on the importance of dialogue and transparency in the procurement process and market.	Low

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b) – Private sector institutions are well organized and able to facilitate access to the market.	The private sector is relatively well-organised within a series of well-established organisations and associations. However, the competition for large contracts remains limited to a relatively small number of firms. E.g. only 4,7% of the Contractors on the Register of Approved Building Contractors (June, 2007 edition) are listed in the top category (category A), thus allowing them to compete for the large scale building contracts.	2	Average number of tenders submitted in each process	37 percent of suppliers who received tender specification did not submit a tender (see also indicator 1E)		Information and training campaigns directed towards the private sector, in particular SMEs who often do not have the capacity to submit eligible tenders.	Medium
c) – Systemic constraints inhibiting the private sector's capacity to access the procurement market.	According to the private sector representatives interviewed, there are generally no major constraints inhibiting private sector access to the market. The only major impediment mentioned was the difficulties faced by SMEs in obtaining adequate credit. It was noted that in recent years the Government has improved the business climate, e.g. by reducing the time and number of licences required to register a company (now down to one licence) and in that local authorities have also changed their by-laws and requirements. The competition law/ framework is currently under review with a commission under the Ministry of Finance.	2	NA			An in-depth study should be conducted in order to assess the scope and scale of the issues related to collateral and registration. Based on the findings, dialogue should be established between PPOA, SME representatives and other relevant stakeholders with a view to identifying solutions to the issues identified.	Medium
8. Existence of contract administration and dispute resolution provisions.							
a) – Procedures are clearly defined for undertaking contract administration responsibilities	The Procurement Regulations art. 17 require a procuring entity to establish an inspection and acceptance committee, which shall inspect and test the goods, works and services immediately after delivery. In addition the STD generally includes clauses on acceptance and contract amendments are part of the standard clauses. Also, clauses are generally consistent with international practices. Procedures for inspection (QA) and testing of goods are provided in the STD on procurement of goods, section 3.8. Supervision of civil works are typically carried out by officials of the Ministry of Works. The STDs and inherent standard contracts include clear payment conditions and regimes, however the private sector representatives complained that payments were often delayed.	2	Percentage of satisfactory opinions on performance of the system.	The main point concerning contract administration related to delays in payment. According to the private sector representatives interviewed, delays in payment has a "trickle-down" effect in that companies - and especially SMEs - then have difficulties in honoring their obligations towards their creditors, e.g. banks, which again has adverse effects on their subsequent abilities to obtain credit.		The PPOA should undertake a more in-depth study on the issue of late payments, identifying the exact reasons, the magnitude and the effects of the problem. The study should also investigate how payments and completion reports for budget execution (see indicator 3.d) can be better interlinked. PPOA to specifically monitor this aspect and provide direct support to those PEs facing problems.	High
b) – Contracts include adequate dispute resolution procedures.	The Arbitration Act of 1995 provides the legal framework for arbitration in Kenya. The law is substantially based on UNCITRAL standards, which makes it consistent with generally accepted practices for neutrality of arbitrators, due process, expediency and enforceability. Kenya accepts as a matter of course international arbitration for international competitive bidding. Provisions for Alternative Dispute Resolution (ADR) are standard in the contract documents forming part of the STDs.	3	Percentage of contracts that include ADR provisions.	N/A			
c) – Procedures exist to enforce the outcome of the dispute resolution process.	Kenya is a member of the New York Convention on enforcement of international arbitration awards. <i>Due to lack of data on sub-criteria (b) and (c), this indicator has not been scored.</i>	-	NA				
Pillar IV. Integrity and Transparency of the Public Procurement System							
9. Effectiveness of control and audit systems							

