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KYRGYZ REPUBLIC

COUNTRY PROCUREMENT STATUS REVIEW



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Abbreviations and Acronyms

ADB	Asian Development Bank
BLI	Baseline Indicator
CA	Chamber of Accounts
CFAA	Country Financial Accountability Assessment
CPSR	Country Procurement Status Review
DfID	Department for International Development
DIA	Division on Internal Audit
EBRD	European Bank for Reconstruction and Development
e-GP	Electronic Government Procurement
EU	European Union
GCC	General Conditions of Contract
GDP	Gross Domestic Product
GNI	Gross National Income
GOK	Government of the Kyrgyz Republic
IAs/EAs	Implementing Agencies/Executive Agencies
IDF	Institutional Development Fund of the World Bank
ISRs	Implementation Status and Results Reports
MDTF	multi-donor trust fund
MOF	Ministry of Finance
MOH	Ministry of Health
NPTC	National Procurement Training Center
OECD-DAC	Organization for Economic Co-operation and Development-- Development Assistance Committee
OSCE	Organization for Security and Co-operation in Europe
PEFA	Public Expenditure and Financial Accountability assessment
PFM	Public Financial Management Framework
PPB	Public Procurement Bulletin
PPL	Public Procurement Law
PPMD	Public Procurement Methodology Department of the MOF
SAPPMR	State Agency on Public Procurement and Material Reserves
SBDs	Standard Bidding Documents
SOEs	State-Owned Enterprises
TA	Technical assistance
TFs	Trust Funds
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WB	World Bank

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PREFACE

Basis of the Report

The Country Procurement Status Review (CPSR) report was prepared on the basis of the findings from a joint World Bank (WB)/Asian Development Bank (ADB) mission that visited the Kyrgyz Republic in February 2012. The review was carried out by a task team led by Majed M. El-Bayya (Lead Procurement Specialist, ECSO2) and composed of: Naushad Khan, Procurement Consultant; Lisa K. Miller, Senior Counsel, LEGOP; Nurbek Kurmanaliev, Procurement Specialist, ECSO2; Irina Goncharova, Procurement Specialist, ECSO2; Galina Alagardova, Financial Management Specialist, ECSO2; and from the ADB, Mart Khaltarpurev, Senior Portfolio Management Specialist. Knut J. Leipold, WB Senior Procurement Specialist, ECSO2, assisted the team in the review of e-procurement and M Ilyas Butt, WB Operation Analyst, ECSO2, assisted in the formatting of the report.

Objectives and Scope

Sound public procurement policies and practices are among the essential elements of good governance. The main objectives of the CPSR are: (a) to analyze the Kyrgyz public procurement system, including the existing legal framework, organizational responsibilities, control and oversight mechanisms, capacity, and current procedures and practices, as well as how well these work in practice; and (b) based on these analyses and review, to identify key areas for improvement in public procurement and prepare an action plan for implementation of related revisions to the public procurement system. The review also will provide input to planned World Bank operations in the pipeline, as well as to ongoing operations such as the education SWAp, governance-focused policy reform and the technical assistance for procurement system strengthening through the multi-donor trust fund. The fiduciary review will apply to all governmental institutions and local governments.

CPSR Process

The WB and ADB team worked in close collaboration with the Government of the Kyrgyz Republic (GOK), including the Ministry of Finance (MOF), the Public Procurement Methodology Department of the MOF (PPMD), the counterpart team established by the GOK, and key public procurement entities and oversight bodies. The team based their work on the review of relevant legislation and other background documentation, discussions with the counterpart team, two workshops with several procuring entities and with private sector and civil society representatives, and meetings with key donors. A list of persons met and the counterpart team members is provided in Annex A. A list of the key materials reviewed is provided in Annex B. At the end of the mission, the task team presented to the GOK in a wrap-up meeting the initial key

findings. After completion of the mission, the GOK was provided the indicators assessment included in this report, for comment. A draft final report as well as a pre-final report was shared with the GOK for comments. A dissemination workshop to discuss the report's findings, recommendations, and action plan is planned in October 2012.

Report Structure

The report has three chapters: I- Introduction; II- Assessment of the Public Procurement System; and III- Recommendations and Action Plan. A summary of the main findings and recommendations is provided in the Executive Summary at the beginning of the report. The detailed assessment of the Baseline Indicators is provided in Annex C. Additional Provisions for National Competitive Bidding under WB-financed operations is provided in Annex D.

The assessment of the public procurement system in Chapter II is further divided into four parts in order to relate the discussion to the four pillars developed by the Organization for Economic Cooperation and Development's Development Assistance Committee (OECD/DAC) with the WB, including the OECD/DAC-WB baseline indicators. At the end of each indicator discussed, the main recommendations are presented.

Acknowledgements

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EXECUTIVE SUMMARY

Introduction

1. As part of the World Bank (WB) and Asian Development Bank (ADB) programs in the Kyrgyz Republic, and as an input to planned WB and ADB operations in the pipeline, as well as to ongoing operations such as the education SWAp, governance-focused policy reform, and the technical assistance for procurement system strengthening through the multi-donor trust fund, and in response to the GOK's request for assisting the GOK in assessing their public procurement system, the WB and ADB prepared this Country Procurement Status Review (CPSR) report.
2. The main objectives of the CPSR are: to analyze the strengths and weaknesses of Kyrgyz's public procurement system using international baseline indicators, to identify key areas for improvement in public procurement, and, where possible, to prepare an action plan for implementation of related revisions to the public procurement system.
3. Public expenditures in the Kyrgyz Republic involve a wide range of sectors at central and local government institutions. The estimated budget for 2012 is 97 billion KGS (Kyrgyz Soms). The Kyrgyz Republic's 2011 budget was 104 billion KGS, while the budget for 2010 was 80 billion KGS. The total public expenditure subject to procurement in the Kyrgyz Republic during the year 2011 was about 14.6 billion KGS.
4. This report mainly discusses the areas that could benefit from revision in the Kyrgyz public procurement system, and does not necessarily address the many areas in which the public procurement system is functioning well.

Key Findings

5. The major legal instrument that regulates public procurement in the Kyrgyz Republic is Public Procurement Law No. 69 of May 24, 2004, as amended by Law No. 172 dated July 28, 2008; Law No. 236 dated July 20, 2009; and Law No. 88 dated July 8, 2011 (PPL). There are no implementing regulations detailing matters set out in the PPL, but there are numerous Presidential Decrees and resolutions that supplement the PPL in governing public procurement-related matters. However, these are not comprehensive, coordinated or current. In addition, several resolutions referred to in the PPL appear not to exist or to be no longer in force. Similarly, certain existing resolutions either are not cross-referenced to the PPL or refer to non-corresponding PPL provisions. In addition, these secondary materials often are used to address matters of critical importance that better should be addressed in the PPL, most notably perhaps the specific identity of the Authorized Body. There also is no current Procurement Manual/users' guide or contract management manual.
6. Public procurement is decentralized, with purchasing of goods, works, and services delegated to government agencies at different levels. As per the PPL, an Authorized Body is mandated to provide support to government agencies in conducting

procurement. The Authorized Body is established as part of the legislative framework and is assigned defined functions. However, no specific entity is identified in the PPL as the Authorized Body. The Ministry of Finance (MOF) presently has been so designated by a presidential resolution, and the MOF carries out the related functions through the Public Procurement Methodology Department (PPMD). Responsibilities of the PPMD are specifically set forth in the Regulation on Public Procurement Methodology Department of the Ministry of Finance of the Kyrgyz Republic, although these responsibilities are not entirely reflective of the authority granted to the Authorized Body under the PPL.

7. Two committees have been established within the PPMD. One committee is responsible for hearing procurement complaints, and the second one is responsible for reviewing requests to add contractors to the list of unreliable contractors and suppliers. However, neither committee makes final decisions, instead making recommendations to the Minister of Finance or his deputy for decision. The PPMD director chairs both committees, and there appears to be overlapping membership on the committees. This structure of PPMD raises independence and conflict of interest concerns.

8. Chapter 9 of the PPL is devoted to Protests and Complaints. According to good international practice, entities responsible for reviewing complaints should be independent and should not be engaged in other functions that may pose conflicts of interest. Granting such responsibility to the Authorized Body may create a conflict of interest with the Authorized Body's regulatory function. Independence and conflict of interest concerns are also implicated by the procuring entity-level complaint review process, but such process also permits a procuring entity the opportunity to itself revisit a decision that is the subject of a complaint. Importantly, complaints also may be brought in court.

9. There is a requirement in the PPL for the collection of procurement data, and the Treasury in the MOF is developing a database of contracts. There appears to be no formal flow of information from procuring entities to the PPMD. No sustainable strategy for collection, analysis and maintenance of data exists. Nor is there a mechanism in place to monitor procuring entity compliance with the PPL when implementing public procurement, or an evaluation mechanism. There is no strategy for the next several years on improving the performance of public procurement in the country. No comprehensive annual procurement report is prepared or made public.

10. The GOK is well aware of the potential of e-Procurement in the context of strengthening the public procurement system. The Prime Minister considers e-Procurement as critical for increasing efficiency and transparency of public procurement and reducing opportunities for corruption. The GOK plans to introduce e-Procurement through the PPMD.

11. The level of procurement competence among government officials is low. In most cases, accounting/financial staff are required to undertake procurement in addition to their regular workloads which is not a good practice and may lead to corruption. A

substantial proportion of civil servants responsible for public procurement either has not received any training at all or has been trained only on the previous procurement legislation. Although the GOK has been making efforts to build procurement capacity, no sustainable strategy for procurement capacity building exists. The GOK privatized the National Procurement Training Center (NPTC) in 2009. Under the private ownership, the NPTC appears to have lost its capacity and has stopped providing any training. However, the MOF has a functional training center that, among other things, provides training on procurement. The procurement training provided by the MOF training center is, however, inadequate and demand rather than supply driven.

12. Procurement is not a profession as such, but each government agency can prepare a profile to fulfill its needs for specialists. The profile must be a combination of the standard profile for different specializations provided by the State Personnel Agency, and the experience and skills required by the appointing agency.

13. Procurement planning by procuring entities is normally done after the annual state budget is approved. However, procuring entities are not able to do proper procurement planning as they do not know when the funds will be available. Sometimes it is only a few weeks before the end of the fiscal year when the MOF advises procuring entities of funding availability for procurement. As the procuring entity rushes to commit and spend the funds before the fiscal year lapses, it may choose inappropriate procurement methods, such as single sourcing, conduct uneconomic procurement, or pay for goods, works or services that are not completed. In some cases, procuring entities may conduct procurement without available funds, which may lead to increased cost to the GOK, delayed payment to vendors and/or corruption. In addition, because the state budget is approved only on an annual basis, there are no multi-year budget plans to project future activities, such as large civil works contracts.

14. The Chamber of Accounts (CA) is accountable to the President and the Parliament, which appoints CA members. The CA audits all state bodies yearly. CA capacity to conduct audits is weak, and CA auditors lack the training and experience to apply audit practices in accordance with international standards. Many CA audit reports include significant deficiencies, such as not clearly highlighting the exact nature of control weaknesses, major issues or conclusions relating to the audit of procurement operations. The quality of individual audit reports is not consistent and depends mainly on the experience of the auditors involved in the audit. There are no quality assurance mechanisms within the CA to ensure consistency of the audit work. Follow-up and enforcement of CA findings is weak and selective, and does not necessarily promote compliance by procuring entities with the requirements of the procurement legal framework.

15. The MOF Division on Internal Audit (DIA) has the mandate for controlling execution of the state budget. However DIA auditors are not sufficiently informed about procurement requirements and control systems to conduct quality audits. DIA staff have not participated in public procurement training and are unaware whether such training is available. The DIA is staffed with only four internal auditors who lack training in professional internal auditing skills. In addition, internal auditors in line ministries have

inadequate training on procurement and therefore are unable to conduct quality and objective audits of procuring entity procurement operations. Only fourteen procuring entities have internal audit (IA) units. The follow-up and enforcement of such IA findings is weak and not always communicated to the units audited.

16. The GOK established the Anti-Corruption Service under the National Security Service in November 2011. The Anti-Corruption Service has broad authorities as a law enforcement agency to enforce the anti-corruption legislation. The Anti-Corruption Service is actively engaged in numerous investigations relating to alleged corrupt practices. An anti-corruption website, anticorr.gov.kg, is available to the public for reporting fraud and corruption, including corruption in public procurement. Little evidence is available regarding prosecution and punishment for corrupt practices.

17. Although there may be an intention of the GOK to streamline responsibilities relating to anticorruption efforts, these activities remain fragmented among various entities, including the Anti-Corruption Service, which has broad overall authority; the Prosecutor General, which generally is engaged in matters pertaining to allegations involving Government officials; the Anti-Corruption Department within the Ministry of Interior, which is engaged in matters pertaining to anticorruption generally and to organized crime; and the financial police, which typically are engaged in matters pertaining to financial crimes. While there may be good reasons to assign specific tasks to separate agencies with particular competencies, there also is a risk that a fragmented system may lead to overlap in functions and/or inconsistencies in their application. At the same time, there is a risk that a fragmented system actually could create gaps in the system to the extent that a lack of clarity in roles and responsibilities potentially could leave certain activities uncovered.

18. Civil society is quite active and frequently reports on fraud and corruption. Pursuant to Presidential Decree No. 212, On Improving the Interaction of the Public Administration Bodies with the Civil Society, dated September 29, 2010, forty-one (41) Civil Society Councils have been established for different sectors of the economy. However, there is no civil society council dedicated to public procurement. The main objective of these Civil Society Councils is to monitor and ensure effective use of public resources for their respective sectors.

Key Recommendations

19. The most important recommendations for the GOK to enhance the performance of the public procurement system in the country and to align it with international good practices are as follows: (i) the procurement legislative framework should be reviewed and revised to ensure that the various legislative instruments are comprehensive, consolidated, coordinated and aligned with good international practices, in particular to address observed gaps in coverage and to ensure that the various legal instruments address related topics in the same manner; (ii) a strategy for improvement of the public procurement system in the next several years should be prepared; (iii) annual reports on the performance of public procurement should be prepared and made available to the public through the MOF's public procurement website; and (iv) the MOF training center

should conduct frequent procurement training seminars to government staff involved in conducting or auditing procurement activities. Other important recommendations are listed below, and more detailed recommendations are provided within the report and Annex C.

20. In order to ensure that the Authorized Body effectively regulates public procurement, it should be considered whether to establish the regulatory body as a stand-alone, independent governmental entity, which is the preferred scenario, or instead to upgrade the current PPMD within the MOF to a more independent entity such as the Treasury Department, and to strengthen its capacity in terms of staffing, office space, equipment, and resources.

21. In addition to procuring entity-level and judicial review, a separate independent body, which is the preferred scenario, should be established to review complaints regarding procurement processes and contract awards. To the extent that a complaint review function is retained within the PPMD, proper and clear segregation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest with other PPMD functions.

22. The Authorized Body should develop and implement a sustainable strategy for collecting, analyzing, maintaining and disseminating procurement statistics, including steps to increase the capacity of the PPMD in this area. The Authorized Body also should design and implement an integrated system for monitoring procuring entities' compliance with procurement legislation and for evaluation of procurement staff performance.

23. The Authorized Body should carry out a capacity building needs analysis and, based on the findings of such analysis, prepare and implement a national procurement capacity building strategy. In addition, an effective professional procurement help desk should be established within the Authorized Body.

24. The GOK should finalize and approve the strategy currently under development with the help of the ADB which will provide a roadmap for the adoption of e-Procurement, including an action plan with clearly defined roles, responsibilities, timeline, and cost estimates.

25. The GOK should consider establishing a separate Civil Society Council on public procurement, with both public and private representation, to ensure civil society oversight on compliance with the procurement legislative framework, and to enhance the accountability of public officials involved in the conduct and management of public procurement and the fight against corruption.

26. In order to promote awareness, communications and understanding of, and support for, the public procurement reform process among key stakeholders in public procurement, consideration may be given to holding a one-day dissemination workshop for the public and private sectors, civil societies and key active donors. Such a workshop could generate a better understanding of, and broader support for, the continuing public

procurement reform process. The dissemination workshop is planned to be conducted in October 2012 with key stakeholders and donors. The main objective of this discussion will be to jointly discuss a strategy for an effective implementation of the action plan on procurement reform in the country.

27. Meanwhile, it is recommended that the GOK establish a public procurement performance improvement group. This will ensure that all key stakeholders are involved in continuous development of different aspects of the public procurement system. This group should include representatives from the GOK (PPMD, Treasury, Public Administration, etc); private sector (consulting firms, construction industry and suppliers); and civil society. This Group should be charged with oversight and coordination of public procurement improvement activities.

28. The Government may also consider benefiting from reviewing other countries experiences in public procurement reform such as Albania, Kosovo, FYR of Macedonia and Turkey. Albania has a procurement regulatory agency (PPA) under the Council of Ministers and a procurement complaint review body (procurement review commission) under the Prime Minister. Kosovo has a procurement regulatory agency (public procurement regulatory commission) and procurement complaint review body. Both bodies are fully independent and report directly to Parliament. In addition to those two independent bodies, there is a central procurement agency located within the ministry of finance responsible for the procurement of common used goods. FYR of Macedonia has a procurement regulatory agency (Public Procurement Bureau) under the Minister of Finance and a fully independent procurement complaint review body (procurement complaint commission) which reports to the parliament. FYR of Macedonia, Albania, Georgia and Turkey have their own functional E-procurement system.

Quick Wins

29. While full implementation of the proposed action plan in Chapter III would be a medium- to long- term objective, the following actions could substantially benefit the public procurement function in the country in the short-term:

- (i) Prepare a strategy for the next several years for the improvement of public procurement system.
- (ii) Establish an effective procurement help desk at the PPMD.
- (iii) Take immediate action to strengthen the capacity of the MOF Training Center so that it can provide training on public procurement to procuring entities as well as to the business community.
- (iv) Develop an e-Procurement strategy based on the already available e-Procurement plan in order to have in place a roadmap for the adoption of e-Procurement, including an action plan with clearly defined roles, responsibilities, timelines, and cost estimates.
- (v) The complaint review mechanisms should operate with greater transparency, such as through publication of decisions, which might

enhance perceptions relating to the fairness of the review system. Publication of decisions should be mandated under the PPL.

- (vi) The PPMD should prepare an annual comprehensive procurement report providing statistical and analytical information about the data collected, including data on procuring entity compliance with procurement legislation.
- (vii) Design and deliver a one-year training program to build procurement skills of a minimum of 500 public officials involved in procurement at all levels of government.

CHAPTER I - INTRODUCTION

A. Country Economic Context

1. The Kyrgyz Republic is a landlocked mountainous country in Central Asia with a multi-ethnic population of 5.4 million with Gross National Income (GNI) per capita of \$920 in 2011 (Atlas methodology). Since its independence in 1991, the country has made strong advances toward the creation of a liberal market economy, with the aim of promoting sustained economic growth and fighting poverty. It has sought international integration through trade and investment, notably through membership in the World Trade Organization. Economic reforms resulted in an average annual growth of 5.4 percent over the five (5) years up to and including 2009, and to a decline in poverty from 40 percent to 32 percent and a decline in extreme poverty from 9 percent to 3 percent from 2006 to 2009. The country was ranked 164 out of 178 in Transparency International's Corruption Perception Index for 2011.

2. Recent economic performance was relatively turbulent. Prior to the onset of the global economic crisis, the Kyrgyz Republic had experienced three (3) years of steady growth, averaging 6.7 percent. In 2009, growth slowed to 2.3 percent, but thanks to a large fiscal stimulus (of 7 percentage points) and a bumper harvest, a recession was avoided despite a substantial impact of the global crisis. The growth trend was reversed in 2010, however, as the political and security crisis of April and June had a severe impact on the economy, resulting in a recession (-1.5 percent growth). In 2011, the economy rebounded quickly and, according to preliminary estimates, growth amounted to 7 percent.

3. The political disturbances in April 2010, and the violent clashes in June 2010, created a large shock to the economy and caused further widening of the deficit and increase in external public debt. The events led to loss of life; injuries to persons; damage to infrastructure; destruction of private and public property; and a weakening of confidence within the private sector. Economic activity was disrupted; investment, including foreign direct investment, fell; the financial sector was severely stressed; and trade and services were adversely affected by weak security and several key border closures. The economy contracted by 1.5 percent in 2010. The interim government at the time designed policies to deal with the crisis, which, inter alia, included wage increases to security forces, pension increases, and an increase in capital spending to implement urgent repairs to public property and housing in the southern part of the country. Consequently, the deficit increased further to 4.8 percent, and external public debt went from 45 percent of GDP in 2008 to 48.1 percent in 2011.

B. Kyrgyz Political System

4. Since independence in 1991, the Kyrgyz Republic has had some success in fostering open institutions, but has struggled to embed lasting democracy and civic freedom. Organization for Security and Co-operation in Europe (OSCE) missions have

criticized the electoral process over the past decade as having fallen short of good practice.

5. April 2010 saw anti-government demonstrations directed at the Presidency's perceived centralization and corruption. The protests culminated in riots in Bishkek and several other cities, a violent crackdown, the removal of the President, and the formation of an interim administration headed by a coalition of opposition leaders. The Interim Government assumed the functions of the Parliament, President and Government. In June 2010, violent clashes took place over three (3) days, particularly in the Southern cities of Jalalabad and Osh in the Ferghana Valley.

The Interim Government, which came to power after the April 2010 events, dissolved the Parliament, and held a nation-wide referendum on a new Constitution on June 27, 2010. The newly-adopted Constitution establishes an essentially new form of government – a parliamentary republic, with the key part assigned to the Parliament, which approves the candidacy of the Prime Minister, and the structure and composition of the Government. The National Constitutional Referendum in July 2010 and Parliamentary Elections in October 2010 were the most decisive and noticeable actions of the Interim Government. Despite the efforts of the Interim Government, the peace and stability in the country remained fragile when the Coalition Government was formed. The election at the end of October 2011 of the Prime Minister, Almazbek Atambayev, as the next President puts in place the last piece of the new political system, following the overthrow of Kurmanbek Bakiyev in April 2010.

C. Public Expenditure

6. The 2009 Public Expenditure and Financial Accountability (PEFA) assessment report identifies systemic weaknesses in budget preparation and execution, budget transparency, internal control and audit and cash management, and sets the basis for continued reform of the Public Financial Management (PFM) system in the Kyrgyz Republic. To address these weaknesses, the Ministry of Finance (MOF) approved a PFM Strategy in 2009. The donors (European Union, Sweden, United Kingdom, and Switzerland) provided financial support to implement priority reforms aimed at strengthening transparency, effectiveness and efficiency of public financial management, and developing capacity in public financial management countrywide by establishing a multi-donor trust fund (MDTF). PFM reforms did not move ahead as planned due to the following reasons. First, the political events in April and June 2010 diverted the MOF's focus on reforms. Second, the reallocation of responsibility for linking policies with the budget from the MOF to a new central agency, and the reversal of this arrangement soon after the April 2010 revolution, caused both confusion and delays.

7. Public expenditures in the Kyrgyz Republic involve a wide range of sectors at central and local government institutions. The estimated budget for 2012 is 97 billion KGS (Kyrgyz Soms). The Kyrgyz Republic's 2011 budget was 104 billion KGS, while the budget for 2010 was 80 billion. The total public expenditure subject to procurement in the Kyrgyz Republic during the year 2011 was about 14.6 billion KGS.

8. The Government of the Kyrgyz Republic (GOK) approved its Medium-Term Development Program (MTDP) for 2012-2014 on April 12, 2012, with Decree No.239. The MTDP also refers to the critical need to optimize public financial management to achieve both allocation and administrative/managerial efficiencies. In particular, it identifies the following PFM reforms as critical to guaranteeing the achievement of these goals: (i) drafting the Budget Code; (ii) implementing a phased transition to program budgeting; (iii) completing the modernization of the Central Treasury; (iv) simplifying the model of intergovernmental transfers to make it more transparent; and (v) implementing an automated system of interaction between the republican and local budgets.

9. The linkages between policy, planning and budget remain weak. In particular, expenditure controls remain one of the weakest areas in the budget execution process. These weaknesses have serious implications on the preparation of annual budgets, and will become even more problematic following the adoption of a well-functioning and comprehensive Midterm Budget Framework (MTBF) process, which currently is being implemented. The PEFA Report of 2009 also identifies low budget predictability, with weak revenue forecast and non-transparent mid-year budget revisions, as a key area of weakness. While the process of budget (annual) preparation is based on a regulatory framework with clear deadlines, line ministries almost always fail to meet these deadlines. The same problem exists in the MTBF, because the links between the annual budget and MTBF are still quite weak.

D. Donor Involvement in the Kyrgyz Republic

World Bank Portfolio and Issues Affecting Project Performance

10. Since the Kyrgyz Republic joined the World Bank (WB) in 1992, it has received commitments of US\$ 1 billion for 48 IDA-funded projects, out of which US\$ 0.8 billion has been disbursed. From 1992 until 2000, the Kyrgyz portfolio had a significant focus on budget support. However, since 2001, there has been a gradual shift toward investment projects. There have been two budget support operations since the July 2010 Donors Conference.

11. The FY12 Program was based on the findings of the Joint Economic Assessment, and was designed as the WB's response to the emergency situation that the country faced in 2010. The WB has allocated US\$ 166 million of IDA resources to the Kyrgyz Republic since July 2010. The WB has prepared an Interim Strategy Note (ISN), which was discussed by the Board on August 2, 2011. This ISN covers the period of August 2011 to June 2013. The need for an interim strategy approach is underscored by the current fragile political, social and economic situation in the country. The ISN focuses on the country's recovery and stabilization needs, while paving the way for support for long-term development.

12. The current International Development Association (IDA) portfolio consists of 17 investment projects as of February 2012, totaling US\$ 351.4 million, out of which US\$ 195.5 million has been disbursed. There are four problematic projects in the current

portfolio: (i) Capacity Building and Economic Management, (ii) Emergency Recovery, (iii) Water Management Improvement (WMIP), and (iv) Rural Water Supply and Sanitation (RWSSP). This can be explained by the difficult operating environment, which is characterized by the following factors: (i) no major policy decisions were made from April 2010 until the new Parliament and Coalition Government were formed in January 2011, and (ii) Government implementation capacity further deteriorated after April 2010 (for example, the April 2010 events led to significant staff turnover in key implementing agencies). In order to mitigate the risks, the WB has allocated sufficient resources to strengthen the supervision of these problematic projects in FY12; and two projects, WMIP and RWSSP, were restructured to ensure satisfactory implementation.

