



REPUBLIC OF SIERRA LEONE

Assessment of National Public Procurement System Based on OECD/DAC Benchmarking Tool



**Draft Report
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Abbreviations

Republic of Sierra Leone – Fiscal Year

January 1 - December 31

Currency Equivalent (April 1, 2011)

Currency Unit = Leone

US\$1.00 = Le 4,255

ACC	Anti-Corruption Commission
ADR	Alternative Dispute Resolution
AfDB	African Development Bank
BLI	Baseline Indicators
CAS	Country Assistance Strategy
CFAA	Country Financial Accountability Assessment
CPAR	Country Procurement Assessment Review
CPIs	Compliance and Performance Indicators
CSOs	Civil Society Organizations
CTB	Consultancy Time Based Contract
DAC	Development Assistance Committee
DFID	Department for International Development of UK Government
EOI	Expression Of Interest
EU	European Union
FAD	Fiscal Affairs Department of IMF
FAO	Food and Agricultural Organization
FAR	Financial Administration Regulations
FBS	Fixed Budget Selection
FIAS	Financial Integrated Accounting System
FM	Financial Management
FY	Fiscal Year
GBAA	Government Budgeting and Accountability Act
GCC	General Conditions of Contract
GDP	Gross Domestic Product
GoSL	Government of Sierra Leone
HIPC	Highly Indebted Poor Countries
HIPC AAP	Highly Indebted Poor Countries Assessment and Action Plan
HR	Human Resource
HRMO	Human Resource Management Office
IAD	Internal Audit Department
IAPSO	Inter-Agency Procurement Services Organization
ICB	International Competitive Bidding
IDA	International Development Association
IFC	International Finance Corporation
IFI	International Financial Institution
IFMIS	Integrated Financial Management Information System

IFR	Interim Financial Report
IMF	International Monetary Fund
IPAM	Institute of Public Administration and Management
IPFMRP	Integrated Public Financial Management Reform Project
IPRP	Independent Procurement Review Panel, or the “Review Panel”
IT	Information Technology
JV	Joint Venture
LCS	Least Cost Selection
LS	Lump Sum
MDAs	Ministries, Departments, and Agencies
MDBS	Multi-Donor Budget Support
MDGs	Millennium Development Goals
MDTF	Multi-Donor Trust Fund
MoFED	Ministry of Finance and Economic Development
MoHTM	Ministry of Works and Housing Technical Maintenance
MTEF	Medium-Term Expenditure Framework
NCB	National Competitive Bidding
NGO	Non Governmental Organization
NPPA	National Public Procurement Authority
NRA	National Revenue Authority
OECD	Organization for Economic Cooperation and Development
PEFA	Public Expenditure and Financial Accountability
PER	Public Expenditure Review
PFM	Public Financial Management
PPA	Public Procurement Act, or “the Act”
PPM	Public Procurement Manual
PPP	Public Private Partnership
PPR	Public Procurement Regulations
PROCYS	Procurement Cycle Tracking System
PRS	Poverty Reduction Strategy
PRSP	Poverty Reduction Strategy Paper
QBS	Quality Based Selection
QC	Quality Control
QCBS	Quality and Cost Based Selection
RFP	Request For Proposals
SAI	Supreme Audit Institution
SBDs	Standard Bidding Documents
SCC	Special Conditions of Contract
SDR	Special Drawing Rights
SMEs	Small to Medium Enterprises
SOEs	State Owned Enterprises
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNICEF	United Nations Children’s Fund
UNDP	United Nations Development Programme

UNFPA	United Nations Populations Fund
USD	United States Dollar
WB	World Bank, also referred to as “the Bank”
WHO	World Health Organization

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Introduction

Sierra Leone is a post conflict country with a population of 6 million in an area of 71,740 square kilometres. Since the end of hostilities in 2002, the United Nations Development Program (UNDP), the African Development Bank (AfDB), the Department for International Development UK (DFID), the European Union (EU), and the World Bank (WB) have played significant roles in supporting the Government of Sierra Leone (GoSL) to rebuild the country for a brighter future. With the demobilization process complete and significant progress in terms of reconstruction, rehabilitation, humanitarian relief and the reestablishment of public service delivery, the GoSL has been focusing reforming and strengthening its governance systems.

Sierra Leone is similar to many of its regional peers with regards to public expenditure, financial accountability and the legal framework of public procurement. However, weaknesses still remain in the legal framework for public procurement, coordination with public financial management, and transparency. Furthermore the lack of clarity on the preceding issues, also contributes to inadequate implementation of the procurement law and Regulations, lack of enforcement mechanisms, and still high levels of corruption and patronage. Finally although the introduction of a procurement cadre career stream has been introduced within the civil service, it still requires strengthening with regards to continuous upgrading of skills of the staff, higher grade levels to prevent arbitrary (*ad hoc*) rotations and comparability with the private sector on remuneration to ensure retention of experienced staff.

Statistics indicate that by 2010, out of a total estimated yearly government budget of US\$342 million per year, about US\$160 million (close to 50% of government expenditure and 16% of GDP) is spent through public procurement processes. The government's priority therefore, is to put in place sound public financial and procurement management systems that ensure maximum levels of efficiency, value for money, transparency and fairness in competition.

Sound public procurement policies and practices are among the essential elements of good governance. Sound practices reduce costs and produce timely results; poor practices lead to waste and delays and are often the cause for allegations of corruption and government inefficiency. The World Bank (also referred to as “the Bank”) has always taken measures to ensure that healthy principles and practices are followed in projects it finances by requiring that Bank borrowers adhere to the Bank's procurement guidelines and through closely supervising project implementation. The same benefits that accrue to Bank-assisted projects should be extended to all public sector procurement at the national level as well. Accordingly, the Bank assists borrowers as an integral part of their Country Assistance Strategies (CAS). This assistance enables borrowers to analyze their present procurement policies, organization and procedures; and, helps them develop those systems to (a) increase their capacity to effectively plan, manage and monitor the procurement process, (b) improve accountability, integrity, and transparency in the process and reduce the likelihood of corruption, and (c) be consistent with the latest internationally accepted principles and practices.

The WB conducted an assessment of the GoSL's public procurement system previously in 2004 and provided the GoSL with a set of recommendations that would send it on its way towards creating a sound national procurement system. Among these recommendations were: the creation of a public procurement law, the formation of a public procurement policy entity, the drafting of procurement Regulations and standard documents, the establishment of a procurement website, creation of monitoring systems, the fostering of partnerships between public and private sectors and civil society organizations, and the strengthening of the auditing and anti-corruption

establishments. As many of these recommendations have now been implemented, the Bank decided to proceed with this Country Procurement Assessment Report (CPAR) conducted jointly with the Government of Sierra Leone.