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a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement.	The Internal Auditor General (IAG) is responsible for the internal audit function across government, including in the area of procurement, whereas external audit is carried out by the National Audit Office (NAO). The work of the IAG is governed by the Public Financial Management act, 2003, to which Regulations have still to be issued. However, the IAG applies its internal audit manual of 2005. The IAG undertakes internal control in all public entities, excluding parastatals, which are controlled by the State Corporations Inspectorate reporting directly to the Office of the President. The NAO derives its mandate from the Constitution and is further governed by the Public Audit Act, 2003. NAO audits are carried out in all public entities (including parastatals) and reports go directly to the Parliament (Public Accounts Committee). The NAO conduct financial audit, systems audit and performance audit. Procurement is included in the latter. The PPDA furthermore provides the PPOA with the mandate to inspect and audit procurement contracts (PPDA art. 49).The PPDA art. 9 include in the functions of the PPOA to monitor the public procur	2	NA				
b) – Enforcement and follow-up on findings and recommendations of the control.	Internal audit is carried out on an on-going basis throughout the FY and in accordance with the required annual work plan. According to the AIG, internal audit recommendations are generally complied with as they are directly linked to the budget performance report. External audit by the NAO is carried out on an annual basis, but implementation of NAO recommendations is flawed and lengthy. As mentioned above, the NAO reports to the Public Accounts Committee of Parliament and Parliament then develops a set of recommendations. These are in turn passed on to the Treasury, which issues a Memorandum, which is the instrument upon which implementation of NAO recommendations is based. The last set of recommendations adopted by Parliament related to the NAO report for the FY 97/98.	1	NA			PPOA to establish formalised dialogue with NAO and IAG with a view to developing a joint strategy for improving enforcement and follow-up under the control framework. Joint strategy for awareness raising among Committee members on the importance of an efficient audit system to be developed.	High
c) – The internal control system provides timely information on compliance to enable management action.	The internal audit manual provides written standards for reporting to management along with regular reporting requirement, however it was generally observed that these standards are not always complied with.	2	NA			PPOA to establish dialogue with IAG with a view to developing a joint strategy to improve compliance with reporting standards.	High
d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.	The Internal Audit Manual elaborates on the internal control routines and procedures, and the IAG testifies that there is sufficient information retained to enable auditors to verify that procedures are adhered to. However, record keeping remains a problem also in this area.	3	NA				
e) – Auditors are sufficiently informed about procurement requirements.	Both internal and external auditors are trained in procurement as part of their regular professional in-house training. However, they are not procurement experts, and currently procurement specialists are not called in to form part of the control and audit teams.	1	NA			PPOA, NAO and IAG need to establish formal dialogue with a view to developing a multi-pronged strategy for improvement of auditors' procurement proficiency.	High
10. Efficiency of appeals mechanism.							

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Baseline Indicator	Status and Trend	Score	Compliance and Performance Indicator	Status	Compliance and Performance Data Source (see OECD-DAC Methodology, PART 2, for review sources)	Proposed Actions	Priority
a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	The Regulations Part VI, B specifies the procedures for review and determines that decisions of the PPCRB shall be based on the available evidence submitted by the parties. PPCRB decisions are subject to judicial review by the High Court and can also be appealed within the regular court system (PPDA art. 112). However, there is no specific appeals body tasked with reviewing the decisions of the PPCRB. The Regulations provide clear guidance on the time limits for submission and review of complaints. These time limits appear adequate.	1	NA				
b) – Capacity of the complaint review system and enforcement of decisions.	The complaints review system is clearly described in the PPDA and Regulations and provides precise conditions and timeframes as well as clear enforcement mechanisms. According to PPDA art. 98, the PPCRB can, as a measure of enforcement, annul procurement proceedings, give directions to the procuring entity, alter the procuring entity's decision, and order payment of costs between parties to the review.	3	a) Percentage of complaints processed within the time limits posted or set out in the legal framework. b) Percentage of decisions taken that have been actually enforced.				
c) – Fairness of the complaints system.	The procedures described in the PPDA and Regulations provide for PPCRB decisions, which are based on information relevant to the case; which are balanced and unbiased; which are subject to judicial review; and provide for relevant remedies.	3	Percentage of favorable opinions by the participants in the system on the fairness of the process				
d) – Public access to decisions.	The decisions of the PPCRB are readily available at the PPOA/PPCRB premises but are currently not published in any official gazette nor on the PPOA website or any other government websites. The legal framework does not regulate the publication of PPCRB decisions.	1				PPCRB decisions to be made publicly available on PPOA website.	High
(e) – Independence of the administrative review body.	The PPCRB is independent and autonomous with regard to solving complaints. The PPCRB has a budget line on the PPOA budget. In turn, the PPOA has its own vote in the approbation bill.	3	NA				
11. Accessibility to information.							