13. In addition to the IDA portfolio, the Kyrgyz program includes 37 co-financing and stand-alone Trust Funds (TFs), with a total value of US\$ 111 million, out of which US\$ 81 million has been disbursed. Education for all - Fast Track Initiative Catalytic Fund Grant -2 project (FTI-2), Public Financial Management (PFM), EU Food Crisis Rapid Response Facility, and co-financing grants for Second Village Investment Project (VIP-2), Water Management Improvement Project (WMIP), and Agribusiness and Marketing project (ABMP) are the largest grants totaling US\$ 46 million. TFs are mainly provided to co-finance IDA operations and to support capacity building activities. The largest TF donors are the EU, Switzerland, UK and Japan.

14. Based on the latest Implementation Status and Results Reports (ISRs) of the 17 investment projects, the procurement rating is satisfactory in eleven (11) projects, moderately satisfactory in seven (7) projects, and moderately unsatisfactory in one (1) project.

ADB Portfolio and Issues Affecting Project Performance

15. ADB has approved 32 ADF loans and 14 ADF grants for a total amount of US\$1,040.3 million equivalent, and 76 TA grants amounting to US\$43.15 million as of the end of 2011. The country also received seven grants from the Japan Fund for Poverty Reduction (JFPR) amounting to \$7 million. ADB is the largest funding agency in the transport and education sectors.

16. As of 31 December 2011, the active ADB portfolio of 13 projects, with a total value of US\$424.3 million, included 7 ADF loans (total amount of US\$195.2 million) and 11 ADF grants (total amount of US\$229.1 million). Portfolio performance is partially satisfactory, with three projects having “actual problems” as of the end of December 2011, namely: (i) Power Sector Improvement Project, because of late effectiveness and delay in consultants recruitment due to taxation issues; (ii) Issyk-Kul Sustainable Development Project, for delays in meeting contract award and disbursement targets; and (iii) Community-Based Infrastructure Services Sector Project (Supplementary), due to poor project management and implementation, and poor quality of civil works. Contract awards and disbursements by December 31, 2011 reached US\$105.96 million and US\$103.41 million, 83.5% and 86% of the year’s projections, respectively.

17. The latest ADB country portfolio review report states that the systemic issues that are continuously affecting portfolio performance in the country are: (i) weak ownership and accountability of the government, (ii) weak interagency coordination of project activity and frequent change of project agency and personnel, (iii) absence of sector strategies and delays in agreed policy actions and approvals, and (iv) poor implementation capacity of government agencies. Political instability, frequent change in the government structure, and turnover of management staff at high- and mid-level over the last few years have greatly contributed to the magnitude of these issues.

18. ADB has been working closely with the Ministry of Finance and the Ministry of Economy and Antimonopoly Policy to improve portfolio performance. Quarterly Portfolio Reviews and annual Country Portfolio Review Missions were organized with participation of executing and implementing agencies to address key generic and project-specific issues affecting portfolio performance.

Procurement Challenges under WB and ADB Portfolios

19. Startup delay: Even though there has been an improvement in startup compliance and project readiness, loan effectiveness delays were recorded last year due to the time-consuming procedures for ratification of government agreements/loans. Project readiness needs to be further improved through continuous support to building institutional capacity, and strengthening internal controls and monitoring mechanisms of project executing agencies.

20. Procurement delay: The amount of time taken by Implementing Agencies/Executive Agencies (IAs/EAs) to conduct bid evaluation, and the submission of incomplete bid documents and bid evaluation reports for no-objection by the WB and ADB contribute to implementation delays. The unnecessarily large number of members participating on tender commission also affects the speed and validity of decision-making for procurement transactions.

21. Non-compliance with procurement procedures: The most recent procurement reviews revealed practices, such as: (i) improper application of bid evaluation criteria, (ii) preparation of inaccurate bid evaluation reports; (iii) disqualification of bidders without clear justification; and (iv) selection of winning bidders based on favoritism or lowest price. Insufficient transparency and lack of EA accountability in handling procurement processes and in contract management also were noted. Poor record keeping and filing of procurement documents, lack of publication of contract awards, delays in contract award, elapsed bid validity periods and bid securities, inadequate or lack of performance securities, advance payment without obtaining bank guarantees, late payments, poor technical supervision of contracts, and poor quality of accepted works also were evidenced.

22. Supplier, contractor and consultant performance: There are indications that IA/EAs reject bids based on their observations as to a bidder's past performance and unfavorable past experience with a bidder, despite evidence being presented by the bidder

of its successful completion of prior contracts. IA/EAs are unable to verify the past performance as there is no reliable system of registration and monitoring of supplier/contractor performance or a database containing such information. Nor is there an effective sanctions system.

23. Poor linkage of procurement processes with budget management: IA/EAs have little control or flexibility in managing procurement contracts. Also, because of budget availability issues, contract variations that have price implications may be difficult to implement. To avoid the potential for uncommitted contingencies, IA/EAs tend to use fixed-price or lump-sum contracts even if nature of the work is not suitable for such contract type. Issues relating to the sustainability of project budgets often hinder the implementation and results of procurement contracts.

24. Lack of robust national consulting industry: There is a very small pool of qualified local consulting firms. For example, the submission of low numbers of expressions of interests (EOIs) makes short-listing for (smaller) assignments difficult. Another example is the lack of qualified national procurement specialists. Thus, project implementation often suffers from poor work quality.

25. Concerns as to reliability of commercial banks to hold project accounts: Instability in the national banking system is likely to affect the financial management of projects and may create payment issues.

26. Local taxation issue: Ambiguity with application of taxes creates a room for different interpretation of the policy application at EA level at the time of preparation of requests for proposals and bidding documents, or at the contract implementation stage.

Other donors' involvement

27. The European Bank for Reconstruction and Development (EBRD)'s program focuses on: (i) fostering the Private Sector, including direct financing of private business in agribusiness, textile, property, tourism, consumer services, and natural resources; (ii) strengthening the Financial Sector; (iii) providing support for critical infrastructure; and (iv) promoting policy dialogue. EBRD, in collaboration with United Nations Commission on International Trade Law (UNCITRAL), has launched an initiative on enhancing public procurement regulation in the Commonwealth of Independent States (CIS) countries, including the Kyrgyz Republic. They plan to hold public procurement policy workshops in the Kyrgyz Republic and other CIS countries in October 2012.

28. Department for International Development (DfID) co-finances the Health and Social Protection Project (Health SWAp), and Public Finance Management (PFM) MDTF. DfID's program focuses on Public Financial Management; aid effectiveness; public policy debates; transparency work; children's rights protections; and external audit and financial management issues in the health sector.

29. The European Union (EU) co-finances the PFM MDTF, and Agriculture Investment support project (AISP). The EU has committed to participate in a planned

Education SWAp, and to provide various technical assistance, as well as assistance with the creation of sufficient food reserves and humanitarian aid. The EU Project “Support to the Kyrgyz Education Sector” provides technical assistance (TA) for “train the trainer” type activities, including planning finance and public procurement.

30. Kreditanstalt für Wiederaufbau (KfW) co-finances and provides parallel financing in the Health SWAp; has committed to participate in the next health SWAp; co-chairs the Donors Coordination Council; is an active partner in dialogue with the GOK regarding the Kyrgyz Medium-term development strategy;. KfW’s program focuses on: (i) private sector development; (ii) financial sector development; (iii) economic development at the rural community level; and (iv) the health and energy sectors.

31. The Swiss Cooperation co-finances the Health SWAp, PFM MDTF and the Financial Sector Development project (FSDP); and supports community driven initiatives in the country. The Swiss Cooperation’s program focuses on: (i) healthcare reform; (ii) water management and disaster risk reduction; (iii) basic infrastructure (water and energy); (iv) private sector development; and (v) public institutions and services.

32. The International Monetary Fund (IMF) has an ongoing program with the GOK, which is aimed at achieving stabilization of the balance of payments, reduction of inflation, a stable fiscal position, prudent management of external debt, a sound banking system, and improvements in governance.

33. The United Nations Development Programme (UNDP) covers a wide range of operations from social mobilization to governance, with a focus on the areas of poverty reduction, democratic governance, crisis prevention and recovery, and sustainable environment. Gender equality is mainstreamed into all programs and operations.

34. The United States Agency for International Development (USAID) has a large TA program with a focus on private sector development, including trade and investment, local governance and conflict mitigation, energy and health. The USAID Regional Trade Liberalization and Customs Project provided TA in reviewing and commenting on the latest draft PPL amendment.

CHAPTER II – ASSESSMENT OF PUBLIC PROCUREMENT SYSTEM

Introduction

35. The GOK initiated public procurement reform in 1994, and passed the first Public Procurement Law (PPL) in April 1997. Since then, the country’s legislative framework for public procurement has been under regular development. The GOK enacted a new PPL in April 2004 (which took effect on May 24, 2004). This PPL reflected some World Bank recommendations. The PPL spelled out the major principles governing public procurement; identified the parties to which the PPL is applicable; defined the mandate and authority of the independent public procurement oversight and regulatory body, the State Agency on Public Procurement and Material Reserves (SAPPMR); and outlined the stages of the public procurement process. Based on the recommendations of the WB’s Country Fiduciary Assessment of 2007, the PPL was amended in July 2008 to formally introduce e-procurement and to limit the power of the SAPPMR to influence the procurement process. As a result, the SAPPMR was tasked to oversee the results of public procurement, but not to take part in any decision-making on bidding processes or contract awards. The SAPPMR was abolished in October 2009 as part of government reorganization. At that time, a new Public Procurement Methodology Department (PPMD) was established under the Ministry of Finance (MOF). In addition, the National Procurement Training Center (NPTC), established with support of the WB’s IDF Grant in 2002, was taken over by private ownership as of 2009, and the range of procurement training has been gradually decreasing.

36. In 2010, the PPMD started preparation of a draft amendment to the PPL, and emphasized that its priority is the development and implementation of the “Conception for Country Public Procurement System Improvement,” including the introduction of e-procurement. The PPL was subsequently revised on July 8, 2011. The main objectives of the amendments to the PPL were to formally introduce e-procurement, and to limit the power of the PPMD to influence the process of public procurement conducted by procuring entities.

37. Below is the task team’s summary assessment of the public procurement system of the Kyrgyz Republic according to the four pillars of the OECD/DAC-WB methodology: I-Legislative and Regulatory Framework; II-Institutional Framework and Management Capacity; III-Procurement Operations and Market Practices; and IV-Integrity and Transparency of Public Procurement System. A detailed assessment using OECD/DAC-WB baseline indicators (without scores¹) is presented in Annex C.

¹ The task team decided not to use scores in order to keep the focus of the Government on the findings and recommendations rather than on what score the country gets on each indicator.

A. Legislative and Regulatory Framework

38. **Scope and coverage:** The major legal instrument that regulates public procurement in the Kyrgyz Republic is the Public Procurement Law No. 69 of May 24, 2004, as amended by Law No. 172 dated July 28, 2008; Law No. 236 dated July 20, 2009; and Law No. 88 dated July 8, 2011 (PPL). There are no implementing regulations detailing matters set out in the PPL, but there are numerous Presidential Decrees and resolutions that supplement the PPL. However, these are not comprehensive, coordinated or current. In addition, several resolutions referred to in the PPL appear not to exist or to be no longer in force. Similarly, certain existing resolutions either are not cross-referenced to the PPL or refer to non-corresponding PPL provisions. In addition, these secondary materials often are used to address matters of critical importance that better should be addressed in the PPL, most notably perhaps the specific identity of the Authorized Body. There also is no current Procurement Manual.

39. While Article 6 of the 2010 Constitution of the Kyrgyz Republic discusses the legal force of legislative documents, and prescribes the Constitution as the supreme legal force in the Kyrgyz Republic, the hierarchy of various legislative instruments is not clearly established therein. The order of precedence among the Constitution, international treaties, laws and other normative legal act is, however, established in the Law on Normative Legal Acts.

40. All legislative acts are published in the web-based Public Procurement Bulletin (PPB) and in the official governmental newspaper Erkin Too or Slovo Kyrgyzstana.

41. The PPL covers procurement of all goods, works, and services (including consulting services) by government agencies, local governments, state and municipal institutions and enterprises, agencies and foundations, as well as joint stock companies with state or municipal shares of more than 50 percent, which procurement is financed in whole or in part with State funds. “State Funds” include: (i) funds from the state budget or budgets of local self- government bodies that shall be allocated for their activity and capital investments; (ii) funds at the expense of the national and local budgets allocated for the implementation of their activities and investments; (iii) funds, defined in the Kyrgyz Republic Law on the Budget as “extra- budgetary funds,” funds of joint stock companies where a State or municipal share exceeds 50 percent, funds of foundations established at the expense of State or municipal funds, and funds of State or municipal enterprises and institutions; (iv) funds provided as foreign aid under International Treaties, if the Treaties shall not require other ways of using funds; and (v) state credits guaranteed or secured.

42. In accordance with PPL Article 2, the PPL does not regulate procurement directly connected with state security, national defense, protection of state secrets, food security and natural disasters, the guidelines for which shall be determined by the GOK. However, the team was advised that certain defense procurements are conducted under the PPL depending on the nature of what is being procured. The National Security Committee maintains a list of national defense goods that shall not be subject to

procurement under the PPL. Although not mentioned in the Article 2 exceptions, PPL Article 17(3) states that procurement of pharmaceuticals and medical items shall be conducted in accordance with procedures issued by the GOK, which indicates that such procurement also is outside of the coverage of the PPL.

43. **Recommendation:** (i) *The procurement legislative framework should be reviewed and revised to ensure that the various legislative instruments are comprehensive, coordinated and current, in particular to address observed gaps in coverage and to ensure that the various legal instruments address related topics in the same manner;* (ii) *Matters of critical importance, such as the identity of the Authorized Body, should be addressed in the PPL rather than regulated through decrees and resolutions;* (iii) *PPL Articles 2 and 17 should be clarified with regard to defense procurement, and procurement of pharmaceuticals and medical items;* (iv) *There should be in place a consolidated, coordinated and comprehensive set of implementing regulations detailing matters set out in the PPL;* and (v) *A Procurement Manual/user's guide reflecting current legislation should be prepared.*

44. **Model Tender Documents:** PPL Article 21 stipulates the contents of bidding documents for goods and works. However, there is no provision in the PPL mandating the issuance of Standard Bidding Documents (SBDs) and their use by procuring entities. SBDs for (i) goods by unlimited, limited and two-stage bidding and by method of request for quotations; (ii) works by unlimited and limited bidding; and (iii) non-consulting services by unlimited, limited and two-stage bidding, are available. Not all existing SBDs have been updated in light of the amended PPL and current legislative framework. The PPMD reported that additional standard bidding documents are being prepared. The MOF has retained a local consultant who is updating the SBDs in accordance with revised PPL.

45. The General Conditions of Contract (GCC) in the SBDs for goods, non-consulting services, and works are broadly consistent with international requirements, but certain gaps in coverage have been observed (in particular with regard to the GCC in the Works SBD). Examples of areas that should be more directly addressed in the SBDs include matters such as dispute resolution, contract administration intellectual property rights, suspension, late payment, assignment, insurance, warranty, and governing law. The use of defined terms is not comprehensive or consistent across the SBDs, which leaves room for potential inconsistencies in application and interpretation. Also, like provisions included across the SBDs are not always consistent.

46. **Recommendation:** (i) *A comprehensive set of SBDs should be prepared and mandated for use by procuring entities, and existing SBDs should be updated consistent with current legislation and international good practice;* (ii) *Gaps in coverage in the GCC should be addressed;* and (iii) *Consistency among related provisions of the various GCC also should be ensured.*

47. **Procurement methods:** Tendering with unlimited participation and electronic public procurement (e-procurement) appear to be the default methods of procurement for

good, works and non-consulting services, subject to the maximum threshold for the use of these methods. However, the default nature of tendering with unlimited participation should be more clearly stated. Furthermore, e-procurement is a means of procurement rather than a separate stand-alone method of procurement (except in the case of Electronic Reverse Auction, for example). Framework contracts are not contemplated under the PPL.

48. Article 32 of the PPL provides for two-stage tendering and sets out the condition for its use, but does not provide that first-stage interactions between the procuring entity and bidder should be along the lines of technical and commercial clarifications rather than broad negotiations. Also, it does not make clear that confidentiality of first-stage proposals shall be maintained.

49. International good practice generally restricts use of single-source procurement to very limited circumstances, such as: availability of goods/works/services from only one qualified source, catastrophic or natural disasters, standardization of equipment, and proprietary reasons. The PPL does not contemplate use of single-source procurement when goods/works/services are available from only one qualified source, for standardization of equipment, or for proprietary reasons. Conversely, the language regarding use of single-source procurement in emergency-type situations may be so broad as to go beyond catastrophic or natural disasters. Furthermore, an extensive list of permitted uses of single-source procurement, such as that included in the PPL, may be broadly interpreted so as to create a potential for misuse by procuring entities. In some cases, restricted bidding rather than single-source procurement may be a more appropriate method. It appears that the broad language of PPL Article 38(3) may be used in practice to justify quick spending at the end of a fiscal year before the funding expires, which should not, in and of itself, be a proper justification for the use of single-source procurement. Of particular concern is the provision under Article 38 whereby single-source procurement could be used for the acquisition of goods according to the list of domestic suppliers defined by the GOK, which might allow for a broad category of procurement to be set aside for domestic suppliers. In fact, this appears to be the case in practice, such as with regard to certain vaccines. Although coordination with the Authorized Body is required for the use of single-source procurement, the process and timing of such effort is unclear.

50. It is not clear in the PPL what procurement method(s) should be used if the procurement value is less than the Som 500,000 threshold for application of competitive procurement methods under the PPL. There also appears to be some question among procuring entities as to whether the threshold applies on a per-contract basis or is an aggregate amount.

51. The PPL should more clearly set out the conditions for use of the various consultant selection methods. For example, the PPL does not specify when to use QCBS.

52. **Recommendation:** (i) *The PPL should state, unambiguously, that tendering with unlimited participation is the default procurement method for goods, works and non-*

consulting services, and should more clearly set out the conditions for use of the various consultant selection methods; (ii) A detailed provision on framework contracts/agreements as a procurement method should be included in the PPL; (iii) Electronic public procurement should be noted as a means of, rather than a stand-alone method of, procurement; (iv) The conditions for use of single-source procurement should be reviewed in light of international good practice; (v) The methods of procurement to be used in case of natural disasters should be clearly defined; and (vi) The methods of procurement to be used if the procurement value is less than the Som 500,000 threshold for application of competitive procurement methods under the PPL should be clearly defined, and the manner of application of thresholds should be clarified.

53. **Rules on Participation:** In evaluating tenders for goods, a procuring entity may grant up to a 20% preference to tenders offering goods produced within the country. The information required to establish the eligibility of a tender for such preference is not clear (e.g., any required domestic content or manufacture percentage, methodology, etc.). Also, 20% may be on the high side.

54. In evaluating tenders for works, a procuring entity may grant up to a 10% preference to proposals of domestic contractors. The information required to establish the eligibility of a tender for such preference again is not clear.

55. The provision relating to construction procurements to the effect that a procuring entity grants preferences to domestic contractors under the condition of using local labor resources, as well as not less than 30% of local raw materials, is generally unclear as to the manner of its application.

56. PPL Article 38 suggests that broad set-asides for domestic contractors may be permitted (and without clear parameters for their use) in connection with the acquisition of goods on the list of domestic suppliers. It is possible that this provision could be applied in such a way as to essentially eliminate the general principle stated elsewhere in the PPL that foreign bidders shall be allowed to participate on an equal basis with domestic bidders except for the application of a domestic preference. In fact, this appears to be the case in practice.

57. Despite the fact that certain eligibility rules are set forth in the PPL, the agencies often do not provide bidding documents to contractors with whom they do not wish to do business even though such contractors do not appear on the list of unreliable contractors and suppliers. Such action was not found to be improper by the PPMD in response to a complaint in one case. Along the same lines, a law enforcement entity told a procuring entity not to include a bidder—which was not on the list of unreliable contractors and suppliers—in the procurement process because its founder had a criminal record, and then subsequently investigated the matter when the procuring entity did not exclude the bidder. These cases suggest that the evaluation (eligibility), complaint review and unreliable contractor/supplier determination processes may be conflated in practice. The second case also shows the level of influence that law enforcement authorities may have on public procurement in the Kyrgyz Republic.

58. The PPL does not specify the conditions under which state-owned enterprises (SOEs) may participate, as bidders, in public procurement. This is a matter that should be addressed in the PPL, with the aim of ensuring a level playing field for both SOE and private sector bidders.

59. The PPL likewise is silent on the matter of joint venture bidders. Joint venture members should be jointly and severally liable for procurement and contract performance matters, and there should be no restrictions on the participation of foreign companies as joint venture members.

60. **Recommendation:** (i) *The PPL provisions on domestic preference should be reviewed and clarified. PPL Article 38 should be reconsidered in light of its potential discriminatory effect on foreign bidders, as well as its impact on competition more generally. The potential negative impact of the current domestic preference provisions also should be considered to the extent that accession to the WTO GPA may be contemplated; and (ii) The PPL also should address the conditions under which SOEs may participate, as bidders, in public procurement.*

61. **Complaints Review Mechanism:** PPL Chapter 9 is devoted to Protests and Complaints. According to good international practice, entities responsible for reviewing complaints should be independent and should not be engaged in other functions that may pose conflicts of interest. Granting such responsibility to the Authorized Body (the PPMD at present) may create a conflict of interest with the Authorized Body's regulatory function. Independence and conflict of interest concerns are implicated by the procuring entity-level complaint review process, but such process also permits a procuring entity the opportunity to itself revisit a decision that is the subject of a complaint. Importantly, complaints also may be brought in court.

62. The PPL does not provide for a standstill period between the announcement of contractor selection and contract signing. The lack of a standstill period is particularly acute in light of the PPL requirement that a contract should be signed within seven (7) days of written notification to the winning bidder, and comments that were made to the effect that contracts may be signed quickly to avoid the possibility of a complaint being filed.

63. Also, the filing of a complaint should be allowed for both actual bidders and potential bidders who may have decided not to compete for reasons that are the subject of the complaint.

64. Publication of complaint decisions is not mandated in the PPL, which should be the case.

65. The PPL provides for a decision deadline of three (3) business days at the procuring entity level and seven (7) business days at the PPMD level, which seems ambitious. The PPMD stated that the average time for the PPMD complaints review process is ten (10) days.

66. There is confusion under the PPL as to whether the complaint mechanisms set forth in the PPL represent consecutive or alternate venues for review. In other words, it is unclear whether each lower-level of review must be exhausted before a complaint can be brought to a higher-level review entity. It seems that the intent of the PPL is to create consecutive levels of review, but the task team was advised that the PPMD will review cases submitted to it in the first instance.

67. It appears that there is a preference for bidders to avoid the complaint mechanisms set forth in the PPL altogether and to instead take complaints to other entities, notably to Prosecutor Offices and sometimes to the financial police, pursuant to a citizen's general right under law to seek redress from an allegedly wrongful government action. Complaints are rarely brought to court (the only available venue) after a contract is signed.

68. **Recommendation:** (i) *In addition to procuring entity-level and judicial review, an independent body, ideally, should be established as a common forum for complaints regarding procurement processes and contract awards. To the extent that such level of the complaint review function is retained within the PPMD, proper segregation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest;* (ii) *Although independence and conflict of interest concerns are implicated by the current mechanism of complaining to the procuring entity, complaint to the procuring entity in a review mechanism that is used in international practice. Where proper safeguards are in place, such mechanism may be an efficient method of resolution of complaints. However, such a system should be transparent and carefully tailored to provide for due process and independent decision-making. Such safeguards, transparency, and due process measures should be put in place in order to ensure the independence of, and encourage public confidence in, this review mechanism;* (iii) *The PPL's treatment of the complaints review process could benefit from redrafting to clarify the process and to address important issues that presently are not addressed or to clarify certain other matters;* and (iv) *The PPMD should facilitate educational programs on complaint review mechanisms for all interested parties.*

B. Institutional Framework and Management Capacity

69. This section examines how the procurement system defined by a country's legal and regulatory framework operates in practice when filtered through the institutions and management system of public sector governance.

70. Public procurement in the Kyrgyz Republic is decentralized, with purchasing of goods, works, and services delegated to government agencies of different levels. The main key entities involved in public procurement include the PPMD and the procuring entities. The Chamber of Accounts is responsible for external auditing, including procurement audits. The MOF, through its division on internal auditing, oversees internal auditing within procuring entities. The Anti-Corruption Service under the

National Security Service, established in November 2011, has broad authorities as a law enforcement agency and broad powers to enforce the anti-corruption legislation.

71. **Authorized Body–Public Procurement Methodology Department (PPMD):** The Authorized Body is mandated to provide support to government agencies in conducting procurement. As currently constituted, the Authorized Body is established as part of the legislative framework and is assigned defined functions. PPL Article 14 states that the Authorized Body is the central body responsible for implementing government policy on the procurement of goods, works, services, and consulting services. No specific entity is identified as the Authorized Body in the PPL, although the MOF presently has been so designated by a presidential resolution and the MOF carries out the related functions through the PPMD. Responsibilities of the PPMD are specifically set forth in the Regulation on Public Procurement Methodology Unit of the Ministry of Finance of the Kyrgyz Republic, although these responsibilities are not entirely reflective of the authority granted to the Authorized Body under the PPL.

72. There is some concern that leaving identification of the Authorized Body to be dealt with by presidential decree or resolution may create the possibility that the specified “Authorized Body” may be more readily changed than would be the case if the specific “Authorized Body” were to be designated in the PPL. In general, a more intensive legislative process is required to change a law than to revise a resolution or Presidential decree. In addition, the Authorized Body ideally would be a fully independent government agency. At a minimum, the status of the PPMD should be upgraded to be more independent. It can be inferred from the consultations with the stakeholders that the abolition of the prior public procurement agency which was a fully independent agency has lessened the status of public procurement in the Kyrgyz Republic. Also, The PPMD has no representation at Oblast or Rayon levels. As a result, procuring entities and the private sector at these levels have been left on their own in conducting public procurement, leading to potential lack of compliance with the procurement legislative framework.