This report takes stock of the progress for reforms in the procurement system since 2004 and sets out the next steps to ensure continued progress towards establishing a modern and efficient and accountable public procurement system. This CPAR is divided into various sections which cover country context, PFM and procurement reform history, government-donor collaboration, and relation to the Country Assistance Strategy (CAS), the methodology used for this assessment, and the major findings and recommendations. The annexes present the detailed assessment report (using the Organization for Economic Cooperation and Development (OECD)/DAC BLI (baseline indicator tool), the detailed recommended action plan, National Competitive Bidding (NCB) exceptions from to conform to the Bank Procurement Guidelines, and other relevant documentation.

Country Context

Political context: Following the 2002 end of a decade-long civil war, peace has been consolidated in Sierra Leone. Among the countries designated as “post-conflict” by the International Development Association (IDA) and “fragile state” by AfDB, Sierra Leone is one of the few to have achieved transition to democratic governance. International observers broadly agreed that the 2007 elections—the second Presidential and Parliamentary elections to be held since the end of the civil war—were free, fair and credible. Recent political events indicate that a sustainable pluralistic, democratic system is gradually being established. A peace and reconciliation process, including a special court, has largely completed the task of bringing closure to the atrocities of the conflict period. Nevertheless, a history of complicated political economy and patronage, the corrosive long-standing influence of the alluvial diamond industry, pervasive youth unemployment, and regional instability all mean that the situation remains fragile, as demonstrated by occasional clashes in urban centers between supporters of the government and main opposition parties. Despite progress, particularly with economic growth and a decline in poverty rates, Sierra Leone’s economic recovery remains tenuous, and the country continues to rank among the least advantaged countries on various measures. Sierra Leone improved from a ranking of 181 to 180 out of 182 countries in the 2008–09 United Nations Development Programme (UNDP) Human Development Index rankings, despite its seven years of high economic growth. Much remains to be done to tackle high levels of unemployment; infant, child, and maternal death rates are among the world’s worst; and there remains a very high youth dependency ratio. These social indices, including gender disparities and the high vulnerability of women are gradually being addressed. Despite heavy government investments weaknesses in infrastructure (energy, water, ports and roads) and access to quality finance (notably rural finance) slow down development across all sectors. Like most developing countries, Sierra Leone is also vulnerable to external shocks. Most recently, global economic volatility (sharp increases in food prices in 2008 followed by steep declines in commodity demand and prices in 2009) has exacerbated poverty, particularly among the young urban populations.

Economic context: Sierra Leone’s post-conflict economic performance was initially robust, but this has slowed recently as a result of global economic instability. The growth rate slowed to 5.5 percent in 2008 and 4.0 percent in 2009 as a result of the food and fuel price escalations of 2008 and of the global recession that followed and sharply reduced world demand for Sierra Leone’s

mineral exports. These adverse developments have highlighted the need for Sierra Leone to reduce its dependence on imported food and fuel and to develop new engines of growth to diversify away from reliance on mineral exports. The economy is on the right track in this regard: exports have been gradually diversifying into cash crops, notably cocoa but also palm oil and other products, while the completion of the Bumbuna Hydroelectric Project will reduce the need for imported fuel (and save foreign exchange). There is also a need to maintain productivity growth, which has been high but constrained by lack of access to financing and the informal nature of the economy, with formal sector activity confined primarily to large scale mining, construction, retail services, tourism and government employment.

The global recession has challenged the economy. The share of exports of goods and nonfactor services in GDP fell from 20.8 percent in 2007 to 16.3 percent in 2008 and around 15.7 percent in 2009, as the result of the global slowdown and the collapse of operations in two mines. Sierra Leone's external current account balance (including official transfers) worsened to -11.2 percent of GDP in 2008 from -3.4 percent of GDP in 2007 on account of a rise in food and fuel prices during the first half of the year and lower diamond prices in the second half. The balance for 2009 has improved slightly to -9.4 percent of GDP, as the share of imports in GDP has fallen from 29.4 percent in 2008 to 28.5 percent in 2009. The current account balance has been financed mainly by concessional external assistance and debt relief. Official reserves in 2009 are said to have increased to US\$333 million (6.5 percent of imports), following a new special drawing rights (SDR) allocation made in response to the global crisis. The financial sector, still developing from a low base, has remained relatively immune from the global financial crisis. The number of banks has continued to grow, from 13 in 2008 to 14 in 2009 while the branch network expanded from 57 in 2008 to 73 in 2009. Private sector credit increased by approximately \$40m (approximately 50 percent) in the 12 months to October 2009.

Inflation has slowed but exchange rate depreciation has accelerated. The sharp increases in the international prices of food and fuel in the first half of 2008 pushed up the rate of inflation to a period average of 14.8 percent in 2008, from 11.7 percent in 2007. The recession-induced decline in many world prices that began in the second half of 2008 and continued into the first half of 2009 helped to slow inflation to 9.5 percent in 2009. But reductions in foreign exchange receipts from exports and remittances put substantial pressure on the exchange rate, which depreciated by almost thirty (30) percent against the US dollar between January and December of 2009.

Macroeconomic context: The global economic prospects for traded goods, and continued domestic investment, will allow Sierra Leone to regain a high rate of growth. Real GDP growth is forecast to gradually return to its pre-recession levels: projections are for 4.7 percent in 2010 and 6.0 percent by 2012. Exports were projected to rebound to 18 percent of GDP by 2010 and to 19 percent in 2011 and 2012. Fuel imports should be substantially reduced by the low-cost hydroelectric power now available from Bumbuna. The current account deficit is expected to resume its original trend towards balance, improving to -8.7 percent of GDP in 2010 and -7.2 percent by 2012. Gross official reserves are expected to stabilize at 5.5 months of import cover by 2012.

Sierra Leone's fiscal policy in the medium term will be geared to raising investments while reducing the domestic primary fiscal deficit to -2.7 percent of GDP by 2012. This is expected to be achieved through increased revenue mobilization, because the government aims to maintain macroeconomic stability while also reducing the share of recurrent expenses in the budget. New and planned tax measures include the Goods and Services Tax, a value-added tax introduced in January 2010, and a major modernization plan that the National Revenue Authority is implementing with support from DfID and the Foreign Investment Advisory Service (FIAS)

(customs; income tax; a Gold and Diamond Office; non-tax revenues; taxpayer identification number; and integrated revenue information system). The poverty reduction strategy is intended to help diversify exports, particularly with regard to agricultural products. Mining sector prospects could be facilitated through the new legal framework for the mining sector.

Offshore oil discoveries, while not yet confirmed to be commercially viable, and possibly larger than previously expected, and iron ore deposits may change the country's economic prospects and dialogue. The commercial viability of the oil reserve discovery will probably not be determined until 2011/2012, and oil revenues will certainly not become a factor during the current poverty reduction strategy paper (PRSP). Nonetheless, the prospect of future revenue may change expectations and behavior. There are also indications that the availability of iron ore may be much larger than current proven reserves.