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Publication and distribution of information.	Tender invitations are generally published in national newspapers while other types of procurement information (e.g. contract award information) are in many cases only available from the individual procuring entities on request. There is no central media for publication of procurement information. However, the PPOA soon expects to officially launch a centralised webpage allowing interested parties to access procurement information.	2	NA			PPOA website to be constructed (including uploading of all relevant procurement information), launched and promoted among stakeholders. Responsibility of website maintenance to be clearly established.	High
12. Ethics and anticorruption policy and measures.							
a) - Legal provisions on corruption, fraud, conflict of interest, and unethical behaviour.	The PPDA defines corruption (by reference to the Anti-Corruption and Economic Crimes Act, 2003), fraudulent practices, collusion and conflict of interest. PPDA art. 40-44 further deliberates on these offences. However, the legal framework does not specifically demand for fraud, corruption of conflict of interest references in the tendering documents. A joint working group between the PPOA and the Kenya Anti-Corruption Commission (KACC) is currently reviewing the STDs ensuring proper anti-corruption and –fraud clauses. This work is expected finalised by the end of 2007.	2	NA				
b) – Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices.	PPDA art. 40-41 establishes corruption, fraud, collusion, conflict of interest and breach of confidentiality as offences. The PPDA art. 137 provides a general penalty including fine and imprisonment.	3	NA				

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c) – Enforcement of rulings and penalties.	The KACC produces monthly corruption reports indicating number of corruption reports processed, number of new cases taken up for action (either by KACC, by other Investigative Agencies, or by Public Service Organisations), number of cases taken to court, and number of persons arrested and charged as well as a number of other statistics. Recent figures show that only a fragment of the cases reported result in prosecution and punishment. Despite receiving between 300 and 500 monthly cases on average, in November 2007 only 4 people were e.g. arrested and charged for corrupt practices. All data is publically available on KACC's website.	2	(a) Percentage of corruption accusations that go to trial. (b) Percentage of those that actually result in application of sanctions or penalties.			PPOA to establish dialogue with the KACC on to improve enforcement levels with a view to curbing corruption in procurement.	Low
d) – Measures exist to prevent and detect fraud and corruption in public procurement.	<i>Due to lack of data this indicator can not be scored.</i>	-	Percentage of favorable opinions by the public on the effectiveness of the anti-corruption measures.				
e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors.	There is a vibrant and active civil society but only a few organisations working in the area of public financial management/ procurement. However, a number of professional organisations have been and still are very active in the procurement field. The PPOA Advisory Board along with the annual consultative meeting provide formal fora for on-going inter-action on procurement reform	2					
f) – Mechanism for reporting fraudulent, corrupt, or unethical behavior.	The KACC employs a whole range of mechanisms for reporting cases on fraud and corruption, including a web-based whistleblower-mechanism. The reporting mechanisms are widely accessible and provides for confidentiality. According to the KACC, a large part of cases reported relate to corruption and fraud in procurement.	3					

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g) - Codes of Conduct/Codes of Ethics for participant and provision for disclosure for those in decision making positions.	<p>The Public Officers Ethics Act provides a general Code of Ethics for Public Officials, though without specific provisions for those officials involved in public financial management including procurement.</p> <p>The Wealth Declaration Act requires that public officials submit annual wealth declarations to their PS (or equal).</p> <p>The PPDA art 139 mandates the PPOA to issue a specific Code of Ethics for procurement officials. Such a code has not yet been issued.</p>	1				<p>PPOA to draft Code of Ethics for procurement officers as required by the PPDA. In addition, a strategy for dissemination, launching and awareness activities should be developed.</p>	Low