73. Two committees have been established within the PPMD. One PPMD committee is responsible for hearing procurement complaints, but final decisions need to be signed by the MOF Minister or his Deputy. A second PPMD committee is responsible for reviewing requests to add contractors to the list of unreliable contractors and suppliers, but this committee also does not make final decisions and instead makes recommendations to the Minister for decision. The PPMD director chairs both committees, and there appears to be overlapping membership on the committees. This structure raises additional independence and conflict of interest concerns.

74. There also are questions as to the perceived independence of the PPMD more broadly given that the PPMD is housed under the MOF—the ministry that manages public funds. Although it is not uncommon for regulatory procurement agencies to be housed under a ministry such as the MOF, good practice would encourage that, where this is the case, the procurement agency should be accorded sufficient autonomy and authority to function independently. For example, the ministry that manages public funds

should not be in a position to influence decisions relating to specific procurements financed with such funds. Here, the concerns regarding the PPMD's independence are particularly acute in light of the fact that the PPMD only makes recommendations on unreliable contractors/suppliers for decision by the Minister of Finance, and that PPMD complaint decisions must be signed by the Minister or his Deputy. These facts indicate that the PPMD apparently does not have the authority to take such decisions independently. There also are questions relating to potential conflicts of interest arising from the various functions assigned to the Authorized Body, presently the PPMD.

75. Granting broad areas of responsibility to the PPMD also may create conflicts of interest, in particular with the PPMD's regulatory function, and may involve the PPMD in procurement operations.

76. In addition, the PPMD lacks the needed capacity to provide the necessary oversight and support for effective implementation of the PPL or for supporting procuring entities through training. In that regard, the PPMD lacks adequate staffing (five specialists) and relevant technical capacity. In particular, the PPMD is not providing any services to regional or local levels, and has no partnership with the private sector.

77. It is predictable that the workload of the PPMD will continue to expand, which would justify an upward adjustment of the staffing. For example, enhancing the role and effectiveness of the PPMD in monitoring and improving the procurement system in the Kyrgyz Republic is likely to require some additions to the staffing. Another source of expanding workload for the PPMD is its central role in reviewing complaints from bidders, the number of which is likely to continue to grow as procurement activities expand. If this function remains with the PPMD, then at least separate staff who are not involved in the PPMD's regulatory work should be assigned to handle complaints.

78. **Recommendation:** (i) *The Authorized Body should be identified in the PPL rather than left for designation pursuant to a resolution;* (ii) *All of the Authorized Body's functions should be set forth in the PPL, and these functions should not be supplemented by resolutions;* (iii) *In order to ensure that the Authorized Body effectively regulates public procurement, it should be considered whether to establish the regulatory body as a stand-alone, independent governmental entity, or instead to upgrade the current PPMD within the MOF to a more independent entity such as the Treasury Department, and strengthen its capacity in terms of staffing, equipment, office space and resources;* (iv) *Liaison public procurement offices should be established at the Oblast and Rayon levels;* (v) *Procurement complaint review, ideally, should be handled through an independent review mechanism;* (vi) *The PPMD should prepare a strategy for the improvement of the public procurement system;* and (vii) *Unreliable contractor and supplier review processes and determinations should be handled through an independent review mechanism, or, at a minimum, the composition of the committee responsible for reviewing cases of unreliable contractors and suppliers should be revisited to ensure its independence and the lack of conflicts of interests with respect to the committee members' other functions.*

79. **Procurement Reporting:** The PPL requires procuring entities to, among other things, send procurement plans to the PPMD for publication in the PPB, post tender invitations and contract awards, and submit quarterly procurement reports to the PPMD. The PPL also requires the PPMD to establish and maintain common national registries of procuring entities, public procurement contracts, and unreliable contractors and suppliers. It appears that, in practice, there is a system for collection of procurement data, but it is not comprehensive. There also appears to be no formal flow of information from procuring entities to the PPMD. The Treasury in the MOF is developing a database of contracts, but there is an institutional gap in monitoring adherence to procurement rules. The MOF supports a Website, www.goszakupki.gov.kg, which provides copies of legislative normative acts, SBDs, public procurement notices, tender opening minutes, contract awards, procurement plans, registrations of procuring entities and suppliers, and an open discussion forum, although not all information is complete and updated. No sustainable strategy for collection, analysis and maintenance of procurement data exists. Nor is there a mechanism in place to monitor procuring entity compliance with the PPL when implementing public procurement. Or an evaluation mechanism.

80. **Recommendation:** (i) *The GOK should develop and implement a sustainable strategy for collecting, analyzing, maintaining, and disseminating procurement statistics, including steps to increase the capacity of the PPMD in this area; and (ii) The GOK should also design and implement an integrated system for monitoring procuring entity compliance with procurement legislation. Periodic reports on the performance of public procurement should be prepared and made available to the public through the public procurement website.*

81. **Procurement Competence:** The level of procurement competence among government officials is quite low. In most cases, accounting/financial staff is required to undertake procurement responsibilities in addition to their regular workloads. However, they lack the required procurement training and skills. As a result, procurement may be inefficient and uneconomic, and frequently lacks transparency. PPL Article 13 requires each procuring entity to entrust the organization of procurement to one of its departments. It also requires the procuring entity to establish a tender commission for each tender. As a mandatory requirement, one member of the tender commission should be a certified procurement specialist. The requirement for inclusion of a certified procurement specialist also seems to apply to the procurement department itself, which would be logical, as per the Government Resolution on the Procurement Department and Tender Committee at a Procurement Entity (Resolution No. 330, dated June 20, 2011).

82. This resolution also sets forth the division of responsibilities between heads of procuring entities (contract signing), procurement departments (contract award decisions) and tender commissions (bid evaluation and award recommendations). However, a majority of the procuring entities do not distinguish between the procurement responsibilities of a department and those of a tender commission. Thus, the handling of procurement processes often is not well organized. Sometimes, the head of a procurement entity chairs the tender commission, which directly contradicts the requirement of PPL Article 13(6) that the head of a procuring entity cannot act as a member of the tender

commission. There is some potential under Article 13 for confusion and for the creation of overlapping functions. More generally, delegations of responsibility are unclear.

83. Procurement is not a profession as such, but each government agency can prepare a profile to fulfill its needs for specialists. The profile must be a combination of the standard profile for different specializations provided by the State Personnel Agency, and the experience and skills required by the appointing agency (e.g., a procuring entity in the case of a procurement specialist).

84. Since the privatization of the National Procurement Training Center (NPTC), procurement training is provided by the MOF Training Center, which has limited technical capacity to fulfill the training needs of procuring entities

85. **Recommendation:** (i) Clarity should be introduced to PPL Article 13, and with respect to Resolution No. 330, in terms of the responsibilities of heads of procuring entities, procurement departments and tender commissions; and (ii) The legislative framework could benefit from revision regarding provisions addressing delegations of authority and decision-maker accountability. The MOF should take immediate action to strengthen the capacity of MOF Training Center so that it can provide training on public procurement to procuring entities as well as to the business community.

86. **Existence of Sustainable Strategy and Training Capacity:** No sustainable strategy and training capacity exists, although the GOK has been making efforts to build procurement training capacity. For example, in 2005 it established the National Procurement Training Center (NPTC), which benefited from a WB grant and technical assistance in developing the skills of its staff in designing and delivering training. The NPTC provided training to 736 civil servants in 2004, 914 in 2005, and 434 in 2006, and provided advisory services to procuring entities, suppliers, and contractors.

87. The GOK privatized the NPTC in 2009. Regrettably, under the private ownership, the NPTC appears to have lost its capacity. As a result, the range of procurement training has been gradually decreasing, and this training center presently is not providing any training. The MOF now has a functional training center that, among other things, provides training in procurement. The procurement training provided by the MOF training center is, however, inadequate and is demand rather than supply driven. The MOF training center charges a fee to the trainees who usually are staff of procuring entities. However, procuring entities are provided little funds for training of their staff.

88. The essential foundation for institutional strengthening and overall improvement of the implementation of public procurement is the expansion of training opportunities for procurement officials. A substantial proportion of civil servants responsible for public procurement either has not received any training or has only been trained in the prior procurement legislation. That fact demonstrates the substantial and widespread gap in training, and highlights the need to make training a pillar of any future institutional strengthening effort. The need for a sustained, long-term national procurement training strategy to be formulated or updated, and implemented, remains urgent.

89. In order to institute sustained development of a trained procurement cadre, it will be necessary to provide not only training upon induction of staff to procurement functions, but also periodically to refresh and upgrade staff knowledge by offering training opportunities on a regular basis. Such ongoing training would enable procurement staff to acquire more detailed knowledge of best practices with respect to key steps in the procurement process, such as procurement planning, preparation of technical specifications, evaluation of bids, and contract administration. Additionally, training could be offered in specialized areas of procurement, such as civil works, health sector, goods, information technology, etc.

90. Significant demand for training exists in both the public and private sectors. In many procuring entities, procurement staff has received inadequate training. Auditors and inspectors of the state bodies responsible for external public procurement control have received no procurement-related training at all.

91. **Recommendation:** (i) *The GOK should carry out a capacity building needs analysis and, based on the findings, should prepare a national procurement capacity building strategy for the short-, medium- and long-term, considering all available resources, such as existing public servant training mechanisms; universities; and training centers, such as the one in the MOF;* (ii) *Based on the strategy, the GOK should implement a training program for key procuring entities at both the national and oblast/raion levels;* (iii) *Procuring entities should be provided with the necessary budget to pay for training at the MOF training center;* (iv) *The GOK should promote professionalism and career development in public procurement to sustain the procurement capacity of procuring entities;* and (v) *An effective procurement help desk should be established at the PPMD.*

92. **Quality Control Standards:** There are no quality standards to evaluate procurement staff performance and promote capacity development. No program for certification of procurement specialists has been prepared and implemented.

93. **Recommendation:** (i) *The GOK should strengthen quality control standards for evaluation of staff performance based on outcomes and professional behaviors. “Service Standards” should be introduced to gauge the efficiency of the control systems and individuals;* and (ii) *General guidance should be provided to procuring entities on how to improve procurement management and performance monitoring, including the introduction of a performance evaluation and reward system that is linked with a comprehensive staff development plan.*

C. Procurement Operations and Market Practices

94. Since public procurement in the Kyrgyz Republic is decentralized, the team looked at the operational effectiveness and efficiency of the procurement system at the level of procuring entities. In order to use the market as one means of judging the quality and effectiveness of the system in implementing procurement procedures, the team held

interviews with several consulting firms, suppliers, and representatives of the civil society.

95. **Procurement Planning:** Procurement planning for budget formulation is generally weak. PPL Article 13(3) (as well as the Government Resolution on the Procurement Department and Tender Committee at a Procurement Entity (Resolution No. 330, dated June 20, 2011)) requires a procuring entity, within ten (10) days of the Republic's budget approval, to submit a procurement plan for the next fiscal year to the Authorized Body (the PPMD), as specified in approved forms. In addition, the MOF issued an instruction requiring procuring entities to prepare their procurement plans for fiscal year 2012 by January 10, 2012, regardless of the fact that Parliament was still considering the budget for that year. Procurement planning normally is done not before, but after, the annual state budget is approved. There are no multi-year plans to project activities (such as large civil works contracts), because the state budget is approved only on an annual basis. Procuring entities are unable to prepare proper time tables for planned procurement, because they are unaware of the timing of release and availability of funds. There is no mechanism for proper scheduling of contracts to help predict cash flow needs within the government, to ensure timely payments, and to reduce extra costs from delayed contractual payments and contract performance.

96. Budget legislation and financial procedures do not support the conduct of timely procurement procedures, because budgetary funds are not made available to procuring entities in a timely manner. Sometimes, it is only a few weeks before the end of the fiscal year (December 31) that the MOF advises the procuring entities of funding availability for procurement. As the procuring entity rushes to commit and spend the funds before the fiscal year lapses, it may choose inappropriate procurement methods, such as single sourcing, and conduct uneconomic procurement, or pay for goods, works or services that are not completed. Furthermore, there is no incentive for procuring entities to save public funds through efficient use of the public procurement system, because any savings are recouped by the Treasury. Moreover, the next year's budgetary allocations are reduced by any amount not spent, even if it represents a saving achieved through sound public procurement.

97. The procuring entities are required to include in draft contracts a provision that payments will be made only upon availability of funds, which has a negative impact on procurement. Bidders, knowing that they may not be paid on time because of the lack of funds, protect themselves by increasing their bid prices. This results in higher prices of goods, works and services for the GOK. In addition, in order to use funds before the end of the fiscal year and not to lose them, procuring entities frequently make full payments to suppliers in the form of prepayments for goods and services that are not yet delivered. Such practice leads to the risk of procuring goods and services of inadequate quality.

98. Fractioning of contracts to avoid application of the PPL to avoid open competition is prohibited. However, such fractioning essentially occurs, in particular near the end of the fiscal year when funds need to be used quickly. In practice, procuring entities may

use low-value (i.e., below threshold level) contracts in order to avoid the need to use more complex procurement methods.

99. **Recommendation:** (i) For effective procurement planning, there is a need for strengthened integration of procurement with budget preparation and execution; (ii) Budget funds should be disbursed to procuring entities throughout the year in accordance with the timelines set in procurement plans and as committed in contracts, rather than only in the third and fourth quarters; (iii) The PPL requirement that procuring entities should prepare and submit a procurement plan within ten (10) days of budget approval should be enforced, or if that period is too short, a longer time period should be specified in the legislation as appropriate; and (iv) Skills of procuring entity staff should be enhanced by providing training/awareness programs in preparing meaningful and realistic budgets and project implementation schedules so that public procurement is effectively integrated into the financial management system.

100. **Initiation of Procurement Actions without Existing Budget Allocations:** Initiation of procurement actions without ensuring that the funds are available to pay for goods, works, and services is common. Procuring entities launch tender notices and even conclude contracts without any assurances of funds availability from the Treasury. In the absence of the confirmation of the availability of budget funds for contractual payments, procuring entities include a provision in the bidding documents that payments will be subject to availability of funds. This practice results in delayed or defaulted payments to providers of goods, works, and services. This practice also seriously affects competition and results in higher end prices for the public. Furthermore, just before the end of the fiscal year when the MOF makes funds available, procuring entities, in order to use the budgetary funds before December 31 when the budget year closes, receive invoices from contractors, consulting firms and suppliers and make payments to them even if they have not yet delivered the contracted goods, works and services. This is a serious matter that needs the GOK's prompt attention.

101. **Recommendation:** (i) The PPL should include a more explicit statement that no procurement action shall be initiated without an existing budget appropriation. Furthermore, a mechanism should be put in place for procuring entities to seek written assurances from the Treasury of the availability of funds before initiating any procurement action.

102. **Submission, Receipt and Opening of Bids:** PPL Articles 23, 24 and 26 stipulate the conditions and deadlines for submission of bids and bid opening. The provisions on bid opening do not expressly provide for bid opening immediately after bid submission, as is the case with the provisions on the opening of consultant financial proposals (PPL Article 48(4)). The PPL does not specify that discounts shall be read out at bid opening. Although rejection of all bids should not be automatic in the event that all bids submitted exceed the allocated funds, this appears to be a frequent occurrence. It also is not clear what is meant by rejection of bids based on auditor's conclusions.

103. **Recommendation:** (i) *The provisions on bid opening should expressly provide for bid opening immediately after bid submission; (ii) Discounts should be read out at bid opening; and (iii) the provisions on rejection of bids could benefit from revision and clarification, e.g, rejection of all bids shall not be automatic in the event that all bids submitted exceed the allocated funds.*

104. **Tender Evaluation, Award Criteria and Contract Signature:** PPL Article 27 relates to the evaluation of bids. The PPL specifies that evaluation shall be done only in accordance with the criteria stated in the PPL and bidding documents, although this could more clearly provide that only those criteria stated in the applicable bidding document shall apply in a specific procurement. The PPL does not provide that criteria not evaluated in monetary terms shall be evaluated on a pass/fail basis to the extent possible. The basis for award should be clearly stated as meaning the lowest evaluated substantially responsive bid. PPL provisions on the evaluation of proposals for consulting services give adequate importance to quality, and regulate how price and quality are considered. The PPL provides for confidentiality during the procurement process. Notice of selection of award and contract signing is not required to be provided to all bidders simultaneously.

105. Each procuring entity has its own procedures, and required approvals, regarding contract signing, but only Ministers and authorized Deputy Ministers have signatory authority. It appears that this process may lead to delays in practice. Contracts must be registered with the PPMD. A contract may be refused registration for a lack of funds or a lack of necessary details, but the contract may be resubmitted for registration. In some cases, this process may lead to negotiation to lower contract prices prior to resubmission for registration.

106. **Recommendation:** (i) *The PPL should provide that criteria not evaluated in monetary terms shall be evaluated on a pass/fail basis to the extent possible; (ii) The basis for award should be the lowest evaluated substantially responsive bid; (iii) Notices of contract award shall be provided directly and simultaneously to all bidders, in writing; (iv) It should be considered to streamline the contract signing process, especially where standard contract forms are used; and (v) Parties should not engage in price negotiation for purposes of achieving contract registration.*

107. **Record Keeping:** PPL Article 13(4) states that procuring entities are responsible for collecting bidding documents, bids and other public procurement documentation, and storing the records for three (3) years. The Government Resolution on the Procurement Department and Tender Committee at a Procurement Entity (Resolution No. 330) provides that procurement records must be kept at the operational level, but in general terms. Contrary to the exceptions stated in PPL Article 10, procurement records shall be maintained regardless of procurement value. In addition, where the single source method of procurement is used, documents justifying the use of this method should be maintained.

108. **Recommendation:** (i) *The legislative framework, or at the very least a Procurement Manual, should specify the list of procurement documents (for each method) to be maintained in the procurement records. Also, procurement records should be maintained regardless of procurement value or method.*

109. **Contract Administration:** It appears that contract management practices are poor and that those who are responsible for managing contracts do not have access to training on the subject. Administrative procedures for civil works contracts reportedly are weak, which may result in acceptance of low-quality civil works with poor workmanship. There apparently are frequent amendments to contracts during contract performance. Because of the unavailability of budgetary funds, payments to contractors and suppliers are frequently delayed. This also results in the undesirable practice of procuring entities paying contractors and suppliers even if the works or services have not been completed or the goods have not been delivered. They do so in order not to lose their budgetary funds which are frozen on December 31.

110. **Recommendation:** (i) *The PPMD should prepare a contract management manual and design and deliver a training program on contract management for public officials.*

111. **Dispute Resolution Procedures:** Claims arising under a contract are dealt with under PPL Article 62, which provides for amicable resolution or, absent such resolution, for recourse to arbitration or court. However, arbitration generally is the manner of such review in international practice. The GCC and SCC relating to dispute resolution allow the parties to submit a disagreement that cannot be amicably resolved to arbitration *or* to a civil court of general jurisdiction, as is to be specified in the SCC. No provisions clearly exist for international arbitration in contracts with foreign providers of goods and services, but the arbitration rules and procedures to be applied are to be specified in the SCC so there remains some possibility that this could be the case; nonetheless, this is an issue that could benefit from clarification. There also is no provision for review of disputes, prior to recourse to arbitration or to court, by an entity such as a disputes resolution board as frequently is used in international practice. It appears that procurement contract disputes, although infrequent, generally are brought in court rather than taken to arbitration. The reason given for this tendency is a lack of understanding of arbitration. There is a “Law on Arbitration in Kyrgyz Republic.”

112. **Recommendation:** (i) *The PPL and GCC generally address contract administration responsibilities, but gaps exist which should be filled, and certain other provisions could benefit from clarification; (ii) Consistency among related provisions of the PPL and the various GCC also should be ensured; (iii) Although the SBDs provide for arbitration, it is understood that arbitration is not frequently used. Perhaps greater outreach could be done to foster an increased understanding of arbitration; and (iv) To the extent that it would not be otherwise inconsistent with Kyrgyz law, it also might be considered whether arbitration, rather than court action, should be the preferred method of dispute resolution. Intermediate review mechanisms, such as dispute resolution boards, also might be considered, especially with respect to larger works contracts.*

113. **Partnership with Private Sector:** No mechanism and no legal framework exist for partnership between the public and private sectors. The PPMD has limited interaction with the business community, such as some attempts made through the open forum function of the central procurement portal. Since the procurement portal was opened in 2011, there have been several public consultation initiatives, mostly regarding the new rules and regulations drafted by PPMD, including the draft 2011 revision to the PPL. The MOF Training Center does not include in its training program any awareness training or seminars for the business community. It appears that public supervision councils have been established in almost every line ministry, government agency and State Owned Enterprise (SOE). Public supervision councils are now playing quite an active role in verifying that procuring entities follow proper practices and procedures, as well as in ensuring the transparency of procurement decisions. A specific Presidential Decree (Decree of President of the Kyrgyz Republic On Improving the Interaction of the Public Administration Bodies with the Civil Society, No. 212) mandates the establishment of such councils. Reportedly, the GOK is preparing a draft Public-Private Partnership (PPP) law, which presumably should foster interest and activity in the PPP area.

114. **Recommendation:** (i) *There is a need to fully engage with the private sector, and to articulate the private sector's contribution to public procurement. Public consultation, collection of feedback and analytical surveys on procurement policy and implementation should be regularly conducted;* (ii) *Any procurement capacity building strategy to be developed should include, in addition to a sustainable mechanism for procurement training, outreach and awareness programs suitable for the private sector;* and (iii) *The PPMD should organize, through the MOFs Training Center, regular seminars and awareness sessions for private sector on a regular basis.*

115. **Electronic Government Procurement (e-GP):** The GOK is well aware of the potential of e-Procurement in the context of strengthening the public procurement system. The Prime Minister considers e-Procurement as critical for increasing efficiency and transparency of public procurement and reducing the opportunity of corruption. The GOK plans to introduce e-Procurement through the PPMD. The PPL provides the legal basis for the introduction of e-Procurement. A strategy for the implementation of e-Procurement is under development with financial assistance from the ADB. The web portal, <http://www.goszakupki.gov.kg/>, in the Russian language currently is used for the publication of procurement-related information. Another web portal, <http://zakupki.okmot.kg>, was created most recently with some e-Tendering functionality (distribution of electronic bidding documents). The PPMD considers international e-Procurement experience, including in the CIS countries, as very helpful in making a decision on how to proceed with the implementation of e-Procurement in the Kyrgyz Republic. Initial steps will include registration modules for procuring agencies and suppliers. Additional functionality in accordance with the legislation will gradually complement the e-Procurement system. The authentication of bidders in the e-Procurement system may be done with electronic rather than digital signatures which would simplify the introduction of e-Procurement transactions considerably.

116. **E-Procurement Legislation:** The latest version of the PPL (last amendment no. 88 on July 8, 2011) provides for the application of electronic means with regard to publication, communication and procurement transactions. The PPMD, as the Authorized Body, is in charge of conducting electronic procurement. However, so far no separate e-Procurement regulations have been developed. The PPL considers two public procurement methods: electronic public procurement and electronic reverse auction. While the latter may be acceptable as a procurement method, the term “electronic public procurement” is not really a procurement method in itself. Rather, e-Procurement refers to all methods of procurement conducted through electronic means as defined in Article PPL 37-1. The reference to the use of electronic means in the PPL may be sufficient, provided that relevant secondary legislation is introduced in the near future in order to regulate the application of different e-Procurement approaches (methods), such as e-Tendering, e-Reverse Auctions, e-Catalogues.

117. **Recommendation:** (i) *The awareness of the potential of e-Procurement for strengthening the public procurement system among high-level political stakeholders in the Kyrgyz Republic should be maintained as the basis for a continued commitment to the introduction of e-Procurement. In this way, the allocation of resources can be better secured, including the development of appropriate skills within the PPMD to be the leader of the e-Procurement agenda;* (ii) *The finalization of the e-Procurement strategy would help to have a roadmap for the adoption of e-Procurement in place, including an action plan with clearly defined roles, responsibilities, timeline, and cost estimates. The final strategy should address critical factors for the successful implementation of e-Procurement, such as government leadership of the e-GP agenda; required policies, legislation, regulations and standards; awareness raising and capacity building among buyers and suppliers; internet connectivity and IT infrastructure; and existing e-Procurement modules or relevant applications;* (iii) *A multi-stakeholder workshop should be conducted to disseminate the draft e-Procurement strategy, and based on the outcome of the workshop, the strategy may be adopted by the GOK as a formal roadmap for the introduction of e-Procurement. While the workshop may be considered as a kick-off event, a strong communication and capacity development plan as part of the strategy should ensure sustainability of the e-Procurement implementation;* (iv) *Based on the approved e-Procurement strategy, the e-Procurement agenda should be implemented. Depending on the findings and suggested actions in the strategy, this plan could include the improvement of the current website by adding more functionality and making it available in the English language. The strategy also should suggest a business model for the development and operation of additional e-Procurement application modules in order to provide a clear rationale with regard to the ownership and funding of the e-Procurement system (e.g. outsourcing vs. government ownership, fee-based e-Procurement models);* and (v) *The PPL should not use the term electronic public procurement to mean a procurement method. Also, secondary legislation for the use of electronic means should be developed to provide clarity and guidance in terms of how to use electronic procedures.*

D. Integrity and Transparency of Public Procurement System

This Section deals with the quality, reliability and timeliness of internal and external controls.