Social Development & Poverty Reduction: Since the beginning of the conflict in the early 1990s, Freetown's population has experienced continuous growth and is believed to have almost doubled by 2010. Considering that the urban infrastructure has not been upgraded in decades, access to basic infrastructure such as water, roads, housing and electricity is limited. The government has completed the second-generation Poverty Reduction Strategy Paper (PRSP-II), which covers 2008–12, under the title “Agenda for Change.” As the government acknowledges, now that the early gains of the peace dividend are exhausted, future economic and social progress will depend largely on the quality of policy decisions and their implementation. The Country Assistance Strategy of the WB, the UN strategy, and the Joint Vision are all fully aligned with the Agenda for Change.

The Agenda for Change is highly selective in its focus and represents the priorities for which the government wishes to be held accountable to the people of Sierra Leone. The strategy puts forward a target of achieving 10 percent annual GDP growth and its primary emphasis is on those sectors—energy, agriculture and transport—that will be key to achieving this ambition. Recognizing the slow rate of progress in attaining the Millennium Development Goals (MDG) , the government also addresses the need for renewed emphasis on human development, in building the Agenda for Change around four key priorities: (a) Ensuring sustainable human development through expanding access to basic social services and improving coverage of social protection needs of the poor and vulnerable; (b) Providing a reliable power supply to the country, and transitioning toward a low carbon energy economy through use of the country's significant hydropower potential; (c) Raising quantity and value-added productivity in agriculture and fisheries, emphasizing the productive capacities of the poor and vulnerable; and, (d) Developing a national transport network for goods and people, thereby facilitating increased investment and economic activity.

The Agenda for Change places emphasis on addressing gender issues as part of human development, including through the extension of women's access to health care, education, and economic opportunities, as well as enhancing women's voice in public affairs. The government has identified four (4) preconditions for growth and development that will underpin the implementation of the Agenda for Change: (a) Good governance, peace, and security are explicitly acknowledged as necessary political underpinnings for development. Without good governance and the absence of corruption on one hand, and the consolidation of peace and security on the other, economic growth and human development will stay below potential (Sierra Leone is a State Party to the UN Convention on Anti-Corruption which prescribes “Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption”); (b)

Macroeconomic stability is acknowledged as a prerequisite for economic growth and private sector development as well as for poverty reduction; (c) Private sector development—including the financial sector—is seen as the engine for growth. The government will seek to encourage private investment in all the PRSP priority sectors; and (d) Managing natural resources is an important priority for a nation that has seen its natural resources depleted (forests, minerals, fish stocks) with limited benefit to the economy or the people. Further prospects in extractive industries (notably oil) enhance the importance of this precondition for sustainable growth.

The Agenda for Change also encompasses strategies for developing the business environment. It focuses particularly on encouraging private sector development—through the removal of administrative barriers—and financial sector development—through a focus on access to finance and an enhanced regulatory framework. Initiatives for legal and regulatory reform include land reform, improvements in access to justice, and measures to attack corruption. The importance of capacity building is recognized in an ambitious public sector reform program that includes planned improvements in pay and incentives, training, and human resource management.

The Agenda for Change promotes decentralization as a means to make service delivery more effective. Local councils are to be empowered to manage human resources, and greater community participation will be sought to foster transparency and accountability. The importance of the rule of law is a theme that cuts across the Agenda for Change, covering business regulation, land reform, and property rights. Human rights issues are addressed by placing emphasis on gender parity across sectors as well as by focusing particularly on education for girls and on reproductive health.

Public Financial Management History

Despite several fiscal management set-backs in key budget areas, public financial management in Sierra Leone has been steadily improving over the last several years according to studies carried out by government and development partners. Key analytical and review works conducted in the recent past to date include: the 2002 Country Financial Accountability Assessment, the corruption surveys from 2000 and 2002, the 2004 Heavily Indebted Poor Country Assessment and Action Plan (HIPC AAP), the 2004 and 2010 Public Expenditure Review (PER), the Public Expenditure and Financial Accountability Public Financial Management (PEFA PFM) assessments of 2007 and 2010, International Monetary Fund Fiscal Affairs Department (IMF FAD) Reviews – the latest being the March 2008 review report on the PFM progress including the issues in existing legal framework and the reform priorities for the future, and the 2010 Review of the Government Budgeting and Accountability Act (GBAA).

Built on prior assessments and reviews, the results of the latest PEFA PFM assessments of the Central Government and Local Councils (2010) indicate major improvements in the PFM systems and processes in Sierra Leone, compared to the 2007 assessment. These assessments and reviews also point to a trajectory of continued general and specific PFM improvements in the future as a result of the reforms currently underway. The 2010 PEFA reports point out that, despite inherent weaknesses yet to be managed, Sierra Leone remains committed and continues to position itself to confront the challenges in the PFM reform arena. The progress achieved in critical areas of reform has been partly due to the concerted efforts of development partners in support of the government program of reforms, and partly as a result of government's own demonstrated commitment to raise the profile of PFM within its menu of governance reforms.

The pace and scope of reforms, from a historical perspective, became visible when the government embraced fundamental reforms recommended in the analytical work carried out since the Country Financial Accountability Assessment (CFAA) of 2002. The genesis of these reforms included the adoption and implementation of a number of core institutional and regulatory frameworks for PFM, including the enactment of: (i) The GBAA, 2005; (ii) Financial Administration Regulations (FMR), 2007; (iii) National Revenue Authority Act (NRAA), 2003; (iv) Local Government Act, 2004; (v) Public Procurement Act (PPA), 2004. Embarking on a wide ranging set of reforms has meant that the government was and remains committed to enhancing its accountability framework, notwithstanding some significant legal inconsistencies yet to be fully managed. The GBAA and FAR were recently reviewed in August 2010 to highlight the inconsistencies in the PPA and Regulations. The review concluded that there are a number of *de jure* and *de facto* inconsistencies not only between the PPA and the Regulations but also with the 1991 constitutional provisions pertaining to management of public finances. The review therefore called for a legislative overhaul, particularly pertaining to the GBAA to further foster consistency of key provisions with international best practice in public sector accountability systems. The government is currently evaluating the review report in order to pursue practicable actions recommended therein so as to anchor the PFM systems and processes on enhanced, consistent and best practice standards.

Nevertheless, the current legal framework provides an adequate platform to build in further PFM provisions that would reinforce the government's pursuit for improved financial governance. Serving as a key vehicle and thrust of the PFM reforms, the Bank and multi-donor supported IPFMRP, which commenced implementation in 2010, has begun to indicate good intermediate outcomes enhancing a number of key and more holistic PFM reforms that together will further strengthen the accountability and public finance management systems in the country. Support for the reforms embedded in this project is wide ranging and includes core areas that foster stronger PFM institutions and systems.