118. **External Audit:** External auditing is conducted by three state bodies: the Chamber of Accounts (CA) and the MOF. The Office of the Procurator implements the revision and inspection over the spending of republican funds by the special request. The Secretariat of Council for Defense of the Kyrgyz Republic is responsible for implementation of the anti-corruption strategy. The Anti-Corruption Service also has broad authorities as a law enforcement agency to enforce the anti-corruption legislation. The CA ensures external audit of procurement operations. The CA is accountable to the President and Parliament, which appoints members of the CA. The CA audits all state bodies yearly. Procurement auditing is only one aspect of the chamber's multifaceted control program. The CA capacity to conduct audits is weak; its staff lacks proper training in procurement; and its reports are not made public. CA auditors lack the training and experience to apply audit practices in accordance with international standards. Most staff members are well-seasoned in control and revision, but they still have had little exposure to modern auditing practices. CA auditors have inadequate training in procurement and therefore are unable to conduct quality and objective audits of procuring entity procurement operations. Many CA audit reports had significant deficiencies. They did not clearly highlight the exact nature of control weaknesses, major issues, or conclusions relating to the audit of procurement operations. The reports did not state the purpose, scope, or standards governing the auditing. The quality of individual audit reports is not consistent and depends mainly on the experience of the auditors involved in the audit. There are no quality assurance mechanisms to ensure consistency of the audit work. Even though the new Audit Methodology has been developed together with consultants under the WB's CA IDF Grant, CA staff needs substantially more training and on-the-job experience, particularly in risk-based and financial auditing. The follow-up and enforcement of CA findings is weak and selective, and does not necessarily promote compliance by procuring entities with the requirements of the procurement legal framework.

119. **Recommendation:** (i) Overall, the CA still needs capacity building to better understand and implement the international audit standards in practice. Training of auditors in modern audit techniques, including training on procurement audit and use of the recently elaborated audit methodology is needed. The CA has applied to the Bank with request to continue the capacity building program for CA aimed at improvement of CA activities. The legal basis for procurement audit should also be in place to provide for the effective audit performance; (ii) The CA should introduce quality assurance procedures, ensuring consistency among audit reports; and (iii) Enforcement mechanisms to address CA audit findings should be developed.

120. **Internal Audit:** Fifteen procuring entities (the Ministry of Health, Ministry of Education, Ministry of Finance, etc.) have internal audit (IA) units. However, the IA units do not provide comprehensive audit coverage due to the lack of professionally trained staff and limited number of personnel. The MOF Division on Internal Audit (DIA) has the mandate for controlling execution of the state budget. However, DIA auditors are not sufficiently informed about procurement requirements and control systems to conduct quality audits. The DIA staff has not participated in any public procurement training and is unaware whether such training is available. The DIA is staffed with only four internal auditors, and the staff lack professional internal auditing skills. Overall, there are too few trained public sector officials at the procuring entities capable of performing internal audits in compliance with the Internal Audit Standards and MOF Internal Audit Methodology. In addition, internal auditors in line ministries have inadequate training in procurement and, therefore, are unable to conduct quality and objective audits of procuring entity procurement operations. The follow-up and enforcement of IA findings is weak and is not always communicated to the units audited.

121. The ongoing CBPFM project and recently approved IDF Grant are contributing towards development of the strong public internal audit in the country. In particular, the strong methodological base will be elaborated; the Quality Assurance and Improvement and Continuous Development Program will be established. Intensive trainings to public internal auditors in modern audit techniques including procurement audit will be conducted within 2 years. In particular, the IDF funding will support the development of modular training materials based on the new internal audit documents (the Regulations, Standards, Audit Manuals and Programs developed under CBPFM).

122. **Recommendation:** (i) *Internal Audit Departments are to be established at more line ministries and state agencies, and should be provided with the required staff;* (ii) *Capacity building training should be conducted to develop skills and enhance internal auditors at the line ministries;* (iii) *A Public Internal Financial Control System (PIFC) strategy should be adopted by the MOF;* and (iv) *Enforcement mechanisms should be put in place to address IA findings.*

123. **Efficiency of Complaints Mechanism:** Although the PPL (Articles 64 and 65 respectively) specifies that procuring entity and PPMD decisions on complaints are final unless submitted to a higher-level reviewing authority pursuant to the PPL, nothing is said as to whether such decisions are binding on the parties. Even though the PPMD decisions are not binding, procuring entities tend to comply with such decisions. In the event of non-compliance, the procuring entity could be taken to court, where it is understood that the PPMD decision would carry weight with the court. In addition, in the event of violations of procurement legislation, the PPMD is required to notify appropriate authorities if a procuring entity fails to eliminate violations notified to it by the PPMD (Article 14). Thus, while the PPMD has no direct enforcement authority, there are mechanisms available to the PPMD in the event that a procuring entity fails to comply with the PPMD's decision. The PPL provides for direct recourse to file complaints in court, as well as a right to appeal lower-level reviewing entity complaint decisions in court. Courts have available to them enforcement authorities as under national law

generally (e.g., Civil Code), which would include measures such as property seizure, auction, etc.

124. There appears to be general reluctance for bidders to avail themselves of the procuring entity-level complaint process, because it is perceived that there would not be a fair and balanced decision from the entity that made the decision on the complaint. Publication of decisions is not mandated under the PPL, and decisions are not published, although the PPMD indicated that its management has directed it to start publishing decisions. However, written decisions are normally provided to the complainants and procuring entities. According to the PPMD, its decisions are reasoned and formally written up, but it is not clear what level of detail is provided given that no decisions were available for review.

125. Bidders seemingly are hesitant to seek review at the procuring entity level because they do not believe that there will be a fair review by the entity that made the decision that is the subject of the complaint.

126. There also are questions regarding the PPMD's independence and the fullness of its authority, which stem largely from the fact that complaint decisions must be signed by the MOF Minister or Deputy, because the PPMD apparently does not have the authority to take such decisions on behalf of the MOF.

127. **Recommendation:** (i) Matters pertaining to enforcement of, and compliance with, complaints decisions should be more directly addressed in the procurement legislation; (ii) Procuring entities and the PPMD (if the PPMD retains its complaints review function) should be provided with adequate resources to allow them to handle complaints efficiently, while at the same time tending to their other work; (iii) The complaint review mechanisms should operate with greater transparency, such as through publication of decisions, which might enhance perceptions relating to the fairness of the review system. Publication of decisions should be mandated under the PPL; and (iv) Ideally, an independent body should be established as a common forum for all complaints regarding procurement processes and contract awards. To the extent that a complaint review function is retained within the PPMD, proper segregation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest. The PPMD also should be given full authority to make decisions on complaints in such cases.

128. **Access to Procurement Information:** Information on procurement is easily accessible in the media, but it does not appear that all procurement-related information is consolidated and available in one place. The information that is provided is partially centralized on the MOF website, which includes public procurement legislation, procurement plans, procurement advertisements, and procurement results. Furthermore, the *Public Procurement Bulletin* (PPB) and MOF website publish information about forthcoming tenders, outcomes of accomplished tenders, as well as all copies of procurement legislation and procurement plans. However complaint decisions are not

published. As discussed in the context of other relevant indicators, the quality of the published information is poor. The GOK has plans to introduce e-GP in the near future, which is expected to facilitate public access to procurement information.

129. **Recommendation:** (i) Steps should be taken to improve the quality of procurement information made available to the public through various media, including the MOF website. Such information should be made available to the public through a single portal, which should be updated on a regular basis; and (ii) The PPMD should prepare an annual comprehensive procurement report providing statistical and analysis information about the data collected, including data on procuring entity compliance with the procurement legislation.

130. **Anti-Corruption Measures:** Although engaging in fraudulent and corrupt practices and acting under a conflict of interest are punishable acts under the relevant legislation, the procurement legal framework does not establish a clear requirement to include references to fraud and corruption, conflict of interest, and unethical behavior in tendering documentation. In addition to including such requirement in the legislation, it also would be prudent for the PPL to mandate that procuring agencies conduct due diligence on bids received in order to identify non-compliance with the PPL / tender rules and identify red flags indicating fraudulent or collusive practices. The legislation also should stipulate an obligation of government officials to report actual or suspected corruption. Specific guidance could be provided in the secondary legislation.

131. The PPL (Article 6) provides for disqualification of bidders/contractors/suppliers who have given anything of value to influence a procurement proceeding, decision or selection of a particular procedure, but this provision speaks to contractor rather than to government actor actions and remedies, which are not addressed. The full range of fraudulent and corrupt practices also is not covered under the PPL. Nor does the PPL give precise instructions on how to incorporate such matters in bidding documents. The standard bidding documents also do not include adequate provisions on fraud and corruption.

132. Provisions on bribery of officials and applicable sanctions are stipulated in the Criminal Code, Chapter 30 “Official Crimes” (Article 303: Corruption; Article 304: Abuse of Official Position; Article 306: Concluding Contracts, Performing Public Procurement against the Interests of the Kyrgyz Republic; Article 308: Illegal Use of Budgetary Funds; Article 309: Illegal Participation in Business Activity; Article 310: Bribery-remuneration; Article 311: Bribery-subornation; Article 313: The Extortion of Bribes; and Article 314: Giving a Bribe; Article 315: Official Forgery; Article 316: Neglect of Duty). Article 314 covers the demand side and the rest regulate the supply side of corruption. The demand side of corruption, therefore, is only tangentially, and thus inadequately, addressed in the context of bribe-giving. More broadly, the anticorruption legislation may be too narrowly drafted to cover the broad range of potential “bad actors” who may engage in fraudulent or corrupt practices. Also, the

Criminal Procedure Code does not directly address investigative authority relating to fraudulent and corrupt practices.

133. No nexus seems to link the PPL with anticorruption legislation, which would call attention to the punitive consequences of corrupt behavior in procurement and spotlight the possibility of criminal referral. The PPL would benefit from such a nexus whereby gaps also could be filled by reference to pertinent provisions of the anticorruption legislation. However, the anticorruption legislation also has gaps of its own. For example, the PPL only mentions “bribery” and not other prohibited acts like collusion, coercion, fraud, and obstructive practices; such broader areas of fraud and corruption also are not covered under the anticorruption legislation. The anticorruption legislation’s description of “subjects to corruption incidents” also may be too narrowly drafted to cover the broad range of potential “bad actors” who may engage in fraudulent or corrupt practices. Although such matters may be otherwise addressed, such as in the Law of the Kyrgyz Republic on Competition (No. 116 dated July 22, 2011), the anti-corruption legislative framework should encompass all forms of corruption, including those which occur between private parties, or should at least cross-refer to prohibitions on certain behavior contained in other laws.

134. Although there may be some intention of the GOK to streamline responsibilities relating to anticorruption efforts, these activities remain fragmented among various entities.

135. Some anticorruption programs and measures are in place. However, there are no clear measures with the specific purpose of detecting and preventing corruption in public procurement.

136. Measures are in place to provide for the confidential reporting of fraudulent, corrupt, or unethical behavior. An anti-corruption website anticorr.gov.kg is available to the public for reporting fraud and corruption, including corruption in public procurement. However, the legislative framework does not clearly provide that an individual complainant has the right to remain anonymous. Furthermore, while the anticorruption legislation law appears to provide for whistleblower protection, the rules are unclear.

137. With regard to the sanction of debarment (inclusion on the list of unreliable contractors and suppliers), matters such as the due process to be afforded accused contractors/suppliers, the nominal period of ineligibility to participate and any conditions for release from ineligibility should be set forth in the PPL, or in secondary legislation at a minimum. There also is some question as to the authority of the PPMD in connection with determinations regarding contractor ineligibility in that the procuring entity submits information relating to contractor behavior to the PPMD which then makes a recommendation as to ineligibility for ultimate decision by the MOF Minister or Deputy. Such decisions can be appealed to court, but the team was advised that contractors usually do not appeal such decisions. The team also as advised that matters pertaining to contractor reliability often are handled informally rather than through an official review process.

138. Both the PPL (Article 5) and the standard bidding documents could benefit from revision in terms of scope of coverage regarding conflicts of interest as well. PPL Article 5 includes conflict-of-interest rules for public officials, but these are narrowly prescribed. For example, coverage of additional categories of conflicts of interest should be addressed, such as more indirect benefits that might be conferred, prohibiting government employees with influence over procurement from obtaining employment with suppliers (contractors) participating in public procurement contracts for a set period of time, etc. Corporate and non-government actor conflicts of interest also should be more fully addressed in the legislative framework. Consideration also should be given to requiring tender commission members to sign Conflict of Interest Affidavits. Article 12 of the Anticorruption Law also should more broadly cover activities that are “incompatible with performing Government functions,” for example, by more clearly defining prohibited behaviors (e.g., insider trading), introducing a *de minimis* rule on gifts, and omitting “participation in strikes”. Government officials should be required to disclose to their manager or an Ethics Office possible or actual conflicts of interest, and there should be provisions for the assignment of penalties for nonconformance with conflict of interest provisions. As noted under Sub-indicator 12(g) below, the legislative framework also should include a Code of Ethics that addresses conflict of interest situations that procurement staff are likely to experience.

139. In addition, to a certain extent, both the PPL and the anticorruption legislation conflate fraudulent and corrupt practices and conflicts of interest. These subjects generally should receive separate treatment under the law.

140. It should be noted that the Kyrgyz Republic has ratified the United Nations Convention against Corruption (UNCAC), but the anticorruption legislation should be reviewed, and revised as needed, to ensure conformity with UNCAC.

141. **Recommendation:** (i) *The procurement legal framework should establish a clear requirement to include references to fraud and corruption, conflict of interest, and unethical behavior in tendering documentation;* (ii) *The overall anticorruption and procurement legislative framework could benefit from revision in order to more fully cover the range of potential fraudulent and corrupt practices, completely define and cover conflict of interest matters, and fill gaps, align and ensure consistency among the legislative documents. The legislative framework should more clearly define responsibilities and accountabilities of government actors, and penalties for individuals and firms found culpable of fraudulent or corrupt practices. The roles and responsibilities of various actors in the anticorruption system should be streamlined, or at least more clearly defined and assigned, in order to ensure that there is clarity and full coverage with respect to responsibilities and accountabilities of GOK entities in this area. In that regard, the legislative framework should include more information about the division of labor among the institutions responsible for fighting corruption, e.g., by naming the institutions, defining their jurisdiction and powers, and clarifying coordination arrangements. The legislation also should stipulate an obligation of government officials to report actual or suspected corruption. Special measures specifically aimed at preventing and detecting fraud and corruption in public*

procurement should be implemented. The legislative framework should clearly provide that an individual complainant has the right to remain anonymous and should more precisely set forth the right to whistleblower protection. The anticorruption legislation should be reviewed, and revised as needed, to ensure conformity with UNCAC; (iii) Fraudulent and corrupt practices and conflicts of interest, which both the PPL and the anticorruption legislation conflate, should be treated separately; and (iv) An independent and transparent process should be put in place with respect to determinations as to debarment (inclusion on the list of unreliable contractors and suppliers).

142. **Stakeholders’ Role in Prevention of Fraud and Corruption:** Civil society is quite active and frequently reports on fraud and corruption. Pursuant to the Presidential Decree No. 212 dated September 29, 2010, On Improving the Interaction of the Public Administration Bodies with the Civil Society. Forty-one (41) Civil Society Councils (Councils) have been established for different sectors of the economy (e.g., energy, environment, education, health, etc.), comprising representatives from civil society organizations, government and private sector. There is no such Council specific to public procurement. These Councils, which have been functioning for the last year, are chaired by two co-chairpersons, one from the civil society/private sector and the other from the GOK. The Council members are elected for two (2) years. The main objective of these Councils is to monitor and ensure effective use of public resources for their respective sectors.

143. **Recommendation:** *(i) The establishment of a separate Civil Society Council on public procurement with public and private representation would be a positive step in seeking to ensure compliance with the procurement legislation, and enhance accountability of public officials involved in the conduct and management of public procurement.*

144. **Enforcement of Rulings and Penalties:** Little evidence is available about prosecution and punishment for corrupt practices. The following cases can be cited: (i) in 2005, the director of a professional technical college was prosecuted; (ii) in 2006, a unit head and the head of the financial department of the Chief Division for Execution of Punishments were charged with crimes in public procurement; and (iii) in 2007, the director and chief accountant of the state-owned enterprise Kyrgyz Patent were prosecuted.

145. Presently no contractors are included on the official list of unreliable contractors and suppliers. A second list maintained by a private entity lists one contractor, but the team understands that the listed contractor no longer is officially ineligible from participation in public procurement. Moreover, the mere existence of such an unofficial list creates confusion and presents a matter that should be addressed. The team was told that the PPMD committee with responsibility for unreliable contractor/supplier recommendations met twice in 2011 and twice so far in 2012. The 2011 cases did not result in inclusion of the contractors on the list of unreliable contractors and suppliers, but no written decisions are available. The 2012 cases still are pending. The team also has heard that requests to include contractors/suppliers on the list of unreliable contractors

and suppliers are submitted to the PPMD, but, to the knowledge of the procuring entity that submitted the request, no further action is taken. Such practice calls into question whether written decisions on such cases actually are being issued.

146. The legislative framework should provide some guidance on what information will be disclosed and when. For example, it would be useful for the anticorruption legislation to mandate disclosure of general information about cases, investigations, sanctions, whether administrative or criminal, e.g., through an annual report with an analysis of trends and patterns.

147. **Recommendation:** (i) *Greater transparency and procedural clarity is needed regarding enforcement of rulings and penalties relating to corrupt practice cases.*

148. **Code of Ethics in Procurement:** There is no separate Code of Ethics or Code of Professional Conduct for government officials with specific provisions for those involved in public financial management, including procurement. However, the team was informed by the Ministry of Justice that a Code of Ethics for government officials has been submitted for its review. At present, Article 10 of the Law on Civil Service, No. 114, of August 11, 2004, provides general principles of ethics for civil servants, including procurement staff. The Law on Civil Service requires a declaration of assets by civil servants, but there is no link to such requirement in the procurement legislative framework, and relevant provisions in the anticorruption legislation could benefit from clarification. For example, the legislation should specify the types of income or forms of wealth that must be disclosed, the type or level of civil servants required to report, and whether family members are to be included in the disclosure. Government officials should be required to submit their financial disclosures annually. There should be penalties for not complying with the disclosure requirements, and the names of individuals who have not filed disclosures should be made public after a stipulated period of time (e.g., three months). The legislation also should assign responsibility to an agency for receiving and reviewing disclosures.

149. **Recommendation:** (i) *As a best practice, a specific code of conduct/ethics codes explicitly covering participants in public financial management systems, including procurement, and addressing matters specific to such persons, should be implemented; and ii) Along the same lines, provisions should be included in the legislative framework clearly mandating financial disclosure by persons in decision-making positions.*

CHAPTER III – RECOMMENDATIONS AND SUGGESTED ACTION PLAN

150. Based on the assessment findings, the following key recommendations and action plan are proposed for the GOK’s consideration. More detailed recommendations addressing the specific areas that could benefit from revision in the public procurement system are stated within the body of the report, mainly in Chapter II and at the end of each baseline indicator in Annex C. The proposed action plan is prioritized into short-, medium-, and long-term actions.²

151. In order to promote awareness and understanding of, and support for, the public procurement reform process, consideration may be given to holding a one-day workshop to disseminate the findings, recommendations and action plan to the public and private sectors and to civil society. Such a workshop could generate understanding of, and support for, the continuing public procurement reform process.

152. Key Recommendations and Action Plan

Recommendation	Timetable	Responsible Entity
Legislative and Regulatory Framework		
Revise the PPL to ensure that the various legislative instruments are comprehensive, coordinated and current in particular to address observed gaps in coverage and to ensure that the various legal instruments address related topics in the same manner. Matters of critical importance, such as the identity of the Authorized Body, should be addressed in the PPL rather than regulated through decrees and resolutions.	Short to Medium	PPMD
Prepare a consolidated, coordinated and comprehensive set of implementing regulations detailing matters set out in the PPL	Short to Medium	PPMD
A comprehensive set of SBDs should be prepared and mandated for use by procuring entities, and existing SBDs should be updated consistent with current legislation and international good practice	Medium to Long	PPMD

² Short, medium, and long terms are understood to mean approximately six (6) months, one (1) year, and two (2) to three (3) years, respectively.

Recommendation	Timetable	Responsible Entity
Ideally, an independent body should be established as a common forum for complaints regarding procurement processes and contract awards. To the extent that a complaint review function is retained within the PPMD, proper segregation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest. The PPMD also should be given full authority to make decisions on complaints in such cases.	Short to Long	GOK/PPMD
Secondary legislation for the use of electronic means of procurement should be developed to provide clarity and guidance in terms of how to use such electronic procedures	Medium	PPMD
Institutional Framework and Management Capacity		
The PPL should include a more explicit statement that no procurement action shall be initiated without an existing budget appropriation	Short to Medium	PPMD and MOF
Prepare a strategy for the next several years for the improvement of public procurement system	Short	PPMD
Develop and implement a sustainable strategy for collecting, maintaining, and disseminating procurement statistics, including steps to increase the capacity of the PPMD in this area	Medium	PPMD
Design and implement an integrated system for monitoring procuring entity compliance with procurement legislation. Periodic reports on the performance of public procurement should be prepared and made available to the public through the public procurement website	Short	PPMD
Carry out a capacity building needs analysis and, based on the findings, prepare a national procurement capacity building strategy for the short-, medium- and long-terms, considering all available resources, such as existing public servant training mechanisms; universities; and training centers such as the one in the MOF. Based on the strategy, implement a training program for key procuring entities at both the national and oblast/rayon levels	Long	MOF/PPMD/MOF training center
Promote professionalism and career development in public procurement to sustain the procurement capacity of procuring entities	Long	Ministry of civil service
Establish an effective procurement help desk at the PPMD	Short to medium	PPMD

Recommendation	Timetable	Responsible Entity
Strengthen quality control standards for evaluation of staff performance based on outcomes and professional behaviors. “Service Standards” should be introduced to gauge the efficiency of the control systems and individuals	Long	PPMD
Procurement Operations and Market Practices		
Take immediate action to strengthen the capacity of the MOF Training Center so that it can provide training on public procurement to procuring entities as well as to the business community	Short to Medium	MOF
Organize, through the MOF Training Center, seminars and awareness sessions for private sector on a regular basis	Medium to Long	PPMD
Finalization of the e-Procurement strategy as roadmap for the adoption of e-Procurement, including an action plan with clearly defined roles, responsibilities, timeline, and cost estimates	Medium to Long	PPMD
Integrity and Transparency of Public Procurement System		
Strengthen the capacity of the Chamber of Accounts (CA) to better understand and implement international audit standards	Short to Medium	CA
The CA should introduce quality assurance procedures, ensuring consistency of audit reports	Short to Medium	CA
Develop an enforcement mechanisms to address CA audit findings	Medium to Long	CA
Internal Audit Departments are to be established at more line ministries and state agencies, and should be provided with the required staff	Medium to Long	MOF
Develop an enforcement mechanisms to address the IA findings	Medium to Long	MOF
The complaint review mechanisms should operate with greater transparency, such as through publication of decisions, which might enhance perceptions relating to the fairness of the review system. Publication of decisions should be mandated under the PPL.	Short	PPMD
The PPMD should prepare an annual comprehensive procurement report providing statistical and analytical information about the data collected, including data on procuring entity compliance with procurement legislation	Short to Medium	PPMD
The procurement legal framework should establish a clear requirement to include references to fraud and corruption, conflict of interest, and unethical behavior in tendering documentation	Medium to Long	PPMD

Recommendation	Timetable	Responsible Entity
The overall anticorruption and procurement legislative framework could benefit from revision in order to more fully cover the range of potential fraudulent and corrupt practices, completely define and cover conflict of interest matters, and fill gaps, align and ensure consistency among the legislative documents. In addition, fraudulent and corrupt practices and conflicts of interest, which both the PPL and the anticorruption legislation conflate, should be treated separately	Medium to Long	PPMD and Anti corruption agency
The establishment of a separate Civil Society Council on Public Procurement with public and private representation would be a positive step in seeking to ensure compliance with procurement legislation, and enhance accountability of public officials involved in the conduct and management of public procurement	Medium to Long	MOF /GOK
A specific code of conduct/ethics codes explicitly covering participants in public financial management systems, including procurement, and addressing matters specific to such persons, should be implemented	Medium to Long	PPMD
Provisions should be included in the legislative framework clearly mandating financial disclosure by persons in decision-making positions	Short to Medium	GOK

ANNEX A – PEOPLE MET

Name	Title	Organization
Mr. Mirlan Baigonchokov	Deputy Minister	Ministry of Finance
Mr. Mamatov Abdimuktar	Deputy, Member of Economy and fiscal policy committee	Jogorku Kenesh (Parliament) of KR
Mr. Damir Bisembin	National Economic Coordinator	Swiss Cooperation Office
Ms. Andrea Studer	Deputy Head	SDC
Mr. Gulnara Botobaeva		EU Delegation in KR
Mr. Carey Gordon	Country Representative	USAID
Ms. Rie Hiraoka	Country Representative	ABD
Ms. Abdrasulova Nurzat	Coordinator	Civil Society Organization Supervisory Councils
Ms. Kunura Raimbekova	Health Program Officer	KFW
Ms. Zinat Beishembaeva	Senior Procurement Specialist	Ministry of Health
Ms. Shirdakova Gulnur	Procurement specialist	Department of road under the Ministry of Transport and Communications
Ms. Abdukerimva Jazgul	Specialist	Ministry of Economy and Antimonopoly regulations
Mr. Abdiev A	Engineer	“Kyrgyzmebel”
Mr. Neimyshev Vasili	Director	“Janar-Elektronik”
Ms. Sagynbaeva Ainura	Director	Ltd “SIAR”
Ms. Alieva K.	Director	Ltd “Neman-Farm”
Ms. Venekova Ekaterina	Director	Ltd “Continent Trade”
Mr. Asanbaev N	Director	“Logic”
Mr. TolubaevN	Head of marketing group	“Elkat”
Ms. Djumasheva I	Executing Director	KPMG Bishkek
Mr. Komarov S.	Manager on Developing	“ST.artLtd ”
Mr. Fadin I.	Manager	Ltd“ Triada Print”
Mr. Davletaliyev Amangeldy Satarovich	Deputy Chairman	Chamber of commerce
Mr. Jekshenbekov Maksat	Head of budgeting department	Ministry of Finance of KR
Mr. Ozumbekov Ulan	Head of Department	Treasury under the MOF
Ms. Omurova Satygul	Head of Internal Audit dept	Ministry of Finance of KR

Name	Title	Organization
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Mr. Kutmanov Nurbolot	Deputy Minister	Ministry of Justice
Mr. Akylbek Umetaliev	Head of logistic department,	KTU
Mr. Melis Akjigit uulu	Head of Public Procurement methodology department	Ministry of Finance of KR
Ms. Mira Ryspekova	Head of Procurement Department	Bishkek Municipality
Mr. Sharabiddinov Nurbek	Specialist	National defense services
Mr. Bolotbaev A	Deputy Director	State Personnel Service
Ms. Egembaeva Guljan Mirovna	Auditor	Chamber of Accounts
Ms. Bermet Musakojoeva	Project Manager	CBPFM
Mr. Murzahmatov Nurbolot	Chairman	Voenno- Antovoskiy Ayil Okmotu
Mr. Ismanova Tokanai	Lead specialist, Regulatory and analytical activity department	State Agency for architecture and construction
Mr. Mairmabek Tairov	Project Director	Agricultural Investments and services project
Ms. Zarylbek kyzy Asel	FM Specialist	Agricultural Investments and services project
Mr. Anvar Mamkulov	Procurement Specialist	Agricultural Investments and services project
Ms. Damira Temirbaeva	Procurement Specialist / BOUIP	ARIS
Mr. Arstan Mukhtarov	Procurement Specialist	ARIS
Mr. Daniyar Mukashev	Procurement Specialist	Second Land and Real estate Registration Project
Mr. Almazbek Doorombaev	ABCC Director	Agribusiness and Marketing project
Mr. Azamat Ibraimov	Procurement Specialist	Agribusiness and Marketing project
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Ms. Saltanat Jumaeva	FM Specialist / OIP II & WMIP	OIP II/WMIP
Ms. Gulzira Kurmankulova	Procurement Specialist	GTAC/ABMP/ERP/CBPFM
Ms. Bermet Musakojoeva	PIU director	GTAC/ABMP/ERP/CBPFM
Ms. Mehriban Davlesova	FM Specialist	GTAC/ABMP/ERP/CBPFM
Mr. Abdykarov Tolubay	Procurement Specialist	Disaster Hazard Mitigation Project

Name	Title	Organization
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Ms. Aida Sootbekova	Procurement Specialist	Reducing Technical Barriers and Entrepreneurship for trade
Ms. Gulgun Imankulova	Procurement Specialist	CBEM
Ms. Aigul Djanuzakova	FM specialist	Reducing Technical Barriers and Entrepreneurship for trade/ CBEM
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Mr. Djamalidinov Bakyt	Deputy Director	National Road Rehabilitation Project
Mr. Ermek Kerimbaev	Project Manager	Emergency Recovery Project
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Mr. Tursunkul uulu Star	Chief engineer- programmer “ Info System” State dept	Ministry of Finance
Mr. Kazymbekov Maksat	Specialist/State procurement bulletin	Education Center

COUNTERPART TEAM

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Ms. Shirdakova Gulnur	Procurement specialist	Department of road under the Ministry of Transport and Communications
Ms. Kadyrkulov Bakyt	Chief Specialist	Ministry of Education and Science
Mr. Bekirbaev Sabyr	State Procurement Specialist	Civil service
Mr. Ozumbekov Ulan	Head of Department	Treasury under the MOF
Mr. Melis Akjigit uulu	Head of Public Procurement methodology department	Ministry of Finance of KR
Ms. Tokotrova Anarkul	Chief Inspector	Chamber of Accounts
Mr. Mirlan Sakiev	Inspector	Chamber of Accounts

ANNEX B – KEY MATERIAL REVIEWED

Title	Version
1. Constitution of the Kyrgyz Republic	2010
2. Law of the Kyrgyz Republic on Public Procurement	July 8, 201, No. 88
3. Law of the Kyrgyz Republic on Fighting Corruption	March 6, 2003, No. 51
4. Law of the Kyrgyz Republic on Competition	July 22, 2011, No. 116
5. Law of the Kyrgyz Republic On Natural and Legal Monopolies in the Kyrgyz Republic	No 135 dated 27 April 2009
6. Law of the Kyrgyz Republic «On the Courts of Arbitration in the Kyrgyz Republic»	June 11, 2004 № 73
7. Law of the Kyrgyz Republic On Civil Service	August 11, 2004, No. 114
8. Law on Normative Legal Acts	June 25, 2002, No. 130
9. Law on Budget	April 17, 2012 № 41
10. Law on Arbitration in Kyrgyz Republic	June 30, 2002
11. Criminal Code	December 21, 2011, No. 246
12. Criminal Procedure Code	As of February 6, 2006, No. 35
13. Regulation on public procurement methodology unit of the Ministry of finance of the Kyrgyz Republic	June 10, 2010 №257
14. Civil Code	July 12, 2011, N 93
15. Resolution of the Kyrgyz Republic Government on Ministry of Finance of the Kyrgyz Republic and Regulation on Ministry of Finance of the Kyrgyz	April 8, 2011, No. 145 and May 31, 2011, No. 269

Title	Version
Republic	
16. Regulation on forming Data base of unreliable (unconscionable) suppliers (contractors) and procedures of its application	May 31, 2011 N 267
17. Resolution of the Kyrgyz Republic Government “On approval of thresholds when performing procurement of goods, works and services”	June 13, 2008 No. 302
18. Resolution of the Kyrgyz Republic Government “On approval of the Regulation on procurement and tender commission unit, samples of the announcement for conducting bids and the announcement of the conducted selection for procurement and the List of data provided by procuring agencies to the authorized public body in charge of public procurement	June 20, 2011 No. 330
19. Decree of President of the Kyrgyz Republic “On improving the interaction of the public administration bodies with the civil society”	September 29, 2010 No. 212
20. Medium-Term Development Program (MTDP) for 2012-2014	April 12, 2012, Decree No. 239
21. Decree Establishing Anti-Corruption Service under National Security Service	December 14, 2011 N 27
22. Standard Bidding Documents for procurement of services by unlimited, 23. limited and two-stage bidding method	July 18, 2011, N 398
24. Standard Bidding Documents “ Procurement of Goods by unlimited, limited and two-stage bidding and by method of request for quotations”	February 25 2011, N 74
25. Standard Bidding Documents Procurement of Works by unlimited, limited bidding	
26. World Bank document: Kyrgyz republic: Public Procurement System Assessment,	November 10, 2007

ANNEX C – KYRGYZ REPUBLIC BASELINE INDICATORS (BLIs)

Pillar I: Legislative and Regulatory Framework

A sound governance system for public procurement begins with a solid legislative and regulatory framework. To measure that, Pillar I of the OECD-DAC/World Bank baseline indicator assessment uses two performance indicators: (i) the existence of a legislative and regulatory framework for public procurement that achieves agreed-upon standards and complies with applicable obligations, and (ii) the existence of implementing regulations and documentation.

Indicator 1: Public procurement legislative and regulatory framework meets agreed standards and complies with obligations

For this indicator, the team reviewed the legal and regulatory instruments, including the Public Procurement Law (PPL), the regulations issued by the prime minister, and the orders issued by the Authorized Body. The indicator's purpose is to determine the structure of the regulatory framework governing public procurement, the extent of its coverage, and public access to relevant laws and regulations; the appropriateness of procurement methods; advertising rules and time limits; rules on participation; status of tender documentation and technical specifications; tender valuation and award criteria; requirements for submission, receipt, and opening of tenders; and effectiveness of the complaint resolution mechanism. The indicator's eight sub-indicators are discussed below.

Sub-indicator	Current Procedures/Practices/Key Findings
1(a)—Scope of application and coverage of the legislative and regulatory framework	<p><u>Legislative Framework:</u> The major legal instrument that regulates public procurement in the Kyrgyz Republic is the Public Procurement Law No. 69 of May 24, 2004 as amended by Laws No. 172 dated July 28, 2008, 236 dated July 20, 2009, and 88 dated July 8, 2011). Numerous Presidential Decrees and Resolutions also exist relating to public procurement, but these are not comprehensive, coordinated, or current. There are no implementing regulations detailing matters set out in the PPL. There is no current procurement manual.</p> <p>While Article 6 of the 2010 Constitution discusses the legal force of legislative documents, and prescribes the Constitution as the supreme legal force in the Kyrgyz Republic, the hierarchy of various legislative instruments is not clearly established therein. The order of precedence among the Constitution, international treaties, laws, and other normative legal act is, however, established in the Law on Normative Legal Acts.</p> <p><u>Availability of Legislation:</u> All legislative acts are published in the web-based <i>Public Procurement Bulletin (PPB)</i> and in the official governmental newspaper <i>Erkin Too</i> or <i>Slovo Kyrgyzstana</i>.</p> <p><u>Scope of PPL (Coverage of subject matter and entities):</u> The PPL covers procurement of all goods, works, and services (including consulting services) by government agencies, local governments, state and municipal institutions and enterprises, agencies and foundations, as well as joint stock companies with state or municipal shares of more than 50 percent, which procurement is financed wholly or in part with State funds. “State Funds” include: (i) funds from the state budget or budgets of local self- government bodies that shall be allocated for their activity and capital investments; (ii) funds at the expense of the national and local budgets allocated for the implementation of their activities and investments; (iii) funds, defined in the Kyrgyz Republic Law on the Budget as “extra- budgetary funds”, funds of joint stock companies, where a State or municipal share exceeds 50%, funds of foundations established at the expense of State or municipal funds, and funds of State or municipal enterprises and institutions; (iv) funds provided as foreign aid under International Treaties, if the Treaties shall not</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>require other ways of using funds; and (v) state credits guaranteed or secured.</p> <p>In accordance with PPL Article 2, the PPL does not regulate procurement directly connected with State security, national defense, protection of state secrets, food security, and natural disasters, the guidelines for which shall be determined by the Government of the Kyrgyz Republic. However, the team was advised that certain defense procurements are conducted under the PPL depending on the nature of what is being procured. The team understands that the National Security Committee maintains a list of national defense goods that shall not be subject to procurement under the PPL. Although not mentioned in the Article 2 exceptions, PPL Article 17(3) states that procurement of pharmaceuticals and medical items shall be conducted in accordance with procedures issued by the Government, which indicates that such procurement also is outside of the coverage of the PPL.</p>
1(b)—Procurement methods	<p>Article 17 provides for the following procurement methods:</p> <ol style="list-style-type: none"> a. Tendering with unlimited participants b. Tendering with limited participants c. Two-stage tendering d. Request for quotations e. Single-source procurement f. Electronic Public Procurement g. Electronic Reverse Auction <p>It appears that tendering with unlimited participation and electronic public procurement are the default methods of procurement, subject to the maximum threshold for the use of these methods. However, the default nature of tendering with unlimited participation should be more clearly stated than simply identifying it as the “main” method of procurement. Furthermore, e-procurement is a means of procurement rather than a separate stand-alone method of procurement (except in the case of Electronic Reverse Auction, for example). E-procurement therefore should not be described as a procurement method, much less as a main method.</p> <p>Framework contracts are not contemplated under the PPL, although PPL Article 13(8) does note, generally, the possibility of joint procurement being conducted on behalf multiple</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>procuring entities.</p> <p>PPL Article 32 <i>et seq.</i> provides for two-stage tendering and sets out the condition for its use. This article might benefit from further revision, for example, to provide that first-stage interactions between the procuring entity and bidder should be along the lines of technical and commercial clarifications rather than full-blown negotiations, and to make clear that confidentiality of first-stage proposals shall be maintained.</p> <p>The PPL could more clearly describe the circumstances when the RFQ method may be used, as well as matters such as the manner of evaluation and the information to be published in the procurement announcement.</p> <p>International good practice generally restricts use of single-source procurement to very limited circumstances, such as: availability of goods/works/services from only one qualified source, catastrophic or natural disasters, standardization of equipment, and proprietary reasons. The PPL does not contemplate use of single-source procurement when goods/works/services are available from only one qualified source, for standardization of equipment, or for proprietary reasons. Conversely, the language regarding use of single-source procurement in emergency-type situations may be so broad as to go beyond catastrophic or natural disasters. Furthermore, an extensive list of permitted uses of single-source procurement, such as that included in the PPL, may be broadly interpreted so as to create a potential for misuse by procuring entities. In some cases, restricted bidding rather than single-source procurement may be a more appropriate method. With regard to PPL Article 38(3), it should be clear that poor procurement planning should not be used as a justification for the use of single-source procurement. It also appears that the broad language of this provision may be used in practice to justify quick spending at the end of a fiscal year before the funding expires, which should not, in and of itself, be a proper justification for the use of single-source procurement. Of particular concern is the provision under Article 38 whereby single-source procurement could be used for the acquisition of goods according to the list of domestic suppliers defined by the Government, which might allow for a broad category of procurement to be set aside for domestic suppliers. In fact, this</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>appears to be the case in practice, such as with regard to certain vaccines. Although coordination with the Authorized Body is required for the use of single-source procurement, the process and timing of such effort is unclear.</p> <p>As noted by procuring entities, it is not clear in the PPL what procurement method(s) should be used if the procurement value is less than the Som 500,000 threshold for application of competitive procurement methods under the PPL. There also appears to be some question among procuring entities as to whether the threshold applies on a per-contract basis or is an aggregate amount. In addition, there is a lack of correspondence between Resolution No. 302 on thresholds dated June 13, 2008, and the PPL because the PPL cross-references in the resolution do not correlate to the PPL articles.</p> <p>PPL Article 40 lists the methods for selection of consultants. These are as follows:</p> <ol style="list-style-type: none"> a. Quality-and Cost-Based Selection (QCBS) b. Quality-Based Selection c. Selection under a Fixed Budget d. Least-Cost Selection e. Selection of Individual Consultants <p>Individual consultants also can be selected without competition if one of the criteria for direct contracting stated in PPL Article 57 is met. No method is provided that would allow for direct contracting with consulting firms (as opposed to individual consultants).</p> <p>Fractioning of contracts to avoid application of the PPL, although not expressly to avoid open competition, is prohibited. However, the team has been told that such fractioning essentially occurs, in particular near the end of the fiscal year when funds need to be used quickly and so low-value contracts are concluded (often on a single-source basis), and at local levels where procuring entities may use low-value (i.e., below threshold level) contracts in order to avoid the need to use more complex procurement methods.</p>
1(c)—Advertising rules and time	Tendering opportunities generally are to be advertised in the <i>Public Procurement Bulletin (PPB)</i> and in mass media (which is

Sub-indicator	Current Procedures/Practices/Key Findings
limits	<p>understood to mean national newspapers with a wide distribution in practice). However, advertising is not required in all cases, which should be the standard (save perhaps for single-source contracts) in order to achieve maximum transparency. Contract awards are published in the source(s) that published the bid invitations, but contract award notices should be published in all cases. In addition, there should not be a delay in publication of the contract award notice so that bidders whose bids have not been accepted have adequate time during which to submit a complaint if they wish. Publication on a website of free access also should be mandated.</p> <p>The required contents of invitations to tender is generally in accordance with international practice, but might also include a summary of the criteria and processes to be used in ascertaining qualifications and the documents that will be required. No similar required contents are specified regarding requests for quotations.</p> <p>Time limits are provided with a minimum three weeks for unlimited tendering.</p>
1(d)—Rules on participation	<p>In evaluating tenders for goods, a procuring entity may grant up to a 20% preference to tenders offering goods produced within the country. The information required to establish the eligibility of a tender for such preference is not clear (e.g., any required domestic content or manufacture percentage, methodology, etc.). Also, 20% may be a bit high.</p> <p>In evaluating proposals for works, a procuring entity may grant up to a 10% preference to proposals of domestic contractors. The information required to establish the eligibility of a tender for such preference again is not clear.</p> <p>The provision relating to construction procurements to the effect that a procuring entity grants preferences to domestic contractors under the condition of using local labor resources, as well as not less than 30% of local raw materials, is generally unclear as to the manner of its application.</p> <p>Article 38 suggests that broad set-asides for domestic contractors may be permitted (and without clear parameters for their use) in connection with the acquisition of goods on the list</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>of domestic suppliers. It is possible that this provision could be applied in such a way as to essentially eliminate the general principle stated elsewhere in the PPL that foreign bidders shall be allowed to participate on an equal basis with domestic bidders except for the application of a domestic preference. In fact, this appears to be the case in practice.</p> <p>Despite the fact that certain eligibility rules are set forth in the PPL, the team was told that agencies often do not provide bidding documents to contractors with whom they do not wish to do business even though such contractors do not appear on the list of unreliable contractors, and that such action was not found to be improper by the PPMD in response to a complaint in one case. Along the same lines, the team was told of a procurement in which a law enforcement entity told a procuring entity not to include a bidder—which was not on the list of unreliable contractors and suppliers—in the procurement process because its founder had a criminal record, and then subsequently investigated the matter when the procuring entity did not exclude the bidder. These cases suggest that the evaluation (eligibility), complaint review and unreliable contractor determination processes may be conflated in practice. The second case also shows the level of influence that law enforcement authorities may have on public procurement in the Kyrgyz Republic.</p> <p>The PPL is silent as to the conditions under which SOEs may participate as bidders in public procurement. This is a matter that should be addressed in the PPL, with the aim of ensuring a level playing field for both SOE and private sector bidders.</p> <p>The PPL likewise is silent on the matter of joint venture bidders. Joint venture members should be jointly and severally liable for procurement and contract performance matters, and there should be no restrictions on the participation of foreign companies as joint venture members.</p>
1(e)—Tender documentation and technical specifications	Articles 20 and 21 of the PPL deal with bidding documents and their contents. The required contents of bidding documents generally accord with international practice, but technical specifications are said to be weak, often not adequate, and contain brand names.

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>The use of neutral specifications and international standards (where possible) is not provided for in the PPL. Nor is equivalency in terms of standards provided for in the PPL.</p>
1(f)—Tender evaluation and award criteria	<p>PPL Article 27 relates to evaluation and comparison of bids. The PPL specifies that evaluation shall be done only in accordance with the criteria stated in the PPL and bidding documents, although this could more clearly provide that only those criteria stated in the applicable bidding document shall apply in a specific procurement.</p> <p>The PPL does not provide that criteria not evaluated in monetary terms shall be evaluated on a pass/fail basis to the extent possible.</p> <p>PPL provisions on the evaluation of proposals for consulting services give adequate importance to quality, and regulate how price and quality are considered.</p> <p>The PPL provides for confidentiality during the procurement process.</p> <p>The basis for award should be clearly stated as meaning the lowest evaluated substantially responsive bid.</p> <p>With regard to bid selection decisions, the PPL requires the procuring entity to provide written notice of acceptance of the selected bid to the selected bidder within three (3) business days after selection of the bid, and to notify all other bidders within three (3) business days of the selection by publishing an announcement on the selection identifying the name and address of the successful bidder and the price of the bid. Similarly, the PPL requires that disappointed bidders be notified of the conclusion of a contract within three (3) days from its conclusion. All such notices shall be provided directly and simultaneously to all bidders, in writing.</p> <p>The team also was informed that each entity has its own procedures, and required approvals, regarding contract signing, but that only Ministers and authorized Deputy Ministers have signatory authority. It appears that this process may lead to delays in practice.</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>Contracts must be registered with the PPMD. A contract may be refused registration for a lack of funds or a lack of necessary details, but the contract may be resubmitted for registration. The team was advised that this process may lead to negotiation to lower contract prices prior to resubmission for registration.</p>
1(g)—Submission, receipt, and opening of tenders	<p>PPL Articles 23, 24, and 26 stipulate the conditions and deadlines for submission of bids and bid opening, respectively.</p> <p>The provisions on bid opening do not expressly provide for bid opening immediately after bid submission (save for a reasonable interval for logistical considerations), as is the case with the provisions on the opening of consultant financial proposals (PPL Article 48(4)).</p> <p>The PPL does not specify that discounts shall be read out at bid opening.</p> <p>Rejection of all bids shall not be automatic in the event that all bids submitted exceed the allocated funds. The team was told that this is a frequent occurrence. It also is not clear what is meant by rejection of bids based on auditor’s conclusions.</p>
1(h)—Complaints	<p>PPL Chapter 9 is devoted to Protests and Complaints.</p> <p>Entities responsible for reviewing complaints should be independent and should not be engaged in other functions that may pose conflicts of interest. Granting such responsibility to the Authorized Body (the PPMD at present) may create a conflict of interest with the Authorized Body’s regulatory function.</p> <p>Independence and conflict of interest concerns are implicated by the procuring entity-level complaint review process, but such a process also permits a procuring entity the opportunity to itself revisit a decision that is the subject of a complaint.</p> <p>Importantly, complaints also may be brought into court.</p> <p>The PPL’s treatment of the complaints review process could</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>benefit from redrafting to clarify the process and to address important issues that presently are not addressed and to clarify certain other matters, such as: inclusion of a standstill period between the announcement of contractor selection and contract signing; inclusion of a mandatory right to receive a debriefing; due process considerations; subject matter that can be protested, which should not be limited; basis for rejection of a complaint; clarification as to whether higher-level and court review are limited to appeals from lower-level complaint decisions or also are available for review of complaints in the first instance. The lack of a standstill period is particularly acute in light of the PPL requirement that a contract should be signed within seven (7) days of written notification to the winning bidder, and comments that were made to the effect that contracts may be signed quickly to avoid the possibility of a complaint being filed. Also, the filing of a complaint should be allowed for both actual bidders and potential bidders who may have decided not to compete for reasons that are the subject of the complaint. All matters pertaining to the procurement and contract award process should be subject to review, which presently is not the case under the PPL. Publication of complaint decisions also should be mandated in the PPL.</p> <p>The PPL provides for a decision deadline of three (3) business days at the procuring entity level and seven (7) business days at the PPMD level, which seems ambitious, although the PPMD indicated that it drops everything to meet the deadline and that the deadline generally is met. The PPMD stated that the average time for the PPMD complaints review process is ten (10) days.</p> <p>Based on our meetings, it appears that there is confusion under the PPL as to whether the complaint mechanisms set forth in the PPL represent consecutive or alternate venues for review. In other words, it is unclear whether each lower-level of review must be exhausted before a complaint can be brought to a higher-level review entity. The PPL should be clarified in this regard. It seems that the general understanding among the participants in the review meetings is that the intent of the PPL is to create consecutive levels of review, but that the PPMD will review cases submitted to it in the first instance. Further evidencing the confusion as to the review structure is an example that was given wherein the court asked the PPMD for its views on a complaint filed in court before issuing its</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>decision. The system also could benefit from educational programs in this area.</p> <p>According to the discussions with the stakeholders in the review meetings, it appears that there is a preference for bidders to avoid the complaint mechanisms set forth in the PPL altogether and to, instead, take complaints to other entities, notably to Prosecutor Offices and sometimes to the financial police, pursuant to a citizen's general right under law to seek redress from an allegedly wrongful government action. The team also was told that complaints are rarely brought to court (the only available venue) after a contract is signed.</p> <p>See also below comments under Indicator 10 regarding specific aspects of the complaints review process.</p>

Recommendation

- (a) The procurement legislative framework should be reviewed to ensure that the various legislative instruments are comprehensive, coordinated and current, in particular to address observed gaps in coverage and to ensure that the various legal instruments address related topics in the same manner.
- (b) An updated Procurement Manual should be prepared.
- (c) Matters of critical importance, such as the identity of the Authorized Body, should be addressed in the PPL rather than regulated through Presidential Decree or Resolution, which are more readily, and less transparently, changed.
- (d) The PPL (Articles 2 and 17 in particular) should be clarified with regard to defense procurement and procurement of pharmaceuticals and medical items.
- (e) The PPL should state, unambiguously, that tendering with unlimited participation is the default procurement method for goods, works and non-consulting services.
- (f) The PPL should more clearly set out the conditions for use of the various consultant selection methods. For example, the PPL does not specify when to use QCBS. A method (and conditions for its use) should be included to provide for selection of a consulting firm on a sole source basis.

- (g) A detailed provision on framework contracts as a procurement method should be included in the PPL.
- (h) Electronic public procurement should be noted as a means of, rather than a stand-alone method of, procurement.
- (i) The two-stage tendering and RFQ provisions could benefit from clarification. The RFQ method also should be applicable for small-value works contracts.
- (j) The conditions for use of single-source procurement should be reviewed in light of international good practice, which generally restricts use of single-source procurement to very limited circumstances, such as: availability of goods/works/services from only one qualified source, catastrophic or natural disasters, standardization of equipment, and proprietary reasons.
- (k) The methods of procurement to be used in case of natural disasters should be clearly defined.
- (l) The application of thresholds should be clearly set forth in the legislative framework.
- (m) Publication of procurement notices and contract award notices should be more widely required in order to achieve maximum transparency. Publication on a website of free access should be mandated.
- (n) The PPL should provide that criteria not evaluated in monetary terms shall be evaluated on a pass/fail basis to the extent possible.
- (o) The basis for award should be the lowest evaluated substantially responsive bid.
- (p) Notices of bid selection and contract signing shall be provided directly and simultaneously to all bidders, in writing.
- (q) It should be considered to streamline the contract signing process, especially where standard contract forms are used.
- (r) Parties should not engage in price negotiation for purposes of achieving contract registration.
- (s) The PPL should make clear that notices of intent to award a contract shall be

published immediately in order to permit disappointed bidders adequate time during which to submit a complaint. Notice also should be posted after a contract is signed along with the names and prices of the other bidders who participated in the tender as well as the reasons for the rejection of bids.

- (t) The required contents of invitations to tender might also include a summary of the criteria and processes to be used in ascertaining qualifications and the documents that will be required. Required contents for requests for quotations should be provided.
- (u) As a general good practice, a minimum of thirty (30) days should be provided for the preparation of bids.
- (v) The PPL provisions on domestic preference should be reviewed and clarified. PPL Article 38 should be reconsidered in light of its potential discriminatory effect on foreign bidders, as well as its impact on competition more generally. The potential negative impact of the current domestic preference provisions also should be considered to the extent that accession to the WTO GPA may be contemplated.
- (w) The PPL should address the conditions under which SOEs may participate, as bidders, in public procurement.
- (x) The PPL should address the matter of joint venture bidders.
- (y) The PPL should provide for the use of neutral specifications, international standards (where possible), and equivalency.
- (z) The provisions on bid opening should expressly provide for bid opening immediately after bid submission deadline (save for a reasonable interval for logistical considerations).
 - (aa) Discounts should be read out at bid opening.
 - (bb) Rejection of all bids shall not be automatic in the event that all bids submitted exceed the allocated funds. Also, the provisions on rejection of bids could benefit from revision and clarification.
 - (cc) In addition to procuring entity-level and judicial review, an independent body, ideally, should be established as a common forum for complaints regarding procurement processes and contract awards. To the extent that a

complaint review function is retained within the PPMD, proper segregation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest.