On the wider PFM performance front, while a lot remains to be done, the government has achieved tremendous progress in implementing reforms generally supportive of assuring (a) aggregate fiscal discipline, (b) strategic allocation of resources, and (c) efficient service delivery. Against the six (6) critical dimensions of performance of an open and orderly PFM system in Sierra Leone, the government has scored well in 2010, compared to 2007, according to the PEFA assessments. However, recent budget execution results (FY 2010) point to a weakening of fiscal discipline as a result of massive over-spending against original budget outlays accentuated by mid-term corrections in spending priorities. As a result, the credibility of the budget for FY 2010 was impaired. Equally, although the comprehensiveness and transparency of the budget continue to improve, there are timeliness issues with the presentation schedule of the budget for legislative approval, and weaknesses in fiscal risk oversight arrangements that would need to be managed. On the implementation of a policy based budgeting system, concerns remain regarding the appropriateness of linking government policies and priorities to planning as part of the budget management arrangements. Budget execution and control is based on revised budget allocations, but the management of expenditure arrears persists as a weak area of control. Accounting and recording is carried out quite efficiently, especially with the use of the IFMIS. Moreover, the public accounts, in terms of the consolidated fund, are prepared and rendered for audit within three months of the end of the fiscal year. However, the comprehensiveness of financial reporting remains an area yet to be fully managed as donor funded operations are not included as part of the overall reporting on government finances. This transcends to the lack of comprehensiveness in the maintenance of a Treasury Single Account. Finally, regarding external scrutiny and audit, the focus on transactions rather than systems and risk is a weakness. This weakness would require capacity improvements to be mitigated. The timeliness of audits, though within the legal frame

of nine months after the rendering of draft accounts, is respected in as much as it is outside the three months that is considered standard international practice. Nevertheless, Parliamentary reviews of the accounts and audit reports are regular and have been reasonably effective in controlling excesses in expenditure management practices in the country.

Procurement Reforms History

Public procurement has evolved in Sierra Leone since colonial times. During the colonial period, procurement in the public sector was completely centralised whereby Crown Agents was appointed by the British colonialists to manage the procurement function/process on behalf of the monarchy in Sierra Leone. After Independence in 1961, the government saw the need to change the inherited centralised system. Public procurement was decentralised to the ministries with the permanent secretaries in charge, since they already controlled the vote. In the provinces, the provincial secretaries, who were also the vote controllers, administered procurement for all the provinces to which they were assigned and were assisted by the district officers. Upon the dissolution of district councils in 1972, public procurement was again centralised with the Ministry of Finance where a central tender board was located to carry out all procurement in the country on behalf of the government. From 1972 to 2002, it became increasingly clear to all stakeholders that there were serious corruption issues surrounding the centralized procurement system. This was the basis for the advent of the present phase of the public procurement reforms.

Over the past nine years, the GoSL has made steady progress in procurement reforms. In early 2002, His Excellency the President requested that the UNDP provide assistance for a comprehensive reform of the country's public procurement system. Missions were completed by the Inter-Agency Procurement Services Office (IAPSO) of the UNDP in December 2002, followed by a two-day workshop with circulation of a report of this workshop to all stakeholders in January 2003. The second IAPSO mission took place from January 24-30, 2003, during which a meeting was held with the Ministry of Finance, Auditor General, Accountant-General, and the Sierra Leone Chamber of Commerce, Industry & Agriculture. The meeting also was attended by representatives of DFID, the European Union (EU) and the World Bank. The meeting brought forth a consensus among participants and an action plan aimed at the reform of public procurement in Sierra Leone. The cabinet at its March 26, 2003 meeting agreed to set up a Procurement Reform Steering Committee to be chaired by the Honorable Vice President, and comprising representatives of the Office of the President, the Ministry of Finance, Ministry of Development & Economic Planning and donor partners. The Steering Committee was tasked with the duty to examine the various reform options and to oversee the implementation of the agreed activities for the procurement reform program.

In June 2004, the Bank conducted another assessment of the procurement system to determine progress made since 2002. The Bank produced an Issues Paper on Procurement that highlighted several recommendations for the GoSL to focus on with regards to continuing the reform process. Some of the recommendations in that action plan (which were in line with the previous action plan that was designed by the multi-donor group) included creating a public procurement law, setting up a public procurement policy entity, drafting procurement Regulations and standard documents, establishing a procurement website, creating monitoring systems, fostering partnerships between public and private sectors and civil society organizations, and strengthening the auditing and anti-corruption establishments, to name but a few.

The GoSL subsequently enacted the PPA (2004), which incorporates many of the major features that meet international best practices in public procurement. The PPA contains for example,

procurement and complaints procedures and also has a focus on decentralization. A subsequently created Independent Procurement Review Panel (IPRP or “the Review Panel”), which was created pursuant to the PPA, has passed and published various judgments on cases referred to it by aggrieved bidders. A National Public Procurement Authority (NPPA) was also created after the adoption of the PPA and is the main body in Sierra Leone that manages the public procurement function. It sets policy, creates Regulations, and monitors the implementation of procurement plans within the ministries and agencies of government, *et cetera* as per the normal mandates of such similar bodies and international best practice.

The NPPA has made several significant strides in terms of advancing the reform of the national public procurement system. For example, it has created all the Regulations to support the implementation of the PPA as well as all accompanying standard bidding documents and request for proposals. It created user manuals for these latter Regulations and documents. It has also conducted extensive awareness and capacity building exercises, including capacity building for media outputs like TV and radio shows, actual training through institutes, and the creation of a public procurement website to name but a few. Initiatives are currently ongoing to create a professional procurement cadre within civil service in Sierra Leone whereby the NPPA is closely working with the Human Resource Office (HRO) for the accreditation/certification of trained personnel and the development of professionalization for procurement practitioners within public and civil service.

In recent developments (December 2009), NPPA started in 2009 to prepare amendments to the law and Regulations, and invited comments from civil society, the private sector and development partners. The Bank encouraged the GoSL to await the completion of this CPAR to better inform their process of updating the law and its Regulations, which was agreed with the GoSL agreed. This CPAR assessment was subsequently carried out as a joint exercise between the GoSL and the WB using the OECD Development Assistance Committee (DAC) methodology for assessing country procurement systems using the Baseline Indicator Tool (BLI), which increased the level of ownership.

The main objectives of this CPAR are to (a) provide a comprehensive analysis of the country's public sector procurement system, including the existing legal framework, organizational responsibilities, control and oversight responsibilities/capabilities, present procedures and practices, and how well these work in practice; (b) undertake a general assessment of the institutional, organizational and other risks associated with the procurement process, including identification of procurement practices unacceptable for use in Bank-financed projects; (c) develop a prioritized action plan to bring about institutional improvements; and (d) assess the competitiveness and performance of local private industry with regard to participation in public procurement, and the adequacy of commercial practices that relate to public procurement.