- (dd) Although independence and conflict of interest concerns are implicated by the current mechanism of complaining to the procuring entity, complaint to the procuring entity is a review mechanism that is used in international practice. Where proper safeguards are in place, such mechanism may be an efficient method of resolution of complaints. However, such a system should be transparent and carefully tailored to provide for due process and independent decision-making. Such safeguards, transparency, and due process measures should be put in place in order to ensure the independence of, and encourage public confidence in, this review mechanism.
- (ee) The manner of conduct of the complaint review process should be formalized and set forth in greater detail. The PPL’s treatment of the complaints review process could benefit from redrafting to clarify the process and to address important issues that presently are not addressed or to clarify certain other matters.
- (ff) Although no particular process is being endorsed hereunder, the review chapter (Chapter VIII) of the new UNCITRAL Model Procurement Law issued in 2011 may be a reference regarding review mechanisms generally.
- (gg) The PPMD should facilitate educational programs on complaint review mechanisms for all interested parties.

Indicator 2: Implementing regulations and documentation

This indicator verifies the existence, availability, and quality of implementing regulations, operational procedures, handbooks, and standard tender documents complete with standard contract conditions. Higher-level legislation, the PPL for example, provides the framework of principles and policies that govern public procurement, while regulations, resolutions, orders, and instructions provide more detailed explanations of the statutes, make them operational, and explain how they are to be applied in specific circumstances. This indicator has six Sub-indicators, which are discussed in the following table.

Sub-indicator	Current Procedures/Practices/Key Findings
2(a)— Implementing	There are no implementing regulations detailing matters set out in the PPL. There are numerous Presidential Decrees and

Sub-indicator	Current Procedures/Practices/Key Findings
regulations define processes and procedures not included in higher-level legislation.	Resolutions that govern public procurement-related matters, but these are not comprehensive, coordinated, or current. In addition, several Resolutions referred to in the PPL appear not to exist or to be no longer in force. Similarly, certain existing Resolutions either are not cross-referenced to the PPL or refer to non-corresponding PPL provisions. In addition, these secondary materials often are used to address matters of critical importance that are better addressed in the PPL, most notably perhaps the specific identity of the Authorized Body. There is no current Procurement Manual.
2(b)—Model tender documents for goods, works, and services are available.	Article 21 stipulates the contents of bidding documents for goods and works. However, there is no provision in PPL mandating the issuance of Standard Bidding Documents (SBDs) and their use by procuring entities. Nor is there a complete set of SBDs covering various types and methods of procurement. SBDs for (i) goods by unlimited, limited, and two-stage bidding and by method of request for quotations; (ii) works by unlimited and limited bidding; and (iii) non-consulting services by unlimited, limited, and two-stage bidding are available. Not all existing SBDs have been updated in light of the amended PPL and current legislative framework. The PPMD reported that additional standard bidding documents are being prepared. The team also was advised that the MOF has retained a local consultant who is updating SBDs in accordance with revised PPL.
2(c)—Procedures for prequalification are sound.	Prequalification is generally not used in public procurement The PPL is lacking guidance as to when the prequalification procedure is to be used. The PPL also does not state that qualifications are to be evaluated on a pass/fail basis. Nor does the PPL specify that qualification criteria should be limited to meet procurement-specific needs.
2(d)—Procedures for contracting services and other requirements in which technical capacity is a key criterion are suitable.	The PPL does not specify when to use QCBS, although it generally provides for conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate. Procedures for assessment of technical capacity and for combining price and technical capacity under different circumstances are described generally in the PPL, but no specific methodologies are stated, which may be a matter that

Sub-indicator	Current Procedures/Practices/Key Findings
	could be addressed in implementing regulations.
2(e)—User’s guide or manual for contracting entities is available.	There is no user’s guide or manual.
2(f)—General Conditions of Contract (GCC) for public sector contracts cover goods, works, and services that are consistent with national and, when applicable, international requirements.	<p>The General Conditions of Contract (GCC) in the SBDs for goods, non-consulting services, and works are broadly consistent with international requirements, but certain gaps in coverage have been observed (in particular with regard to the GCC in the Works SBD). For examples in that regard relating to dispute resolution and contract administration, see the comments under Sub-indicator 8(a) below. Examples of other areas that should be more directly addressed in the SBDs include matters such as intellectual property rights, suspension, late payment, assignment, insurance, warranty, governing law, etc. Also, the use of defined terms is not comprehensive or consistent across the SBDs, which leaves room for potential inconsistencies in application and interpretation. Also, like provisions included across the SBDs are not always consistent.</p> <p>The procuring entities are required to include in draft contracts a provision that payments will be made only upon availability of funds, which has a negative impact on procurement.</p>

Recommendation

- (a) There should be in place a comprehensive set of implementing regulations, detailing matters set out in the PPL.
- (b) A Procurement Manual/user’s guide reflecting current legislation should be prepared.
- (c) A comprehensive set of SBDs should be prepared and mandated for use by procuring entities, and existing SBDs should be updated consistent with current legislation and international good practice.
- (d) The PPL should clarify and expand upon the procedures for prequalification, as well as the evaluation criteria.
- (e) The PPL should more clearly set out the conditions for use of the various

consultant selection methods. For example, the PPL does not specify when to use QCBS.

- (f) Procedures for assessment of technical capacity and price should be more clearly set forth in the legislative framework.
- (g) The GCC in the SBDs are broadly consistent with international requirements, but gaps in coverage should be addressed. Consistency among related provisions of the various GCC also should be ensured.

Pillar II. Institutional Framework and Management Capacity

Pillar II examines how the procurement system defined by a country’s legal and regulatory framework operates in practice when filtered through the institutions and management systems of public sector governance.

Indicator 3: The public procurement system is mainstreamed and well integrated into the system of public sector governance

This indicator examines the procurement system to determine: (i) its suitability to discharge legally prescribed obligations without gaps or overlaps; (ii) whether necessary links exist with other sectors of government affecting procurement; (iii) whether procurement operations are constrained by other external institutional factors; and (iv) whether the managerial and technical capacity of the system are adequate for procurement without unnecessary cost or delay. In assessing the integration of the procurement system with other parts of government, attention is given to the financial management system because of its complementary role in the process, from budget preparation and planning to Treasury operations for payment. This indicator has four Sub-indicators, which are discussed in the table below.

Sub-indicator	Current Procedures/Practices/Key Findings
3(a)—Procurement planning and associated expenditures are included in the budget formulation process and contribute to multiyear planning.	Procurement planning for budget formulation is generally weak. PPL Article 13(3) (as well as the Government Resolution on the Procurement Department and Tender Committee at a Procurement Entity (Resolution No. 330, dated June 20, 2011)) requires a procuring entity, within ten (10) days of the Republic’s budget approval, to submit a procurement plan for the next fiscal year to the Authorized Body (the PPMD), as specified in approved forms. In addition, the MOF issued an instruction requiring procuring entities to prepare their procurement plans for fiscal year 2012 by January 10, 2012, regardless of the fact that Parliament was still considering the

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>budget for that year. Hence, procurement planning normally is done not before, but after, the annual state budget is approved. There are no multi-year plans to project activities (such as large civil works contracts), because the state budget is approved only on an annual basis. Procuring entities are unable to prepare proper time tables for planned procurement, because they are unaware of the timing of the release and availability of funds. There is no mechanism for proper scheduling of contracts to help predict cash flow needs within the government, to ensure timely payments, and to reduce extra costs from delayed contractual payments and contract performance.</p>
<p>3(b)—Budget law and financial procedures support timely procurement, contract execution, and payment.</p>	<p>Budget legislation and financial procedures do not support the conduct of timely procurement procedures, because budgetary funds are not made available to procuring entities in a timely manner. Sometimes, it is only a few weeks before the end of the fiscal year (December 31) that the MOF advises the procuring entities of funding availability for procurement. As the procuring entity rushes to commit and spend the funds before the fiscal year lapses, it may choose quick but inappropriate procurement methods, such as single sourcing, conduct uneconomic procurement, or pay for goods, works or services that are not completed. Furthermore, there is no incentive for procuring entities to save public funds through efficient use of the public procurement system, because any savings are recouped by the Treasury. Moreover, the next year’s budgetary allocations are reduced by any amount not spent, even if it represents a saving achieved through sound public procurement. The procuring entities are required to include in draft contracts a provision that payments will be made only upon availability of funds, which has a negative impact on procurement. Bidders, knowing that they may not be paid on time because of the lack of funds, protect themselves by increasing their bid prices. This results in higher prices of goods, works, and services for the government. In addition, in order to use funds before the end of the fiscal year and not to lose them, procuring entities frequently make full payments to suppliers in the form of prepayments for goods and services that are not yet delivered. Such practice leads to the risk of procuring goods and services of inadequate quality.</p> <p>There are standards for invoice processing by the Treasury (the Instruction “On opening and maintaining of Treasury accounts</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	for registration of operations to execute expenditures of the state budget of the Kyrgyz Republic by regional divisions of the Central Treasury of the Ministry of Finance,” approved by the October 18, 2001, MOF Order No. 293-p), but no rules are provided for processing invoices to meet obligations for timely payment according to contract conditions.
3(c)—No initiation of procurement actions occurs without existing budget appropriations.	Initiation of procurement actions without ensuring that the funds are available to pay for goods, works, and services is common practice in the Kyrgyz Republic. Procuring entities launch tender notices and even conclude contracts without any assurances of funds availability from the Treasury. In the absence of the confirmation of the availability of budget funds for contractual payments, procuring entities include a provision in the bidding documents that payments will be subject to availability of funds. This practice results in delayed or defaulted payments to providers of goods, works, and services. This practice also seriously affects competition and results in higher-end prices for the public. Furthermore, just before the end of the fiscal year when the MOF makes funds available, procuring entities, in order to use the budgetary funds before December 31 when the budget year closes, receive invoices from contractors, consulting firms and suppliers and make payments to them even if they have not yet delivered the contracted goods, works, and services. This is a serious matter that needs the government’s prompt attention.
3(d)—Systematic completion reports are prepared to certify budget execution and to reconcile delivery with budget programming.	No systematic procurement completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming. The PPL does, however, require procuring entities to submit quarterly summary reports to the PPMD.

Recommendation

1. For effective procurement planning, there is a need for strengthened integration of procurement with budget preparation and execution.
2. Budget funds should be disbursed to the procuring entities throughout the year in

- accordance with the timelines set in procurement plans and as committed in contracts, rather than only in the third and fourth quarters.
3. Rules for processing invoices should be implemented.
 4. The PPL requirement that procuring entities should prepare and submit a procurement plan within ten (10) days of the budget approval should be enforced, or if that period is too short, a longer time period should be specified in the legislation as appropriate.
 5. Skills of procuring entity staff should be enhanced by providing training/awareness programs in preparing meaningful and realistic budgets and project implementation schedules so that public procurement is effectively integrated into the financial management system.
 6. The PPL should include a more explicit statement that no procurement action shall be initiated without an existing budget appropriation. Furthermore, a mechanism should be put in place for procuring entities to seek written assurances from the Treasury of the availability of funds before initiating any procurement action.
 7. The PPMD should strengthen its capacity to produce systematic reports on public procurement in coordination with other MOF departments, such as the Treasury.

Indicator 4: The country has a functional normative/regulatory body

This indicator deals with the existence of oversight and regulatory functions within the public sector, the independence of regulation, performance effectiveness, and the degree of coordination between responsible organizations. The four Sub-indicators are discussed below.

Sub-indicator	Current Procedures/Practices/Key Findings
4(a)—The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.	<p>Public procurement in the Kyrgyz Republic is decentralized, with purchasing of goods, works, and services delegated to government agencies of different levels. The Authorized Body is mandated to provide support to government agencies in conducting procurement.</p> <p>As currently constituted, the Authorized Body is established as part of the legislative framework and is assigned defined functions. Article 14 of the PPL states that the Authorized Body on Public Procurement is the central body that should implement the government policy on procurement of goods, works, services, and consulting services. No specific entity</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>is identified as the Authorized Body in the PPL, although the MOF presently has been so designated by a presidential resolution and the MOF carries out the related functions through its Public Procurement Methodology Division (PPMD). Responsibilities of the PPMD are specifically set forth in the Regulation on Public Procurement Methodology Unit of the Ministry of Finance of the Kyrgyz Republic, although these responsibilities are not entirely reflective of the authority granted to the Authorized Body under the PPL.</p> <p>There is some concern that leaving identification of the Authorized Body to be dealt with by presidential decree or resolution may create the possibility that the specified “Authorized Body” may be more readily changed than would be the case if the specific “Authorized Body” were to be designated in the PPL. In general, a more intensive legislative process is required to change a law than to revise a resolution or Presidential decree.</p> <p>In addition, the Authorized Body ideally would be a fully independent government agency. At a minimum, the status of the PPMD should be upgraded. It can be inferred from the consultations with the stakeholders that the abolition of the prior public procurement agency has lessened the status of public procurement in the Kyrgyz Republic.</p> <p>The PPMD has no representation at Oblast or Rayon levels. As a result, procuring entities and the private sector at these levels have been left on their own in conducting public procurement, leading to potential lack of compliance with the procurement legislative framework.</p> <p>Two committees have been established within the PPMD. One PPMD committee is responsible for hearing procurement complaints, but final decisions need to be signed by the MOF Minister or a Deputy. A second PPMD committee is responsible for reviewing requests to add contractors to the list of unreliable contractors and suppliers, but this committee also does not make final decisions, instead making recommendations to the Minister for decision. The PPMD director chairs both committees, and</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>there appears to be overlapping membership on the committees. This structure raises additional independence and conflict of interest concerns.</p> <p>There are questions as to the perceived independence of the PPMD more broadly given that the PPMD is housed under the MOF—the ministry that manages public funds. The MOF should not be in a position to influence decisions relating to specific procurements financed with such funds. Although it is not uncommon for procurement agencies to be housed under a ministry such as the MOF, good practice would encourage that, where this is the case, the procurement agency should be accorded sufficient autonomy and authority to function independently. Here, the concerns regarding the PPMD’s independence are particularly acute in light of the fact that the PPMD only makes recommendations on unreliable contractors for decision by the Minister of Finance and that PPMD complaint decisions must be signed by the Minister or his Deputy. These facts indicate that the PPMD apparently does not have the authority to take such decisions independently.</p> <p>There are questions relating to potential conflicts of interest arising from the various functions assigned to the Authorized Body.</p>
<p>4(b)—The body has a defined set of responsibilities that include but are not limited to a set of eight identified functions.</p>	<p>PPL Article 14.3 stipulates the following main functions for the Authorized State Body:</p> <ul style="list-style-type: none"> • Develop a normative legal framework for the public procurement system functioning, which includes procurement procedures and proceedings, awarding of contracts and payments there under; • Coordinate and regulate the activity of State bodies in carrying out procurement of goods, works, services, and consulting services with the state funds; • Formation and maintenance of common national registers of procuring entities, public procurement contracts, unreliable and unscrupulous participants of public procurement; • Assist State bodies to carry out procurement of goods, works, services, and consulting services which includes the training of personnel on procurement procedures and rendering consultative

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>assistance to them;</p> <ul style="list-style-type: none"> • Provide openness and transparency in procurement proceedings; and • Review the complaints and protests, issuing decisions on them, provided by legislation on Public Procurement, within its competence. <p>The Regulation on the PPMD also assigns to the Authorized Body responsibilities relating to monitoring, managing a statistics database, and reporting within the government.</p>
<p>4(c)—The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with its responsibilities.</p>	<p>The State Agency on Public Procurement and Material Reserves (SAPPMR), which was established as an independent public procurement oversight body, was abolished in October 2009 due to changes in the government structure, and its functions were transferred to the newly created PPMD in the MOF.</p> <p>The PPL assigns procurement authority only to an Authorized Body, but does not identify who that body is. Designation of the Ministry of Finance as the Authorized Body was stipulated in the Resolution No. 733 of Government of the Kyrgyz Republic dated December 4, 2009. The PPMD carries out the relevant functions on behalf of the MOF and thus acts as the Authorized Body.</p> <p>The PPMD appears to be not independent and that it does not have authority to make decisions on behalf of the MOF. There are potential conflicting activities within the PPMD such as procurement complaint decisions and contractor unreliability determinations.</p> <p>Granting broad areas of responsibility to the PPMD also may create conflicts of interest, in particular with the PPMD’s regulatory function, and the involvement of the PPMD in procurement operations.</p> <p>In addition, the PPMD lacks the necessary capacity to provide the necessary oversight and support for effective implementation of the PPL or for supporting procuring entities through training. It lacks adequate staffing (only it</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>has five specialists) and relevant technical capacity. In particular, the PPMD is not providing any services to regional or local levels, and has no partnership with the private sector.</p> <p>It is predictable that the workload of the PPMD will continue to expand, which would justify an increase of the staffing. For example, enhancing the role and effectiveness of the PPMD in monitoring and improving the procurement system in the Kyrgyz Republic is likely to require some additions to the staffing. Another source of expanding workload for the PPMD is its central role in reviewing complaints from bidders, the number of which is likely to increase as procurement activities expand—if this function remains with the PPMD, then at least separate staff who are not involved in the PPMD’s regulatory work should be assigned to deal with complaints.</p>
4(d)—The body’s responsibilities should be clearly defined and separated to avoid conflict of interest and direct involvement in execution of procurement transactions.	The PPMD’s responsibilities are clearly defined, but these responsibilities are not adequately separated so as to avoid conflicts of interest, especially with respect to the PPMD’s regulatory, complaint review and unreliable contractor determination responsibilities, which conflict to the extent that a regulatory entity ideally shall not also have responsibilities related to procurement-specific operations.

Recommendation

1. The Authorized Body should be identified in the PPL rather than left for designation pursuant to a resolution.
2. In order to ensure that the Authorized Body effectively regulates public procurement, it should be considered whether to establish the regulatory body as a stand-alone, independent governmental entity, or instead to upgrade the current PPMD within the MOF to the same status as the Treasury Department, and strengthen its capacity in terms of staffing, equipment, office space, etc.
3. In addition, liaison public procurement offices should be established at the Oblast

- and Rayon levels. The PPMD should work closely with these offices in the performance of its regulatory functions.
4. Procurement complaint review, ideally, should be handled through an independent review mechanism. Ideally, the same would be the case regarding decisions as to contractor reliability. At a minimum, the composition of the committee responsible for reviewing cases of unreliable contractors and suppliers should be revisited to ensure its neutrality and independence.
 5. All of the Authorized Body's functions should be set forth in the PPL, and these should not be supplemented by resolutions.
 6. The independence and authority of the PPMD should be more clearly established, and concerns regarding the PPMD's conflicting functions should be addressed.
 7. The PPMD should be reorganized and strengthened to improve the capacity of its staff to manage public procurement effectively through oversight, the provision of support to procuring entities at all levels in their organization, and the training of public officials involved in procurement throughout the country.
 8. There is need to provide additional, in-depth training to the staff of the PPMD in order to further strengthen its capacity. The need for further training of PPMD staff should remain an ongoing process and a priority. Increasing the capacity of the staff of the PPMD will be essential for the continuing development and increased effectiveness of the PPMD.
 9. The Authorized Body should not get involved in procurement operations.

Indicator 5: Existence of institutional development capacity

The objective of this indicator is to assess the extent to which the country has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires, among other things, information systems, a capacity for analysis, feedback mechanisms, and planning capacity to carry out improvements. It is very important that responsibilities are clearly assigned and are being performed.

Sub-indicator	Procedures/Practices/Key Findings
5(a)—The country has a system for collecting and	The PPL requires procuring entities to, among other things, send procurement plans to the PPMD for publication in the PPB, post tender invitation and contract awards, and submit

Sub-indicator	Procedures/Practices/Key Findings
<p>disseminating procurement information, including tender invitations, requests for proposals, and contract award data.</p>	<p>quarterly procurement reports to the PPMD. The PPL also requires the PPMD to establish and maintain common national registries of procuring entities, public procurement contracts and unreliable contractors.</p> <p>The team understands that there is a system for collection of data, but it is not comprehensive and is weak. There also appears to be no formal flow of information from procuring entities to the PPMD. The Treasury in the MOF is developing a database of contracts, but there is an institutional gap in monitoring adherence to the procurement rules. The MOF supports a Website, www.goszakupki.gov.kg, which provides legislative normative acts, SBDs, public procurement advertisements, tender opening minutes, contract awards, procurement plans, registrations of procuring entities and suppliers, and an open discussion forum, although not all information is complete and updated. The PPMD advised that it will begin publishing reports on procurement activities later this year.</p>
<p>5(b)—The country has a sustainable strategy and procedures for collecting and monitoring national procurement statistics.</p>	<p>No such strategy exists, although the MOF does collect data and statistics on public procurement. But no data is provided on the duration of different stages of procurement cycles; unit prices for the most common types of goods and services; and other information that allows analysis of trends and levels of participation, efficiency, and economy in purchases and compliance with requirements.</p> <p>There are no adequate reports on procurement monitoring produced by the PPMD.</p>
<p>5(c)—A sustainable strategy and training capacity exists to provide skills enhancement, advice, and assistance to enable government and private sector</p>	<p>No sustainable strategy and training capacity exists, although the GOK has been making efforts to build procurement training capacity. For example, in 2005 it established the National Procurement Training Center (NPTC), which benefited from a World Bank grant and technical assistance in developing the skills of its staff in designing and delivering training. The NPTC provided training to 736 civil servants in 2004, 914 in 2005, and 434 in 2006, and provided advisory services to procuring entities, suppliers, and contractors.</p> <p>The GOK privatized the NPTC in 2009. Regrettably, under the private ownership, the NPTC appears to have lost its capacity. As a result, the range of procurement training has been</p>

Sub-indicator	Procedures/Practices/Key Findings
<p>participants to understand procurement rules and regulations and how they should be implemented.</p>	<p>gradually decreasing, and at this time this training center presently is not providing any training. The MOF now has a functional training center that, among other things, provides training on procurement. The procurement training provided by the MOF training center is, however, inadequate and is demand rather than supply driven. The MOF training center charges a fee to the trainees who usually are staff of procuring entities. However, procuring entities are provided little funds for training of their staff.</p> <p>The essential foundation for institutional strengthening and overall improvement of the implementation of public procurement is the expansion of training opportunities for procurement officials. A substantial proportion of civil servants responsible for public procurement either has not received any training at all or has only been trained on the prior procurement legislation. That fact demonstrates the substantial and widespread gap in training, and highlights the need to make training a pillar of any future institutional strengthening effort. The need for a sustained, long-term national procurement training strategy to be formulated or updated, and implemented, remains urgent.</p> <p>In order to institute sustained development of a trained procurement cadre, it will be necessary to provide not only training upon induction of staff to procurement functions, but also periodically to refresh and upgrade staff knowledge by offering training opportunities on a regular basis.</p> <p>Such ongoing training would enable procurement staff to acquire more detailed knowledge of best practices with respect to key steps in the procurement process, such as procurement planning, preparation of technical specifications, evaluation of bids, and contract administration. Additionally, training could be offered in specialized areas of procurement, such as civil works, health sector goods, information technology, etc.</p> <p>Significant demand for training exists in both the public and private sectors. In many procuring entities, procurement staff has received inadequate training. Auditors and inspectors of the state bodies responsible for external public procurement control</p>

Sub-indicator	Procedures/Practices/Key Findings
	have received no procurement-related training at all.
5(d)—Quality control standards are disseminated, and used to evaluate staff performance and promote capacity development.	There are no quality standards to evaluate staff performance and promote capacity development. No program for certification of procurement specialists has been prepared and implemented.

Recommendation

1. The PPMD should establish an effective system for collection, analysis and dissemination of procurement information. Capacity at the PPMD in this regard should be strengthened.
2. The GOK also should design and implement an integrated system for monitoring procuring entity compliance with procurement legislation.
3. The PPMD should prepare annual reports on the performance of public procurement and should make them available to the public through the public procurement website, as well as submitting them to the GOK and the Parliament.
4. As an immediate procurement capacity-building measure, the GOK should design and implement a training program for key procuring entities at both the national and oblast/rayon levels. At the same time, the GOK should strengthen and support the MOF Training Center and other qualified training institutions/universities as a sustainable procurement capacity-building mechanism so that they can offer short-, medium-, and long-term training courses, accompanied by testing and certification, for procuring entities' staff on a supply-driven, rather than demand-driven basis.
5. Procuring entities should be provided with the necessary budget to cover the training fees at the MOF Training Center.
6. The GOK should carry out a capacity-building needs assessment and, based on the findings, should prepare and implement a national procurement capacity-building strategy, considering all available resources, such as existing public servant training mechanisms, universities, colleges; institutes, associations, etc.
7. The GOK should promote professionalism and career development in public procurement to sustain the procurement capacity of procuring entities.

8. An effective procurement help desk should be established at the PPMD.
9. The GOK should strengthen quality control standards for evaluation of staff performance based on outcomes and professional behaviors. “Service Standards” should be introduced to gauge the efficiency of the control systems and individuals.
10. General guidance should be provided to procuring entities on how to improve procurement management and performance monitoring, including the introduction of a performance evaluation and reward system that is linked with a comprehensive staff development plan.

Pillar III. Procurement Operations and Market Practices

Given that public procurement in the Kyrgyz Republic is decentralized, the team looked at the operational effectiveness and efficiency of the procurement system at the level of procuring entities. In order to use the market as one means of judging the quality and effectiveness of the system in implementing procurement procedures, the team held interviews with several consulting firms, suppliers, and representatives of civil society. The information contained in the indicators below is largely based on the information collected through these interviews.

Indicator 6: The country’s procurement operations and practices are efficient

This indicator looks at the efficiency of procuring entity operations and practices. In summary, this means that the operational practices result in timely contract awards at competitive market prices as determined by effective and fair implementation of procurement procedures.