Relation to World Bank’s Country Assistance Strategy for Sierra Leone

This CPAR supports the CAS and the “Agenda for Change (PRSP) from the GoSL in that all three focus on strengthening governance systems in Sierra Leone. Public procurement is already mentioned as crucial in getting value for money in a country where revenue generation is still relatively low and where dependence on donor support is significant. Also, a sound procurement system will support and increase the chances of favourable outcomes in the other priority areas of the PRSP/CAS which include ‘increased human development through the delivery of basic

services’, ‘strengthening the agriculture sector’, ‘becoming more self efficient in the energy sector’, and ‘improving the transport sector and road infrastructure’.

This CPAR has close links to the Institutional Reform and Capacity Building Project (closed March 31, 2009) and its successor, the Integrated Public Financial Management Reform Project (IPFMRP). The second component of this latter project is reinforcing the control system for improved service delivery, which includes an updated legal framework, robust public procurement practices, tightened payroll controls, strengthened internal audit, and improved accounting procedures. The project contains a \$1.29m component to support procurement reforms and capacity strengthening which is already being aligned to assist the government in implementing some of the recommendations of this CPAR. Additional actions and resources (from the WB and other Development Partners) will be needed to address to totality of all the recommended actions.

Government Development Partnership History

There are quite a few development partners (often referred to as ‘donors’) that are present in Sierra Leone, of which the main ones of which include: The World Bank, the AfDB, the UN organizations (*e.g.* UNDP, UNICEF, UNFPA, WHO, etc.), DFID, and the EU. As already described above, the UNDP and the World Bank have taken the lead in procurement reforms in country, with UNDP at the outset, and the Bank since 2004 to present day. Annex 6 presents several tables that describe the different sectors in which the Development Partners in Sierra Leone are involved with details of their portfolios as originally presented in the recent 2010 Joint Country Assistance Strategy for Sierra Leone.

Introduction to OECD/DAC Tools

Under the auspices of the joint World Bank and OECD Development Assistance Committee (DAC) Procurement Round Table initiative, developing countries and bilateral and multilateral donors worked together to develop a set of tools and standards that provide guidance for improvements in procurement systems and the results they produce. The Round Table initiative culminated with the December 2004 adoption of the "Johannesburg Declaration" including a commitment for the adoption of the Baseline Indicators Tool as the agreed international standards for assessment of national procurement systems. Following the conclusion of the Round Table initiative, under the coordination of the Working Party on Aid Effectiveness of the OECD/DAC, the Joint Venture for Procurement was created and has further advanced the development of the methodology for application of the baseline indicators and associated compliance and performance indicators to assess country procurement systems.

The methodology for assessment of national procurement systems using the OECD/DAC tool is intended to provide a common methodology which developing countries and donors can use to assess the quality and effectiveness of national procurement systems. The understanding among the participants in this process is that the assessment will provide a basis upon which a country can formulate a capacity development plan to improve its procurement system. Similarly, donors can use the common assessment to develop strategies for assisting the capacity development plan and to mitigate risks in the individual operations that they decide to fund. The long term goal is that countries will improve their national procurement systems to meet internationally recognized standards enabling greater effectiveness in the use of funds to meet country obligations. The

OECD/DAC and the Joint Venture (JV) for Procurement agreed that a scoring criterion would also contribute to the primary objective of supporting capacity development in the area of procurement by helping to more specifically and consistently identify the strengths and weaknesses of the systems assessed and increase the ability to track progress of reform initiatives.

The information resulting from an assessment supports the design of harmonized capacity development and reform initiatives intended to address weaknesses associated with the procurement system. The assessment provides the country with information it can use to monitor the performance of its system and the success of the reform initiatives in improving performance. In identifying weaknesses in the current system in a country, donors are also provided with information that helps them determine risks to the funds they provide to partner countries.

The methodology includes two parts: Part I covers the Baseline Indicators that deal with the formal and functional features of the existing system; and Part II covers the compliance/performance indicators (CPIs), that deal with monitoring performance data to determine level of compliance with the formal system. These two parts are designed to be applied jointly or separately depending on the intended purpose and scope of the assessment.

For the purpose of this CPAR, the joint team from GoSL and WB agreed to use solely Part I; *i.e.* the Baseline Indicators. The use of the Part II tool, CPIs, was evaluated but considered to be too data intensive and not appropriate in the context of the current procurement progress in Sierra Leone. The detailed assessment report using these BLI can be found in annex 1. (For more detailed information on the OECD/DAC assessment tool for public procurement and its history, please refer to OECD website at: www.oecd.org).

Methodology of Assessment

The approach to the work in Sierra Leone is a participatory joint assessment approach that proceeded in four steps: (Step 1) Agreement between the Bank and the government on scope, timing, methodology and method of participation of key national stakeholders and Development Partners; (Step 2) Carrying out of independent preliminary assessments by the government and the Bank teams, followed by the main assessment mission which was done jointly to enhance country-ownership and foster close working relationships to carry forward future reforms; (Step 3) Review of both sets of the results of analysis; discussion between the Bank and the government as to strengths, weaknesses and divergences in the assessments of the procurement system; the Bank and the government held discussions to have consensus on the results and recommended actions; and review this draft joint assessment report (inclusive of a draft action plan); and (Step 4) Dissemination of the draft report to a large group of stakeholders; the Bank received feedback and comments, and held discussions with the government to prepare a mutually agreed Final Report.

The main methodology agreed upon is the OECD/DAC Methodology for Assessment of National Procurement Systems (Version 4 – July 17 2006), but the assessment also incorporates specific issues of interest to the Bank, such as an update to the list of NCB (national competitive bidding) exceptions. The list identifies the exceptions to the national laws that need to be included in bidding documents so that the procurement method entitled NCB conforms to the Bank's Procurement Guidelines. Given the Bank's increased risk based approach to preparation and supervision of its operations, determining the risks is important.

While the Bank carried out its desk review and completed an internal assessment using the methodology, the GoSL also carried out their self assessment. Once both were completed, the two teams came together at a three-day workshop to compare and contrast the different findings and scores attributed. Subsequent to the workshop, the two teams came up with a mutually agreed report and scoring for all of the indicators and prepared this joint report.

The GoSL self assessment was conducted in Freetown using specialists with varied and various backgrounds and the other non state actors (Civil Society). Please refer to annex 5 for a detailed list of participants of the national self assessment team.

These selected participants required training on the use of the OECD/DAC tool for the purpose of the exercise. They were, therefore, taken through a four-day intensive training on the use of the tool for the assessment. The training was facilitated by Mr. M.J. Musa (NPPA) who has had training on the use of the tool for country public procurement assessment and member of the task force of the OECD/DAC-WB JV pilot tool. The training process focused on hands-on use of the BLI methodology tool. The training method used was the following:

1. A step-by-step explanation and discussion of the background of the BLI tool as an assessment instrument;
2. A step-by-step explanation and discussion of the organization of the BLI tool;
3. A detailed explanation and discussion of the scoring system of each of the pillars, indicators and sub-indicators; and,
4. A plenary discussion and group discussions to address questions from the assessors.

The trainees were then divided into four (4) groups based on their professional backgrounds, responsibilities and interests in the four pillars of the BLI. These groups were led by a member of the NPPA staff to ensure that the focus of the assessment was maintained. The four (4) groups follow the pillars as set out below:

1. Pillar I: Legislative and Regulatory Framework.
2. Pillar II: Institutional Framework and Management Capacity.
3. Pillar III: Procurement Operations and Market Practices
4. Pillar IV: Integrity and Transparency of the Public Procurement System.

While the Bank carried out its desk review and completed an internal assessment (with several specialists from different units), the GoSL also carried out their self assessment as described above. . Once both assessments were completed, the two teams came together to compare and contrast the different findings and scores attributed. Subsequent to a three day workshop in Freetown, the two teams came up with a mutually agreed report and scoring for all of the indicators and prepared this joint report

For a list of documents that were reviewed by the GoSL and Bank teams as a part of this assessment, please refer to annex 7.

Summary of Key Findings and Recommendations

As this is a highly specialized technical report on procurement, we have designed this section to be a more readable summary for a general audience of non-procurement specialists, with only the

essential information provided. This section presents an overview of the findings and recommendations which are amplified in much greater details in the annexes.

The technical reader is referred to primarily to Annex 1 for the most precise wording, interpretations, and recommendations with regards to all issues in this report. Annex 2 presents similar information in a table style format for an action plan, with more simplified wording for the sake of brevity.

A summary of the main issues are presented below:

Revisions to the Legal Framework for Procurement

The CPAR review reveals that there are many improvements that need to be carried out to the legal framework, mainly under Pillar 1 but also as well as under several of the other indicators. Generally, there are several inconsistencies, contradictions and ambiguities in language as well as among the PPA, its Regulations and the procurement manual. Also in some cases the Regulations contain substantive provisions governing for the procurement processes that are not included in the PPA.

Key matters to be revised in the Public Procurement Act and its Regulations

- The procurement methods are imprecisely or not fully set forth, and their conditions for use are not clear or consistently stated.
- The use of two-envelope system should be clearly prohibited for works and goods in both the PPA and its Regulations, except for selection of consultants. This is an example of an inconsistency or ambiguity between the Act and its Regulations.
- The PPA should expressly provide that foreign bidders may participate in procurements conducted using NCB.
- In the case of a procurement involving multiple lots, the procurement methods should be selected based on the estimated total value of the overall procurement package (i.e. not on a lot-by-lot value basis).
- The publication requirements are not consistently set forth in the PPA and its Regulations. The Regulations should be revised so that they do not allow for individual determination/interpretation as to when nationality may be used as a discriminating factor in participation.
- The registration process for private sector companies needs to be clarified so that it is not an eligibility requirement or other condition for participation in public procurement.
- The PPA does not explain the important information as to the debarment process, including the due process accorded the accused. To the extent that suspension is intended, then it should be provided for in the legislative framework.
- Revise the PPA and its Regulations to explicitly describe the conditions for the participation of government-owned enterprises in public procurement (current legal framework is silent as to SOE participation).
- Although the PPA does permit negotiations to reduce the contract cost when the lowest evaluated responsive bid exceeds the contract budget by a substantial margin, the distinction as to when such negotiations are acceptable and when rebidding is required should be clearer

- Prohibit on the use of point system evaluation (except in the case of consulting services), and specify that criteria not evaluated in monetary terms should be evaluated on a pass/fail basis.
- The PPA should be explicit that in all cases of late submission of consultant services requests for proposals (RFPs) that the RFP should be returned unopened. This is another example where there is ambiguity between the Act and its regulations, as it is only in the regulations that call for returning an unopened envelope upon late submission.
- Pre-qualification should not be used for the purpose of shortlists in restricted bidding and registry systems.
- Like in the PPA, the Regulations should make clear that nothing in the functions assigned to the NPPA shall be construed to include the power to participate in the award of any specific procurement contract, or to otherwise intervene in procurement operations. The Regulations should not be used to assign additional functions to the NPPA
- The Regulations, but not the Act, permit a procuring entity to renegotiate the contract in order to stay within the budget or otherwise minimize costs for the procuring entity in such circumstances. As a general matter, it is not appropriate to include in Regulations conditions, such as this one, that alter what is permitted under the law. In addition, this particular alteration gives a procuring entity a potentially wide opening to renegotiate contracts in circumstances that would require termination of the contract under the Act and under good international practice generally. The Regulations should not allow renegotiation when price deviation causes an increase in excess of the pre-agreed
- The Regulations should be updated on a regular basis, since normally regulations are updated more often than the primary Act. In Sierra Leone the Procurement Regulations have not been updated since 2006.
- The PPA and Regulations should be revised so as to refer to the current Anti-Corruption Act of 2008 (and not to the Anti-Corruption Act of 2000).
- The PPA needs a clear explicit revision or cross reference to the GBAA with regards to the commencement of procurement proceeding, since the GBAA (2005) does clearly state that funds cannot be committed unless covered by appropriations duly approved by Parliament.

Key matters to be revised in Relation to the Independent Procurement Review Panel

- Independence of IPRP from NPPA should be clarified and ensured. Clear lines of independence should be established between the NPPA and the Review Panel.
- The PPA states deadlines, but also allows that other deadlines for the submission of complaints may be established in the Regulations. A mechanism for enforcement of decisions should be included in the PPA and Regulations.
- A mechanism for enforcement of decisions should be included in the PPA and its Regulations.
- The right to judicial review should be provided for with respect to procurement complaint.

Key matters to be revised in the Procurement Manual and the Standard Bidding Documents (SBDs)

- Manual and SBDs need to be updated on a regular basis.
- SBDs for health goods and IT are missing.
- SBDs and contract documents do not fully or consistently address matters relating to fraud and corruption, conflicts of interest and unethical behaviour.
- The manual is not the appropriate venue for allowing any forms of deviations – this should be at the level of the PPA. In the Bank’s opinion, the NPPA should not be in a position to authorize any such deviations through the use of the Regulations and procurement manual.

Key matters to be revised in other legislation

- The GBAA (2005) needs to have explicit description as to when a procurement can commence, since the GBAA (2005) does clearly state that funds cannot be committed unless covered by appropriations duly approved by Parliament. This also needs to be explicitly cross referenced to the PPA.
- The PPA and Regulations should be revised so as to refer to the current Anti-Corruption Act of 2008 (and not to the Anti-Corruption Act of 2000).
- The respective scopes of responsibility of the NPPA and Anti-Corruption Commission are not always clearly delineated.
- Enactment of an arbitration law should be considered.
- Sierra Leone is not a signatory to the New York Convention on enforcement of international arbitration awards, and this should be addressed.