Sub-indicator	Procedures/Practices/Key Findings
6(a)—The level of procurement competence among government officials within an entity is consistent with their procurement responsibilities.	<p>The level of procurement competence among government officials is quite low. In most cases, accounting/financial staff are required to undertake procurement in addition to their regular workloads. However, they lack the required procurement training and skills. As a result, procurement may be inefficient and uneconomic, and frequently lacks transparency.</p> <p>PPL Article 13 requires a procuring entity to entrust the organization of procurement to one of its departments. It also requires the procuring entity to establish a tender commission for each tender. As a mandatory requirement, one member of</p>

Sub-indicator	Procedures/Practices/Key Findings
	<p>the tender commission should be a certified procurement specialist. This requirement is unreasonable considering the lack of procurement training opportunities for public officials. The requirement for inclusion of a certified procurement specialist also seems to apply to the procurement department itself, which would be logical, as per the Government Resolution on the Procurement Department and Tender Committee at a Procurement Entity (Resolution No. 330, dated June 20, 2011).</p> <p>This resolution also sets forth the division of responsibilities between heads of procuring entities (contract signing), procurement departments (contract award decisions) and tender commissions (bid evaluation and award recommendations). The team has learned, however, that a majority of the procuring entities do not distinguish between the procurement responsibilities of a department and those of a tender commission. Thus, the handling of procurement processes often is not well organized. Sometimes, the head of a procurement entity chairs the tender commission, which directly contradicts the requirement of PPL Article 13(6) that the head of a procuring entity cannot act as a member of a tender commission.</p> <p>Procurement is not a profession as such, but each government agency can prepare a profile to fulfill its needs for specialists. The profile must be a combination of the standard profile for different specializations provided by the State Personnel Agency, and the experience and skills required by the appointing agency (e.g., a procuring entity in the case of a procurement specialist).</p> <p>See also below comments under Sub-indicator 6(d).</p>
6(b)—The procurement training and information programs for government officials and for private sector participants are	<p>The procurement training and information programs for public officials and the private sector are not consistent with demand. In 2003, the Bank through its Institution Development Fund (IDF) provided a grant for institutional strengthening through support to the National Procurement Training Center in Bishkek (NPTC). The NPTC, which reported to and was housed in the State Procurement Agency, was privatized in 2009. At present, the privatized training center does not conduct any procurement training for public officials. However, procurement training is now provided by the MOF training center, which has limited</p>

Sub-indicator	Procedures/Practices/Key Findings
consistent with demand.	<p>technical capacity to fulfill the training needs of procuring entities across the country.</p> <p>The procuring entities located in the regions have little access to the public procurement training and information programs because of the lack of internet facilities.</p> <p>The team was told that a couple of universities have introduced a procurement module into their programs for some regular majors such as engineering, public finance and economics.</p>
6(c)—There are established norms for protecting records and documents related to transactions and contract management.	<p>Article 13(4) of the PPL states that procuring entities are responsible for collecting bidding documents, bids, and other public procurement documentation and storing the records for three years. The Government Resolution on the Procurement Department and Tender Committee at a Procurement Entity (Resolution No. 330) provides that procurement records must be kept at the operational level, but in general terms.</p> <p>Contrary to the exceptions stated in PPL Article 10, procurement records shall be maintained regardless of procurement value. In addition, where the single source method of procurement is used, documents justifying the use of this method should be maintained.</p>
6(d)—Provisions exist for delegating authority to others who have the capacity to exercise responsibilities.	<p>As noted above, PPL Article 13 requires a procuring entity to entrust the organization of procurement to one of its departments, and also requires the procuring entity to establish a tender commission for each tendering process. According to Article 13, procurement departments shall: (i) determine the procurement method; (ii) prequalify bidders; (iii) develop bidding documents; (iv) organize publication of procurement announcements or send invitation to bid directly to potential bidders; (v) control the conduct of procurement proceedings; (vi) decide on contract awards based on tender commission decisions; (vii) review and decide on procurement complaints; (viii) cancel tender proceedings; (ix) publish the report on public procurement proceedings; (x) collect and maintain bidding documents, bids and other procurement documentation for three years; (xi) select auditors; and (xii) submit quarterly reports to the PPMD. According to Article 13, tender commissions shall: (i) open the bids at the deadline specified in the bidding documents; (ii) compile the minutes of bid opening and promptly send the copy of it to the PPMD; (iii) evaluate bids using the procedures and criteria in the bidding documents;</p>

Sub-indicator	Procedures/Practices/Key Findings
	<p>(iv) make recommendations to determine the winner or take any other decision on the results of the procurement proceedings; and (v) maintain the record of procurement proceedings.</p> <p>There is some potential under Article 13 for confusion and for the creation of overlapping functions. Also, delegations of responsibility are unclear. For example, it is unclear why the procurement department rather than the tender commission would handle prequalification, especially given that evaluation of qualifications would be handled by the tender commission as part of the general evaluation process in cases where there is no prequalification. Such potential is carried over and exacerbated Resolution No. 330, on the Procurement Department and Tender Committee at a Procurement Entity. This resolution provides that the tender commission may act as if it is the procurement department. Not only is such a structure contrary to PPL Article 13, it also creates a situation where a procuring entity would be left without a dedicated procurement unit and where one-off tender commissions would be responsible for functions that should be handled on a more systemic basis within the procuring entity. In such cases there also would be no segregation of responsibilities, such as with respect to evaluations and review of procurement complaints, so as to ensure even a minimal amount of independence into the process.</p> <p>To the extent that the tender commission is tasked with conducting the evaluation of bids, it also is questionable to what extent the procurement department should be able to “revisit” tender commission decisions as would be permitted under the resolution. Moreover, the resolution gives the tender commission a right to exclude contractors from participation in a particular procurement, but it is not clear that the tender commission is the entity best situated to take such decisions or even that such a process would comply with the terms of the PPL.</p> <p>The resolution also assigns functions to the procurement department and the tender commission in addition to those assigned in PPL Article 13. As noted under sub-indicator 2(a) above, secondary materials should not be used to address matters of critical importance that better should be addressed in the PPL, such as the identity of the Authorized Body.</p>

Sub-indicator	Procedures/Practices/Key Findings
	See also the comments under Sub-indicator 6(a) above.

Recommendation

1. Clarity should be introduced to PPL Article 13, and with respect to Resolution No. 330 on the Procurement Department and Tender Committee at a Procurement Entity, in terms of the responsibilities of the procurement unit and the tender commission (committee).
2. The MOF should take immediate action to strengthen the capacity of the MOF Training Center so that it can provide training on public procurement to procuring entities as well as to the business community.
3. The legislative framework, or at the very least a Procurement Manual, should specify the list of procurement documents (for each method) to be maintained in the procurement records. [Also, procurement records should be maintained regardless of procurement value or method.](#)
4. The legislative framework could benefit from revision regarding provisions addressing delegations of authority and decision-maker accountability.

Indicator 7: Functionality of the public procurement market

This indicator assesses the market response to public procurement needs for goods, works, and services in the context of the general economic climate, private sector development and policies, the existence of financial institutions, the government's attractiveness as a business partner, and the kinds of goods or services required for public projects.

Sub-indicator	Procedures/Practices/Key Findings
7(a)—There are effective mechanisms for partnerships between the public and private	No mechanism and no legal framework exist for partnership between the public and private sectors. The PPMD has limited interaction with the business community, such as some attempts made through the open forum function of the central procurement portal. Since the procurement portal was opened in 2011, there have been several public consultation initiatives, mostly

Sub-indicator	Procedures/Practices/Key Findings
sectors.	<p>regarding the new rules and regulations drafted by PPMD, including the draft 2011 revision to the PPL. The MOF training center does not include in its training program any awareness training or seminars for the business community</p> <p>It appears that public supervision councils have been established in almost every line ministry, government agency, and State Owned Enterprise (SOE). Public supervision councils are now playing quite an active role in verifying that procuring entities follow proper practices and procedures, as well as in ensuring the transparency of procurement decisions. A specific Presidential Decree (Decree of President of the Kyrgyz Republic On Improving the Interaction of the Public Administration Bodies with the Civil Society, No. 212) exists, which mandates the establishment of such councils.</p> <p>Reportedly, the GOK is preparing a draft Public-Private Partnership (PPP) law, which presumably should foster interest and activity in the PPP area.</p>
7(b)—Private sector institutions are well organized and able to facilitate market access.	<p>There are no associations of consulting firms, manufacturers, and civil works contractors. Most companies interviewed during this assessment indicated that they regularly follow up on public procurement opportunities, but have little confidence in the fairness of the public procurement system. Among the reasons cited were the following: technical specifications are too narrow and inhibit competition by unnecessary reference to brand names; essential requirements were missing from the technical specifications in bidding documents for public contracts; and technical specifications sometimes contain requirements that are superfluous to the end-user's real needs but favor a particular firm.</p>
7(c)—There are no major systemic constraints (e.g., inadequate access to credit, contracting practices, etc.) inhibiting the private sector's	<p>Major systemic constraints still exist. Access to credit is difficult, and prevailing contracting practices deter the private sector from doing business with the government. These contracting practices include:</p> <p>(a) incorrect and misleading publication of procurement opportunities: existence of two websites for procurement notice publication – one government (www.goszakupri.gov.kg), second – private</p>

Sub-indicator	Procedures/Practices/Key Findings
capacity to access the procurement market.	<p>(www.goszakupki.kg); the content of notices are not informative; the notices are published only a few days before the deadline for bids/quotations submission;</p> <p>(b) difficult access to bidding documents: high fee (up to \$200); due to lack of courier services, the bidders should visit the procuring entities to obtain the bidding documents; practically impossible for suppliers from Bishkek to get the bidding documents if the tender takes place in another city (Osh, Jalal-Abad, etc.);</p> <p>(c) poor quality of bidding documents, especially technical specifications; using brand names is a regular practice;</p> <p>(d) short bid preparation time for bidders;</p> <p>(e) cancellation of tenders for no reason;</p> <p>(f) cancellation of contract awards without any justification; and</p> <p>(g) frequent amendments to contracts during contract performance;</p> <p>(h) delayed contractual payments; and</p> <p>(i) Difficulty in obtaining bank guarantees due to costly and time-consuming requirements of commercial banks in issuing all types of guarantees.</p>

Recommendation

1. There is a need to fully engage with the private sector, and to articulate the private sector's role in and contribution to public procurement. Public consultation, collection of feedback and analytical surveys on procurement policy and implementation should be regularly conducted.
2. Any procurement capacity building strategy to be developed should include, in addition to a sustainable mechanism for procurement training, outreach and awareness programs suitable for the private sector and general public.
3. The PPMD should organize, through the MOF's Training Center, regular seminars and awareness sessions for the private sector on a regular basis.
4. The PPMD should analyze any restriction or obstacles for bidding by the private sector and should address these challenges in order to increase competition.
5. The PPP law that, the team understands, presently is under development should be consistent with the principles of the PPL.

6. The GOK should strengthen the oversight role of the public supervision councils in procurement.

Indicator 8: Existence of contract administration and dispute resolution provisions

For this indicator, the team reviewed current contract administration procedures and interviewed some procuring entities to assess the quality of their administrative practices.

Sub-indicator	Procedures/Practices/Key Findings
<p>8(a)—Procedures are clearly defined for undertaking contract administration responsibilities, including inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.</p>	<p>Chapter 8 is devoted to public procurement contracts and their administration. Procedures for undertaking contract administration for goods (including inspection and acceptance procedures and quality control procedures) are defined in the General Conditions of Contract that form part of the standard bidding documents.</p> <p>Amendments to public procurement contracts are regulated by PPL Article 60, and broad changes to the contract appear to be permissible. It should not be the case that a contract can be so materially modified that it essentially alters the basis upon which the procurement was bid and/or the contract was awarded.</p> <p>According to PPL Article 61 a contract can be cancelled because of a substantial change in the circumstances which existed at the time the contract was concluded, and which was impossible to foresee at the time of conclusion of the contract, and if it makes the performance of the contract contrary to public interests. This provision essentially reads like a government termination for convenience right as one would expect to find in international practice.</p> <p>The provisions of PPL Article 58 as to when a contract comes into effect could benefit from clarification.</p> <p>The GCC in the Services SBD: (i) provide for resolution of contract disputes amicably or, absent that, by arbitration or in court as is to be specified in the Special Conditions of Contract (SCC) (arbitration is further discussed in Sub-indicator 8(b) below); (ii) provide for government termination for convenience and compensation to the contractor in such case as is generally consistent with international practice; (iii) generally</p>

Sub-indicator	Procedures/Practices/Key Findings
	<p>(but vaguely) assign responsibilities for contract administration; (iv) include QC and inspection provisions generally in accordance with international practice, but acceptance is not, but should be specifically addressed, and quality requirements should be more clearly addressed; (v) provide that contract modifications require written agreement of the parties as is generally consistent with international practice, but the basis for the 10% threshold requirement is not clear; and (vi) include payment provisions as is generally consistent with international practice.</p> <p>The GCC in the Goods SBD: (i) provide for resolution of contract disputes amicably or, absent that, by arbitration or in court as is to be specified in the SCC; (ii) provide for government termination for convenience and compensation to the contractor in such case as is generally consistent with international practice; (iii) are silent as to the assignment of responsibilities for contract administration; (iv) include QC, inspection and acceptance provisions generally in accordance with international practice, although acceptance and quality requirements should be more clearly addressed; (v) are silent as to contract modifications; and (vi) include payment provisions as is generally consistent with international practice, although late payments are not specifically addressed.</p> <p>The GCC in the Works SBD: (i) provide for resolution of contract disputes amicably or, absent that, by arbitration or in court as is to be specified in the SCC; (ii) provide for government termination for convenience and compensation to the contractor in such case as seems to be generally consistent with international practice, although this provision could benefit from clarification; (iii) generally (but vaguely) assign responsibilities for contract administration; (iv) include QC and inspection provisions generally in accordance with international practice, but acceptance and quality requirements should be more clearly addressed; (v) are silent as to contract modifications; and (vi) include payment provisions as is generally consistent with international practice.</p> <p>Like provisions included across the SBDs are not always consistent.</p>

Sub-indicator	Procedures/Practices/Key Findings
	<p>The team was told that contract management practices are poor and that those who are responsible for managing contracts do not have access to training on the subject. Administrative procedures for civil works contracts reportedly are weak, which may result in acceptance of low-quality civil works with poor workmanship. There apparently are frequent amendments to contracts during contract performance. Because of the unavailability of budgetary funds, payments to contractors and suppliers are frequently delayed. As discussed earlier, this also results in the undesirable practice of procuring entities paying contractors and suppliers towards the end of the year even if the works or services have not been completed or the goods have not been delivered. They do so in order not to lose their budgetary funds which are frozen on December 31.</p>
<p>8(b)—Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disagreements arising during contract performance.</p>	<p>Claims arising under a contract are dealt with under PPL Article 62, which provides for amicable resolution or, absent such resolution, for recourse to arbitration or court. However, arbitration generally is the manner of such review in international practice.</p> <p>The GCC and SCC relating to dispute resolution allow the parties to submit a disagreement that cannot be amicably resolved to arbitration <i>or</i> to a civil court of general jurisdiction, as is to be specified in the SCC. No provisions clearly exist for international arbitration in contracts with foreign providers of goods and services, but the arbitration rules and procedures to be applied are to be specified in the SCC so there remains some possibility that this could be the case; nonetheless, this is an issue that could benefit from clarification. There also is no provision for review of disputes, prior to recourse to arbitration or to court, by an entity such as a dispute resolution board as is frequently used in international practice.</p> <p>It appears that procurement contract disputes, although infrequent, generally are brought into court rather than taken to arbitration. The reason given for this tendency is a lack of understanding of arbitration. There is a “Law on Arbitration in Kyrgyz Republic.”</p>
<p>8(c)—Procedures exist to enforce the outcome of the</p>	<p>According to the Ministry of Justice, both court and arbitral decisions are enforced under the Civil Code. Civil procedures provide for contract enforcement and allow the prevailing party</p>

Sub-indicator	Procedures/Practices/Key Findings
dispute resolution process.	in a contract dispute to move for enforcement of judgment in court. The Kyrgyz Republic also is a member of the New York Convention on enforcement of international arbitration awards.

Recommendation

1. The PPL and GCC generally address contract administration responsibilities, but gaps exist which should be filled, and certain other provisions could benefit from clarification.
2. Consistency among related provisions of the PPL and the various GCC also should be ensured.
3. Although the SBDs provide for arbitration, it is understood that arbitration is not frequently used. Perhaps greater outreach could be done to foster an increased understanding of arbitration.
4. To the extent that it would not be otherwise inconsistent with Kyrgyz law, it also might be considered whether arbitration, rather than court action, should be the preferred method of disputes resolution. Intermediate review mechanisms, such as disputes resolution boards, also might be considered, especially with respect to larger works contracts.
5. It appears that procedures exist in the broader legal framework to enforce the outcome of a dispute resolution process, but this could benefit from clarification in the legislative framework.
6. Capacity building should be conducted with respect to contract administration.

Pillar IV. Integrity and Transparency of the Public Procurement System

Pillar IV covers four indicators that are considered necessary for a system that operates with integrity, has appropriate controls to support implementation in accordance with the legal and regulatory framework, and has appropriate measures to address potential corruption. It also covers important aspects of the procurement system that incorporate stakeholders in the control process. Aspects of the procurement system and governance environment are defined and structured to contribute to overall integrity and transparency of operations.

Indicator 9: The country has an effective control and audit system

The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. This indicator has five Sub-indicators, which are discussed in the table below.

Sub-indicator	Current Procedures/Practices/Key Findings
<p>9(a)—A legal framework and the organization, policy, and procedures for internal and external control and audit of public procurement operations are in place and provide comprehensive coverage.</p>	<p>External auditing is conducted by the Chamber of Accounts (CA) and the MOF. In addition the Office of the Procurator implements the inspections and revisions by special request and based on the findings of the CA.</p> <p>The CA ensures external audit of procurement operations. The CA is accountable to the president and the Parliament, which appoints members of the chamber. The CA audits all state bodies yearly. Procurement auditing is only one aspect of the chamber’s multifaceted control program. The CA capacity to conduct audits is procurement weak; its staff lacks proper training in procurement; its reports are not made public.</p> <p>CA auditors lack the training and experience to apply audit practices in accordance with international standards. Most staff members are well-seasoned in control and revision, but they still have had little exposure to modern auditing practices. Many CA audit reports had significant deficiencies. They did not clearly highlight the exact nature of control weaknesses, major issues, or conclusions relating to the audit of procurement operations. The reports did not state the purpose, scope, or standards governing the auditing. The quality of individual audit reports is not consistent and depends mainly on the experience of the auditors involved in the audit. No quality assurance mechanisms to ensure consistency of the audit work exist. Even though the new Audit Methodology has been developed together with consultants under the CA IDF Grant, CA staff still needs substantially more training and on-the-job experience, particularly in risk-based and financial auditing.</p> <p>Fifteen (15) procuring entities (the Ministry of Health, Ministry of Education, Ministry of Finance, etc.) have internal audit (IA) units. However, IAs do not provide comprehensive audit coverage due to the lack of professionally trained staff.</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>The MOF Division on Internal Audit (DIA) has the mandate for controlling execution of the state budget. However DIA auditors are not sufficiently informed about procurement requirements and control systems to conduct quality audits. The DIA staff has not participated in any public procurement training and is unaware whether such training is available. The DIA is staffed with only four internal auditors and the staff lacks professional internal auditing skills.</p> <p>Overall, there are too few trained public sector officials at the procuring entities capable of performing internal audits in compliance with the Internal Audit Standards and MOF Internal Audit Methodology.</p> <p>According to its mandate, the Office of the Procurator (OP) carries out control of government bodies for compliance with state legislation, including public procurement. OP inspectors inspect an institution’s activities once a year, including auditing of public procurement. The inspectors seem to have little knowledge of public procurement procedures.</p> <p>The involvement of multiple control bodies including the CA, OP, National Security Council, Financial Police, etc., in the control of public procurement is leading to frequent delays in completion of the procurement process.</p>
9(b)—Enforcement and follow-up of control framework findings and recommendations provide an environment that fosters compliance.	The follow-up and enforcement of CA findings is weak and selective, and does not necessarily promote compliance by procuring entities with the requirements of the procurement legal framework. The follow-up and enforcement of IA findings is weak and is not always communicated to the units audited.
9(c)—Internal control systems provide timely information on compliance to enable management action.	Few procuring entities have proper internal control systems in place. There is a lack of understanding of modern internal control policies and procedures over procurement and related payments at the procuring entities.
9(d)—Internal	As noted above, only a few procuring entities have internal

Sub-indicator	Current Procedures/Practices/Key Findings
control systems are sufficiently defined for performance audits to be conducted.	control systems.
9(e)—Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that foster compliance.	<p>CA auditors have inadequate training in procurement and therefore are unable to conduct quality and objective audits of procuring entity procurement operations.</p> <p>Internal Auditors in line ministries have inadequate training in procurement and therefore are unable to conduct quality and objective audits of procuring entity procurement operations.</p>

Recommendation

1. Overall, the CA needs capacity building to better understand and implement international audit standards in practice. Donor assistance is needed to support further reforms in public sector auditing. Training of auditors in modern audit techniques and use of the recently elaborated audit methodology is needed. The CA should ensure that the professional competence of its audit staff is increased, in particular with respect to the auditors' understanding of key audit procedures, such as audit observation, analytical procedures, etc., and audit risk. The CA should introduce quality assurance procedures, ensuring consistency among audit reports.
2. Internal Audit (IA) Departments should be established at more line ministries and state agencies. Capacity building activities are needed to develop skills and enhance the internal audit function at line ministries. The IA units at the line ministries need to be sufficiently staffed to ensure proper audit coverage.
3. The DIA should be strengthened via providing with extensive internal audit training.
4. Periodic training programs are necessary to develop skills of internal auditors. A more sustainable training policy should create a critical mass of trained internal auditors.
5. A Public Internal Financial Control System (PIFC) strategy should be adopted by the MOF. The MOF needs to prepare a training needs assessment in order to develop coordinated training plans in PIFC.
6. The GOK should strengthen internal control systems for procurement through

- preparing internal procurement audit rules and a training program.
7. Training plans in procurement should be developed and delivered to internal and external auditors on a regular basis. Training centers should be established to provide for continuous professional development.
 8. Enforcement mechanisms to address the CA and IA findings need to be developed and monitored.

Indicator 10: Efficiency of the appeals mechanism

The appeals mechanism was covered under Pillar I with regard to its creation and coverage by the legal regulatory framework. It is further assessed under this indicator for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

Sub-indicator	Current Procedures/Practices/Key Findings
<p>10(a)—Decisions are based on available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.</p>	<p>Because decisions on procurement complaints (at any level) are not publicly available, it could not be confirmed whether such decisions are based on available information. The team was told, however, that the PPMD reviews the procurement record and the submissions of the parties to the complaint, and meets with the parties to discuss the case prior to rendering a decision.</p> <p>Although the PPL (Articles 64 and 65 respectively) specifies that procuring entity and PPMD decisions on complaints are final unless submitted to a higher-level reviewing authority pursuant to the PPL, nothing is said as to whether such decisions are binding on the parties. The PPMD informed the team that even though its decisions are not binding, procuring entities tend to comply with such decisions. In the event of non-compliance, the procuring entity could be taken to court, where it is understood that the PPMD decision would carry weight with the court. In addition, in the event of violations of legislation in the sphere of procurement, the PPMD is required to notify appropriate authorities if a procuring entity fails to eliminate violations notified to it by the PPMD (Article 14). Thus, while the PPMD has no direct enforcement authority, there are mechanisms available to the PPMD in the event that a procuring entity fails to comply with the PPMD’s decision.</p> <p>The PPL provides for direct recourse to file complaints in court, as well as a right to appeal lower-level reviewing entity</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>complaint decisions in court. Courts have available to them enforcement authorities as under national law generally (<i>e.g.</i>, Civil Code), which would include measures such as property seizure, auction, etc.</p> <p>See also comments under Sub-indicator 1(h) with regard to Indicator 10 generally.</p>
<p>10(b)—The complaint review system has the capacity to handle complaints efficiently and the means to enforce the remedy imposed.</p>	<p>The PPMD has limited staff, and the team was told that they need to drop everything to meet decision deadlines. There is a general view that the PPMD does not have adequate capacity. Nonetheless, the team was told that the PPMD has decided cases in accordance with the PPL timeline in all but one case. The team also was informed that the PPMD dealt with 30 cases in 2011.</p> <p>General concerns noted above regarding procuring entity capacity also would carry over into the area of complaints review.</p> <p>See also comments under Sub-indicator 10(a) regarding enforcement.</p>
<p>10(c)—The system operates fairly, with balanced decisions justified by available information.</p>	<p>As noted above, because decisions are not publicly available, it could not be confirmed whether decisions are based on available information. According to the PPMD, its decisions are reasoned and formally written up, but it is not clear what level of detail is provided given that no decisions were available for review. However, we received no indication that participants in the PPMD complaints review process take the view that the PPMD process is unfair.</p> <p>On the other hand, the team was told that there is general reluctance for bidders to avail themselves of the procuring entity-level complaint process, because it is perceived that there would not be a fair and balanced decision from the entity that made the decision that is the subject of the complaint. However, despite this general skepticism as to the fairness with which a procuring entity might review complaints pertaining to its own decisions, the team was told of one complaint decided by a procuring entity wherein the procuring entity reversed its own procurement decision that was the subject of the complaint.</p> <p>As also noted above, the PPL provides for a right to further</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>review of lower-level decisions, as well as for judicial review of complaints in the first instance. Judicial review is an important safeguard in seeking to ensure fairness and accountability.</p> <p>See also comments under Sub-indicator 10(a) regarding decision-making.</p>
10(d)—Decisions are published and made available to all interested parties and to the public.	Publication of decisions is not mandated under the PPL, and decisions are not published, although the PPMD indicated that its management has directed it to start publishing decisions. The team was advised that written decisions are provided to the complainants and procuring entities.
10(e)—The system ensures that the complaint review body has full authority and independence for resolution of disputes.	As noted regarding Sub-indicator 1(h) above, independence and conflict of interest concerns are implicated with respect to review by the procuring entity and by the PPMD. Bidders seemingly are hesitant to seek review at the procuring entity level because they do not believe that there will be a fair review by the entity that made the decision that is the subject of the complaint. Questions regarding the PPMD’s independence and the fullness of its authority stem largely from the fact that complaint decisions must be signed by the MOF Minister or Deputy, because the PPMD apparently does not have the authority to take such decisions on behalf of the MOF.