Reforms and Revisions Related to Financial Management

The findings show that the examples below are key actions to for Sierra Leone to consider in the near future:

- Amend the GBAA (2005) to clearly state that funds cannot be committed unless covered by appropriations duly approved by Parliament, and to clarify when procurement proceedings can commence and when contracts can be signed based on appropriated funds.
- Review the GBAA and FAR, to introduce amendments to strengthen conditions to ensure that information on contracts is reported upon and recorded in a regular and timely manner.
- Strengthen the internal audit function across MDAs generally, and specifically introduce focused and specialised procurement capacity building program to cater for the requirements of auditors (internal and external).
- Provide technical assistance to the supreme audit institution to enable them to carry out annual procurement audits effectively.
- Follow-up to implement the already recommended mechanisms to ensure that all recommendations are adopted of audit reports, and that compliance with established reporting requirements is strengthened.

Strengthening Capacity Building Strategy & Procurement Professionalization

The NPPA needs to design a procurement capacity building strategy, and continue its efforts to structure a career stream for procurement staff in the civil service in Sierra Leone. Some of the key issues to improve are:

- The current capacity building initiatives need to be studied and incorporated into a wider capacity building strategy that encompasses the creation of a professional procurement cadre under the civil service (titles, job descriptions, national qualifications, career paths and appropriate remuneration); the establishment of national training institutes that can deliver certified procurement training on a sustainable basis (training of trainers, supply of syllabi, training materials, etc.); and the delivery of tailored courses for all of the various stakeholders (audit, procurement officers, high level government and parliamentary persons, media, civil society organizations (CSOs), etc.)
- The system for annual evaluations of staff performance in the field of procurement is nascent and requires much more work.
- The procurement cadre concept is only now being implemented in Sierra Leone and will need significant strengthening.
- IPRP members should be trained in procurement.
- Technical specialists in procurement entities (as for example in health, educations, transport, etc) need to be strengthened to prepare appropriate technical specifications, performance criteria, and terms of reference. Furthermore these technical specialists need to be trained on critical procurement aspects such as qualifications, bid evaluation of substantial responsiveness and scoring in technical evaluation of consultant proposals.

Strengthening of Key Operational Aspects for Procurement and CSO Involvement

The NPPA web site is a critical tool for procurement in Sierra Leone and it needs several improvements because it is not up-to-date, nor fully reliable. As connectivity is improving in the country, and within the next two years a submarine cable will improve speed and access dramatically, the NPPA web site should address the following:

- Improve user friendliness
- Update all information regularly (*e.g.* weekly)
- Revive dead links continuously
- Improve record keeping at MDAs so current information can be analyzed and posted publicly.

There is a weak network or relationship that currently exists between civil society and the NPPA/ACC. CSOs are not well prepared and do not have much capacity in the field of procurement. Access to procurement information is also very limited for them to perform social audits. The current knowledge of the basic procurement processes, and the CSO role in monitoring of procurement processes needs to be strengthened.

Annex 1: Detailed findings of the assessment under OECD/DAC pillars methodology

Pillar I - Legislative and Regulatory Framework

Pillar I – Legislative and Regulatory Framework	Assessment Score
1) The public procurement legislative and regulatory framework.	
a) - Scope of application and coverage of the regulatory framework and public access to legislation..	3
b) - Procurement methods.	0
c) - Advertising rules and time limits.	3
d) - Rules on participation and qualitative selection	0
e) - Tender documentation and technical specifications.	3
f) - Tender evaluation and award criteria	3
g) – Submission, receipt and opening of tenders	3
h) – Complaints system structure and sequence	1
2) Implementing Regulations and Documentation	
a) – Implementing regulation that provides defined processes and procedures.	2
b) – Model tender documents for goods, works, and services.	3
c) – Procedures for pre-qualification.	3
d) – Procedures for contracting for services or other requirements in which technical capacity is a key criterion.	3
e) – User’s guide or manual for contracting entities.	3
f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts.	3

Indicator 1: Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.

Sub-indicator 1(a) - Scope of application and coverage of the legislative and regulatory framework. Assessment Score: 3

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) The legislative and regulatory body of norms is adequately recorded and organized hierarchically (laws, decrees, Regulations, procedures,) and precedence is clearly established.

The legal framework in Sierra Leone is rooted in customary law, statutory law and common law. As per Article 170 of the Constitution of Sierra Leone (the “Constitution”), the laws of Sierra Leone are comprised of:

1. the Constitution;
2. laws made by or under the authority of Parliament as established by the Constitution;
3. any orders, rules, Regulations and other statutory instruments¹ made by any person or authority pursuant to a power conferred in that behalf by the Constitution or any other law;
4. the written and unwritten laws of Sierra Leone as they existed immediately before the entry into force of the Constitution² and any statutory instrument issued or made before but to come into force on or after that date; and
5. the common law, which comprises the rules of law generally known as the common law, the rules of law generally known as the doctrines of equity, and the rules of customary law,³ including those determined by the Superior Court of Judicature.

It is presumed, but is not expressly stated in the Constitution, that the order of precedence of laws are as listed above. The Constitution is the supreme law of Sierra Leone, and any law found to be inconsistent with any provision of the Constitution shall, to the extent of the inconsistency, be void and of no effect.⁴

The president is responsible for the execution of treaties, agreements or conventions in the name of Sierra Leone. Any treaty, agreement or convention that relates to any matter within the legislative competence of Parliament, or that alters the law of Sierra Leone, or imposes any charge on, or authorizes any expenditure out of, the Consolidated Fund or any other fund of Sierra Leone shall be subject to ratification by Parliament.⁵

The conduct of public procurement is governed by the Public Procurement Act, 2004⁶ and the Regulations on Public Procurement, First Edition 2006 (the “Regulations”). Additional guidance is set forth in the Public Procurement Manual (First Edition) of 2006 (the “Procurement Manual”). Standard forms of bidding documents and contract conditions also are issued for use by procuring entities. These materials, therefore, comprise the general legislative framework for the conduct of public procurement. Nonetheless, the procurement rules of a donor or funding agency that are prescribed as part of an international donor/funding agreement would prevail in cases of conflict with the PPA.⁷

¹ “Statutory instrument” means “any proclamation, regulation, order, rule or other instrument (not being an act of Parliament) having the force of law.” Constitution Article 171(1).

² Adopted on October 1, 1991, as amended.

³ “Customary law” refers to the rules of law that, by custom, are applicable to particular communities in Sierra Leone. Constitution Article 170(3).

⁴ Constitution Article 170(3).

⁵ Constitution Article 40(4).

⁶ Signed by the President on December 7, 2004.

⁷ Act Section 1(2); Regulation 1(2)(a).

With respect to the legislative framework governing public procurement, inconsistencies have been observed among the key governing documents, *i.e.*, PPA and Regulations, as well as the Procurement Manual. Such observations are discussed below in the context of specific subject matter areas.⁸ Inconsistencies within the procurement legislative framework, and areas where clarity is lacking, should be addressed in any future revisions to the legislative framework. For example, the Procurement Manual should be reviewed generally to ensure consistency with the PPA and Regulations, and should not be used to introduce deviations from or exceptions to the legislative requirements set forth in the PPA and Regulations. While it may be appropriate in some circumstances for a procuring entity to tailor standard procedures or documentation to its particular needs, authorizing a procuring entity to conduct public procurement in a manner that conflicts with such standard procedures or documentation undermines the strength of the public procurement system as a whole. Along the same lines, a general review of the legislative framework should be undertaken to ensure that the public procurement system functions independently and is not subject to manipulation through authorizations granted to various government entities under separate legislative acts.