Recommendation

1. Matters pertaining to enforcement of and compliance with complaints decisions should be more directly addressed in the procurement legislation.
2. The complaint review mechanisms should operate with greater transparency, such as through publication of decisions, which might enhance perceptions relating to the fairness of the review system.
3. Publication of decisions should be mandated under the PPL.
4. Ideally, an independent body should be established as a common forum for complaints regarding procurement processes and contract awards. To the extent that a complaint review function is retained within the PPMD, proper segregation of functions and safeguards should be put in place to ensure independence and to minimize the potential for conflicts of interest. The PPMD also should be given full authority to make decisions on complaints in such case.

5. Although independence and conflict of interest concerns are implicated by the current mechanism of complaining to the line agency secretary, complaint to the procuring entity is a review mechanism that is used in international practice. Where proper safeguards are in place, such mechanism may be an efficient method of resolution of complaints. However, such a system should be transparent and carefully tailored to provide for due process and independent decision-making. Such safeguards, transparency, and due process measures should be put in place in order to ensure the independence of, and encourage public confidence in, this review mechanism.
6. Procuring entities and the PPMD (assuming that the PPMD retains its complaints review function but with independence) should be provided with adequate resources to allow them to handle complaints efficiently, while at the same time tending to their other work.

Indicator 11: Degree of access to information

This indicator deals with how relevant, available, and comprehensive information about the public procurement system is.

Sub-indicator	Current Procedures/Practices/Key Findings
11(a)— Information is published and distributed through available media with support from information technology when feasible.	Information on procurement is easily accessible in the media, but it does not appear that all procurement-related information is consolidated and available in one place. The information that is provided is partially centralized in the MOF website, which includes public procurement legislation, procurement plans, procurement advertisements, and procurement results. Furthermore, The <i>Public Procurement Bulletin</i> and official Web site publish information about forthcoming tenders, outcomes of accomplished tenders, as well as all implementing regulations and procurement plans. However complaint decisions are not open to the general public. As discussed in the context of other relevant indicators, the quality of the published information is poor. The GOK has plans to introduce Electronic Government Procurement (e-GP) in the near future, which is expected to facilitate public access to procurement information.

Recommendation

1. Steps should be taken to improve the quality of procurement information made available to the public through various media, including the MOF website. Such

information should be made available to the public through a single portal that is updated on a regular basis.

2. Reports on the use of state funds through public procurement shall be prepared and published to the public at least on an annual basis.

Indicator 12: The country has ethics and anticorruption measures in place

This indicator assesses the nature and scope of the anticorruption provisions in the procurement system. This indicator has seven Sub-indicators, which are discussed below.

Sub-indicator	Current Procedures/Practices/Key Findings
<p>12(a)—The legal and regulatory framework for procurement, including tender and contract documents, includes provisions against corruption, fraud, conflict of interest, and unethical behavior; it sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.</p>	<p>The legal framework does not establish a clear requirement to include references to fraud and corruption, conflict of interest, and unethical behavior in tendering documentation, but engaging in fraudulent and corrupt practices and acting under a conflict of interest are punishable acts under the legislation. It would be prudent for the PPL to mandate that procuring agencies conduct due diligence on bids received in order to identify non-compliance with the PPL/tender rules and identify red flags indicating fraudulent or collusive practices. Specific guidance can be provided in the secondary legislation.</p> <p>The PPL (Article 6) provides for disqualification of bidders/contractors/suppliers who have given anything of value to influence a procurement proceeding, decision, or selection of a particular procedure, but this provision speaks to contractor rather than to government actor actions and remedies, which are not addressed. The full range of fraudulent and corrupt practices also is not covered under the PPL. Nor does the PPL give precise instructions on how to incorporate such matters in bidding documents. The standard bidding documents also do not include adequate provisions on fraud and corruption.</p> <p>Provisions on bribery of officials and applicable sanctions are stipulated in the Criminal Code in Chapter 30 “Official Crimes” (Article 303: Corruption; Article 304: Abuse of Official Position; Article 306: Concluding Contracts, Performing Public Procurement against the Interests of the Kyrgyz Republic; Article 308: Illegal Use of Budgetary Funds; Article 309: Illegal Participation in Business Activity; Article 310: Bribery-remuneration; Article 311: Bribery-subornation;</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>Article 313: The Extortion of Bribes; and Article 314: Giving a Bribe; Article 315: Official Forgery; Article 316: Neglect of Duty). Article 314 covers the demand side and the rest regulate the supply side of corruption. The demand side of corruption therefore is only tangentially, and thus inadequately, addressed in the context of bribe-giving. More broadly, the anticorruption legislation may be too narrowly drafted to cover the broad range of potential “bad actors” who may engage in fraudulent or corrupt practices. The Criminal Procedure Code does not directly address investigative authority relating to fraudulent and corrupt practices.</p> <p>No nexus seems to link the PPL with anticorruption legislation, which would call attention to the punitive consequences of corrupt behavior in procurement and spotlight the possibility of criminal referral. The PPL would benefit from such a nexus whereby gaps also could be filled by reference to pertinent provisions of the anticorruption legislation. However, the anticorruption legislation also has gaps of its own. For example, the PPL only mentions “bribery” and not other prohibited acts like collusion, coercion, fraud, and obstructive practices; such broader areas of fraud and corruption also are not covered under the anticorruption legislation. The anticorruption legislation’s description of “subjects to corruption incidents” also may be too narrowly drafted to cover the broad range of potential “bad actors” who may engage in fraudulent or corrupt practices. Although such matters may be otherwise addressed, such as in the Law of the Kyrgyz Republic on Competition (No. 116 dated July 22, 2011), the anti-corruption legislative framework should encompass all forms of corruption, including those which occur between private parties, or should at least cross-refer to prohibitions on certain behavior contained in other laws.</p> <p>With regard to the sanction of debarment (inclusion on the list of unreliable contractors and suppliers), matters such as the due process to be afforded accused contractors/suppliers, the nominal period of ineligibility to participate and any conditions for release from ineligibility should be set forth in the PPL, or in secondary legislation at a minimum. There also is some question as to the authority of the PPMD in connection with determinations regarding contractor ineligibility in that the procuring entity submits information relating to contractor</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>behavior to the PPMD which then makes a recommendation as to ineligibility for ultimate decision by the MOF Minister or Deputy. Such decisions can be appealed to court, but the team was advised that contractors usually do not appeal such decisions. The team also was advised that matters pertaining to contractor reliability often are handled informally rather than through an official review process.</p> <p>Both the PPL (Article 5) and the standard bidding documents could benefit from revision in terms of scope of coverage regarding conflicts of interest as well. PPL Article 5 includes conflict-of-interest rules for public officials, but these are narrowly prescribed. For example, coverage of additional categories of conflicts of interest should be addressed, such as more indirect benefits that might be conferred, prohibiting government employees with influence over procurement from obtaining employment with suppliers (contractors) participating in public procurement contracts for a set period of time, etc. Corporate and non-government actor conflicts of interest also should be more fully addressed in the legislative framework. Consideration also should be given to requiring tender commission members to sign Conflict of Interest Affidavits. Article 12 of the Anticorruption Law also should more broadly cover activities that are “incompatible with performing Government functions,” for example, by more clearly defining prohibited behaviors (e.g., insider trading), introducing a <i>de minimis</i> rule on gifts, and omitting “participation in strikes”. Government officials should be required to disclose to their manager or an Ethics Office possible or actual conflicts of interest, and there should be provisions for the assignment of penalties for nonconformance with conflict of interest provisions. As noted under Sub-indicator 12(g) below, the legislative framework also should include a Code of Ethics that addresses conflict of interest situations that procurement staff are likely to experience.</p> <p>In addition, to a certain extent, both the PPL and the anticorruption legislation conflate fraudulent and corrupt practices and conflicts of interest. These subjects generally should receive separate treatment under the law.</p> <p>It should be noted that the Kyrgyz Republic has ratified the</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>United Nations Convention against Corruption (UNCAC), but the anticorruption legislation should be reviewed, and revised as needed, to ensure conformity with UNCAC.</p>
<p>12(b)—The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found culpable of fraudulent or corrupt practices.</p>	<p>Again, the PPL and the anticorruption legislation conflate fraudulent and corrupt practices and conflicts of interest.</p> <p>In order to vigorously detect and deal with corrupt practices, the GOK established, by Presidential decree, the Anti-Corruption Service under the National Security Service in November 2011. The Anti-Corruption Service has broad authorities as a law enforcement agency and broad powers to enforce the anti-corruption legislation. The team further understands that the Anti-Corruption Service is actively engaged in numerous investigations relating to alleged corrupt activities.</p> <p>Although there may be some intention of the GOK to streamline responsibilities relating to anticorruption efforts, these activities remain fragmented among various entities, including the Anti-Corruption Service, which has broad overall authority; the Prosecutor General, which generally is engaged in matters pertaining to allegations involving Government officials; the Anti-Corruption Department within the Ministry of Interior, which is engaged in matters pertaining to anticorruption generally and to organized crime; and the financial police, which typically are engaged in matters pertaining to financial crimes. While there may be good reasons to assign specific tasks to separate agencies with particular competencies, there also is a risk that a fragmented system may lead to overlap in functions and/or inconsistencies in their application. At the same time, there is a risk that a fragmented system actually could create gaps in the system to the extent that a lack of clarity in roles and responsibilities potentially could leave certain activities uncovered.</p> <p>The legislative framework does not, but should, stipulate an obligation of government officials to report actual or suspected corruption.</p> <p>See also above comments under Sub-indicator 12(a).</p>
<p>12(c)—Evidence exists of</p>	<p>Little evidence is available of prosecution and punishment for corrupt practices. The following cases can be cited: (i) in 2005,</p>

Sub-indicator	Current Procedures/Practices/Key Findings
enforcement of rulings and penalties.	<p>the director of a professional technical college was prosecuted; (ii) in 2006, a unit head and the head of the financial department of the Chief Division for Execution of Punishments were charged with crimes in public procurement; and (iii) in 2007, the director and chief accountant of the state-owned enterprise Kyrgyz Patent were prosecuted.</p> <p>Presently no contractors are included on the official list of unreliable contractors and suppliers. A second list maintained by a private entity lists one contractor, but the team understands that the listed contractor no longer is officially ineligible from participation in public procurement. Moreover, the mere existence of such an unofficial list creates confusion and presents a matter that should be addressed. The team was told that the PPMD committee with responsibility for unreliable contractor/supplier recommendations met twice in 2011 and twice so far in 2012. The 2011 cases did not result in inclusion of the contractors on the list of unreliable contractors and suppliers, but no written decisions were available, and the 2012 cases still are pending. The team also has heard that requests to include contractors/suppliers on the list of unreliable contractors and suppliers are submitted to the PPMD, but, to the knowledge of the procuring entity that submitted the request, no further action is taken, which calls into question whether written decisions on such cases actually are being issued.</p> <p>The legislative framework should provide some guidance on what information will be disclosed and when. For example, it would be useful for the anticorruption legislation to mandate disclosure of general information about cases, investigations, sanctions, whether administrative or criminal, e.g., through an annual report with an analysis of trends and patterns.</p>
12(d)—Special measures exist to prevent and detect fraud and corruption in public procurement.	Some anticorruption programs and measures are in place. Most notable among the recent measures taken by the GOK in that regard is the establishment of the Anti-Corruption Service under the National Security Service. However, the team is not aware of any measures that are in place with the specific purpose of detecting and preventing corruption in public procurement.

Sub-indicator	Current Procedures/Practices/Key Findings
<p>12(e)—Stakeholders (the private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behavior.</p>	<p>Civil society is quite active and frequently reports on fraud and corruption.</p> <p>Pursuant to the Presidential Decree No. 212 dated September 29, 2010, On Improving the Interaction of the Public Administration Bodies with the Civil Society. Forty-one (41) Civil Society Councils (Councils) have been established for different sectors of the economy (e.g., energy, environment, education, health, etc.), comprising representatives from civil society organizations, government and private sector. These Councils, which have been functioning for the last year, are chaired by two co-chairpersons, one from the civil society/private sector and the other from the GOK. Council members are elected for two (2) years. The main objective of these Councils is to monitor and ensure effective use of public resources for their respective sectors.</p>
<p>12(f)—The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.</p>	<p>Measures are in place to provide for the confidential reporting of fraudulent, corrupt, or unethical behavior. An anti-corruption website anticorr.gov.kg is available to the public for reporting fraud and corruption, including corruption in public procurement.</p> <p>The legislative framework does not, but should, clearly provide that an individual complainant has the right to remain anonymous. Furthermore, while the anticorruption legislation law appears to provide for whistleblower protection, the rules are unclear. Thus, it would be useful to: (i) define the precise types of disclosures that would be protected; (ii) clarify what protection would be extended (the term “state protection services” is quite broad); and (iii) identify the government entities that can provide for protected disclosures.</p>
<p>12(g)—Codes of conduct/ethics codes cover participants in public financial management systems and also provide for disclosure of those in decision-making positions.</p>	<p>There is no separate Code of Ethics or Code of Professional Conduct for government officials with specific provisions for those involved in public financial management, including procurement. However, the team was informed by the Ministry of Justice that a Code of Ethics for government officials has been submitted for its review. At present, Article 10 of the Law on Civil Service, No. 114, of August 11, 2004, provides general principles of ethics for civil servants, including procurement staff.</p>

Sub-indicator	Current Procedures/Practices/Key Findings
	<p>The Law on Civil Service requires a declaration of assets by civil servants, but there is no link to such requirement in the procurement legislative framework, and relevant provisions in the anticorruption legislation could benefit from clarification. For example, the legislation should specify the types of income or forms of wealth that must be disclosed, the type or level of civil servants required to report, and whether family members are to be included in the disclosure. Government officials should be required to submit their financial disclosures annually. There should be penalties for not complying with the disclosure requirements, and the names of individuals who have not filed disclosures should be made public after a stipulated period of time (e.g., three months). The legislation also should assign responsibility to an agency for receiving and reviewing disclosures.</p>

Recommendation

1. The procurement legal framework should establish a clear requirement to include references to fraud and corruption, conflict of interest, and unethical behavior in tendering documentation. More generally, the overall anticorruption legislative framework (including procurement materials) could benefit from revision in order to cover the range of potential fraudulent and corrupt practices more fulsomely, and to define and cover conflict of interest matters more completely. In addition, fraudulent and corrupt practices and conflicts of interest, which both the PPL and the anticorruption legislation conflate, should be treated separately. The anticorruption legislation should be reviewed, and revised as needed, to ensure conformity with UNCAC.
2. The legal instruments comprising the overall anticorruption legislative framework also should be aligned to fill gaps and ensure consistency among these instruments.
3. An independent and transparent process should be put in place with respect to determinations as to debarment (inclusion on the list of unreliable contractors and suppliers).
4. The legislative framework should more clearly define responsibilities and accountabilities of government actors, and penalties for individuals and firms found culpable of fraudulent or corrupt practices. The legislation also should

- stipulate an obligation of government officials to report actual or suspected corruption.
5. The roles and responsibilities of various actors in the anticorruption system should be streamlined, or at least more clearly defined and assigned, in order to ensure that there is clarity and full coverage with respect to responsibilities and accountabilities of GOK entities in this area. In that regard, the legislative framework should include more information about the division of labor among the institutions responsible for fighting corruption, e.g., by naming the institutions, defining their jurisdiction and powers, and clarifying coordination arrangements.
 6. Greater transparency and procedural clarity is needed regarding enforcement of rulings and penalties relating to corrupt practice cases.
 7. Special measures specifically aimed at preventing and detecting fraud and corruption in public procurement should be implemented.
 8. The legislative framework should clearly provide that an individual complainant has the right to remain anonymous and should more precisely set forth the right to whistleblower protection.
 9. The establishment of a separate Civil Society Council on Public Procurement with public and private representation would be a positive step in seeking to ensure compliance with procurement legislation, and enhance accountability of public officials involved in the conduct and management of public procurement.
 10. The GOK should continue fighting against corruption also by introducing clear procurement rules, as well as through building skills to follow those rules and strengthened controls.
 11. As a best practice, a specific code of conduct/ethics codes explicitly covering participants in public financial management systems, including procurement, and addressing matters specific to such persons, should be implemented. Along the same lines, provisions should be included in the legislative framework clearly mandating financial disclosure by persons in decision-making positions.
 12. The Ministry of Justice advised that a Code of Ethics for government officials has been submitted for its review, which process of review and approval hopefully can be expedited.

ANNEX D – CONDITIONS ON NATIONAL COMPETITIVE BIDDING (NCB) PROCEDURES

(TO BE PART OF FINANCING AGREEMENT)

I) Under WB financed Operations

The procurement procedure to be followed for National Competitive Bidding shall be the tendering with unlimited participation procurement method set forth in the Law of the Kyrgyz Republic on Public Procurement No. 69 of May 24, 2004 (as amended by the following laws of the Kyrgyz Republic: (i) Law No. 172 dated July 28, 2008; (ii) Law No. 236 dated July 20, 2009; and (iii) Law No. 88 dated July 8, 2011) (the “PPL”); provided, however, that such procedure shall be subject to the provisions of Section I and Paragraphs 3.3 and 3.4 of the “Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers” (January 2011) (the “Procurement Guidelines”) and the following additional provisions:

1. Eligibility: Eligibility of bidders to participate in a procurement process and to be awarded an Association-financed contract shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Bank or Association for reasons other than those provided in Section I of the Procurement Guidelines.
2. Domestic Preference: No domestic preference may be applied in bid evaluation on the basis of bidder nationality, the origin of goods, services or labor, and/or preferential programs.
3. Registration and Licensing: Registration shall not be used to assess bidders’ qualifications. A foreign bidder shall not be required to register or obtain a license as a condition for submitting its bid, and a foreign bidder recommended for contract award shall be given a reasonable opportunity to register or obtain a license, with the reasonable cooperation of the Borrower, prior to contract signing.
4. Bidding Documents: Procuring entities shall use the appropriate standard bidding documents acceptable to the Association, which documents shall be prepared so as to ensure economy, efficiency, transparency, and broad consistency with the provisions of Section I of the Procurement Guidelines.
5. Bid Validity: The bid validity period required by the bidding documents shall be sufficient to account for any period that may be required for the approval and registration of the contract as contemplated in the PPL. An extension of bid

validity, if justified by exceptional circumstances, may be requested in writing from all bidders before the original bid validity expiration date, provided that such extension shall cover only the minimum period required to complete the evaluation, award a contract, and/or complete the contract registration process. No further extensions shall be requested without the prior written concurrence of the Association.

6. Qualification: Qualification criteria shall be clearly specified in the bidding documents. All criteria so specified, and only such specified criteria, shall be used to determine whether a bidder is qualified. Qualification shall be assessed on a “pass or fail” basis, and merit points shall not be used. Such assessment shall be based entirely upon the bidder’s or prospective bidder’s capability and resources to effectively perform the contract, taking into account objective and measurable factors, including: (a) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period; (b) financial position; and where relevant (c) capability of construction and/or manufacturing facilities.

Prequalification procedures and documents acceptable to the Association shall be used for large, complex and/or specialized works contracts. Verification of the information upon which a bidder was prequalified, including current commitments and the bidder’s capability with respect to personnel and equipment, shall be carried out at the time of contract award.

In the procurement of goods and works where prequalification is not used, the qualification of the bidder who is recommended for award of contract shall be assessed by post-qualification, applying the qualification criteria stated in the bidding documents.

7. Cost Estimates and State Unit Costs: Cost estimates shall be confidential and shall not be disclosed to prospective bidders. No bids shall be rejected on the basis of comparison with the cost estimates and/or budget ceiling without the Association’s prior written concurrence. State unit costs shall not be used for contract budgeting and/or for evaluation for civil works contracts.
8. Bid Submission and Bid Opening: Prospective bidders shall be given at least thirty (30) days from the date of publication of the invitation to bid or the date of availability of the bidding documents, whichever is later, to prepare and submit bids. Bids shall be opened in public, immediately after the deadline for their submission. No bids shall be rejected at bid opening. A copy of the bid opening minutes shall be promptly provided to all bidders who submitted bids, and to the Association with respect to contracts subject to the Association’s prior review.

9. Rejection of Bids and Re-bidding: No bids shall be rejected solely because they exceed the estimated cost. All bids (or the sole bid if only one bid is received) shall not be rejected, the procurement process shall not be cancelled, and new bids shall not be solicited without the Association's prior written concurrence.
10. Bid Evaluation: Evaluation criteria shall be clearly specified in the bidding documents. Evaluation of bids shall be made in strict adherence to the evaluation criteria specified in the bidding documents. All bid evaluation criteria other than price shall be quantifiable in monetary terms. Merit points shall not be used, and no minimum point or percentage value shall be assigned to the significance of price, in bid evaluation. Bidders shall not be eliminated on the basis of minor, nonmaterial deviations.

Contracts shall be awarded to the qualified bidder whose bid has been determined: (i) to be substantially responsive to the bidding documents; and (ii) to offer the lowest-evaluated cost. No negotiations shall be permitted in connection with the bid evaluation or the contract registration process.

11. Guarantees: Guarantees shall be in the format specified in the bidding documents. The bid guarantee shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested.
12. Contract Modifications: With respect to contracts subject to the Association's prior review, the Borrower shall obtain the Association's no objection before agreeing to: (i) a material extension of the stipulated time for performance of a contract; (ii) any substantial modification of the contract scope of services or other significant changes to the terms and conditions of the contract; (iii) any variation order or amendment (except in cases of extreme urgency) which, singly or combined with all variation orders or amendments previously issued, increases the original contract amount by more than 15 percent; or (iv) the proposed termination of the contract. A copy of all contract amendments shall be provided to the Association.
13. Fraud and Corruption: The bidding documents and contract as deemed acceptable by the Association shall include provisions stating the Association's policy to sanction firms or individuals, found to have engaged in fraud and corruption as defined in the Procurement Guidelines.
14. Inspection and Audit Rights: In accordance with the Procurement Guidelines, each bidding document and contract financed out of the proceeds of the Financing shall provide that bidders, suppliers and contractors, and their subcontractors,

agents, personnel, consultants, service providers, or suppliers, shall permit the Association to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Association. Acts intended to materially impede the exercise of the Association's inspection and audit rights provided for in the Procurement Guidelines constitute an obstructive practice as defined in the Procurement Guidelines.

II) Under ADB financed Operations

General

1. The procedures to be followed for national competitive bidding shall be for tendering with unlimited participation and the two-stage tendering set forth in Law of the Kyrgyz Republic on Public Procurement of Goods, Works and Services effective on April 2004 with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the ADB Procurement Guidelines.

Eligibility

2. ADB: The eligibility of bidders shall be as defined under section I of ADB's Procurement Guidelines published by ADB in April 2010, as amended from time to time; accordingly, no bidder or potential bidder should be declared ineligible to ADB-financed contracts for other reasons than the ones provided by section I of ADB's Guidelines. Bidders must be nationals of member countries of ADB, and offered goods, works and services must be produced in and supplied from member countries of ADB.

Prequalification

3. Normally, post-qualification shall be used unless explicitly provided for in the loan agreement/procurement plan. Irrespective of whether post qualification or prequalification is used, eligible bidders (both national and foreign) shall be allowed to participate.

Registration and Licensing

- (i) Bidding shall not be restricted to pre-registered/licensed firms.
- (ii) Where registration or licensing is required, bidders (i) shall be allowed a reasonable time to complete the registration or licensing process; and (ii) shall not be denied registration/licensing for reasons unrelated to their capability and resources to successfully perform the contract, which shall

be verified through post-qualification.

- (iii) Foreign bidders shall not be precluded from bidding. If a registration or licensing process is required, a foreign bidder declared the lowest evaluated bidder shall be given a reasonable opportunity to register or to obtain a license.

Bidding Period

- 5. The minimum bidding period is twenty-eight (28) days prior to the deadline for the submission of bids.

Bidding Documents

- 6. Procuring entities should use standard bidding documents for the procurement of goods, works and services acceptable to ADB.

Preferences

- 7. No domestic preference shall be given for domestic bidders and for domestically manufactured goods.

Advertising

- 8. Invitations to bid shall be advertised in at least one widely circulated national daily newspaper or freely accessible, nationally-known website allowing a minimum of twenty-eight (28) days for the preparation and submission of bids.
- 9. Bidding of NCB contracts estimated at US\$500,000 equivalent or more for goods and related services or US\$1,000,000 equivalent or more for civil works shall be advertised on ADB's website via the posting of the Procurement Plan.

Bid Security

- 10. Where required, bid security shall be in the form of a bank guarantee from a reputable bank.

11. Bid Opening and Bid Evaluation

- (i) Bids shall be opened in public.

- (ii) Evaluation of bids shall be made in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated bidder.
- (iii) Bidders shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.
- (iv) No bidder shall be rejected on the basis of a comparison with the employer's estimate and budget ceiling without the Bank's prior concurrence.
- (v) A contract shall be awarded to the technically responsive bidder that offers the lowest evaluated price and who meets the qualifying requirements set out in the bidding documents.
- (vi) No negotiations shall be permitted.
- (vii) Price verification shall not be applied.

Rejection of All Bids and Rebidding

12. Bids shall not be rejected and new bids solicited without ADB's prior concurrence.

Participation by Government-owned enterprises

13. Government-owned enterprises in Kyrgyz Republic shall be eligible to participate as bidders only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the contracting authority. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.

Right to Inspect/Audit

14. A provision shall be included in all NCB works and goods contracts financed by ADB requiring suppliers and contractors to permit ADB to inspect their accounts and records and other documents relating to the bid submission and the performance of the contract, and to have them audited by auditors appointed by ADB.

15. Fraud and corruption

- (i) The Borrower shall reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question.
- (ii) ADB will declare a firm or individual ineligible, either indefinitely or for a

stated period, to be awarded a contract financed by ADB, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, an ADB-financed contract.

National Sanctions List

16. National sanctions lists may be applied only with prior approval of ADB.