(b) All laws and Regulations are published and easily accessible to the public at no cost.

Article 170(6) of the Constitution requires publication of every statutory instrument in the Sierra Leone Gazette no later than twenty-eight (28) days after it is made or any required approval is obtained. Any statutory instrument that is not so published shall be void.

The Act and Regulations, as well as other legislation relevant to public procurement⁹ are posted on the NPPA website, <http://www.publicprocurement.gov.sl/index.htm>, and therefore are available to the public at no cost. However, it appears that the NPPA website is not current and could benefit from revision. For example, the “Procurement Plans” link is not active; the “Procurement News,” “Supplier Records,” “Archiving,” “Extensions and Cancellations” tabs expressly state “Needs updating”; the “Debarment” tab is not populated and states only “To be updated as debarments occur”; the most recent Procurement Annual Report is for 2005-2006; the most recent Annual Price Survey is from 2002; the most recent Procurement Quarterly Bulletin is dated April 2008; outdated invitations to bid still are posted on the website; and the responses posted under the “Frequently Asked Questions” tab do not correspond to the questions. In addition, only a few contract awards are posted on the NPPA website for 2010. Also, the Anti-Corruption Act, 2000 is posted on the NPPA website, but that act was repealed and replaced by the Anti-Corruption Act, 2008, which is not posted.¹⁰

The website should hence be updated to ensure that up-to-date information is available, and a designated person should be made responsible for managing the website continuously.

(c) The legislative and regulatory body of norms covers goods, works, and services (including consulting services) for all procurement using national budget funds.

⁸ An inconsistency that is not otherwise addressed herein, but that is nonetheless worthy of mention, relates to the notice of proposed award provisions in Section 56(3) of the Act and Regulation 122(5) and the corresponding trigger for the start of the fourteen (14) calendar-day standstill period prior to contract award. The Act refers to notice to other bidders, while the Regulation refers to publication of the notice.

⁹ Such legislation includes the Anti-corruption Act, 2000; Local Government Act, 2004; National Social Security and Insurance Trust Act (Nassit) Act, 2001; National Revenue Authority Act, 2002; and Government Budget Accountability Act, 2005.

¹⁰ As discussed below, the Public Procurement Act still refers to the Anti-Corruption Act, 2000, which is a matter to be addressed through future revision to the Act.

Section 1(1) of the Act describes the Public Procurement Act as covering the procurement of goods, works and services, including any procurement financed in whole or in part from public or donor funds by the following bodies or organizations:

1. Central government ministries, departments, commissions and agencies;
2. Local councils;
3. Sub vented agencies;
4. State-owned enterprises that utilize public funds ¹¹;
5. Public universities, colleges, hospitals and all companies that are wholly owned by the State or in which the State has majority interest;¹² and
6. Any entity in the private sector that is given the responsibility for carrying out activities using public funds.

Regional entities are not included among the bodies and organizations identified as being subject to the Act in Section 1(1). For this and other reasons, it is not clear that this list fully comports with Section 2 of the Act, which defines “procuring entity” as “any organ of the State or regional and local authorities as well as statutory bodies, public sector corporations which are majority owned by the government, public utilities using revenue collected by the sale of public services, as well as any other physical or juridical person to whom public funds have been allocated for use in public procurement.” To enhance the clarity of the Act, it should be considered whether these provisions should be aligned. In addition, to the extent that public entities that are less than majority owned by the State are given responsibility for carrying out activities using public funds, such entities also should be covered under the Act. Finally, the extent to which public utilities, as specific legal entities, may be subject to the Act should be made clear.

The decentralized system of procurement was passed into law on the December 7, 2004. At the time of passing decentralized procurement into law, the district councils had just been reestablished in 2003 and the Decentralization Secretariat took the lead to ensure that the procurement law was abided by all district councils. The district councils, who are not supervised by the Provincial Secretaries, were the first to employ trained procurement officers in Sierra Leone. The Regional Provincial Offices are directly supervised by the Ministry of Interior whilst the councils are supervised by the Decentralization Secretariat. Since 2005 the decentralized procurement has been and continues to be rolled out to the whole country by the NPPA. In the current decentralized system, all entities are in complete control of their process and fully accountable for it. Within this frame work, the NPPA is charged with the responsibility to regulate and monitor the activities of the entities to avoid misuse of the decentralized system.

Section 2 defines “public funds” as “monetary resources of the State budget, or aid and credits under agreement with foreign donors, or extra-budgetary resources of procuring entities, used in public procurement.” In fact, the Regulations provide that a procuring entity may initiate procurement proceedings, up to, but not including contract award, prior to formally committing the funds required.¹³ Furthermore, the GBAA (2005) does clearly state that funds cannot be

¹¹ What is meant by “state-owned enterprises” (such as a State percentage ownership threshold or public fund contribution amount) is not further defined in the PPA or Regulations.

¹² Any distinction between state-owned enterprises and companies that are wholly- or majority-owned by the State is unclear.

¹³ Regulation 35(3).

committed unless covered by appropriations duly approved by Parliament. Care must therefore be taken to ensure that public procurement is conducted subject to the proper appropriation of funds.

The Act defines goods,¹⁴ works,¹⁵ (non-consultant) services,¹⁶ and intellectual services,¹⁷ but not consultant services.¹⁸ Some confusion is created by the fact that the Regulations also include “consultants’ services” as a defined term, with a definition that is very similar to the definition of intellectual services” included in the Act.¹⁹ Defined terms should be used consistently in the Act and Regulations and these documents hence require some updating accordingly.

Application of the rules and procedures set out in the Act may be modified by the NPPA where the Minister responsible for defense, with approval of the Defense Council, determines that procurement related to national defense or national security requires the application of special measures, provided that any such modification shall be governed only by defense considerations.²⁰ It is not a waiver, but rather an alternate method that would normally be applied (e.g. LIB or sole sourcing). This is applicable only for matters of national security, where specifications for military procurement (*i.e.*, equipment) are designated as classified information not privy to all bidders. Procurement of items such as general stores, uniforms, stationery, office equipment and standard vehicles shall not be classified as national defense or national security procurement.²¹

¹⁴ “Goods” means “objects of every kind and description, including commodities, raw materials, products and equipment, and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods, if the value of those incidental services does not exceed that of the goods themselves.”

¹⁵ “Works” means “all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the contract, if the value of those services does not exceed that of the construction itself.”

¹⁶ “Services” means “any services other than intellectual services,” which in turn means “any activity of an intellectual nature that does not lead to a measurable physical output.”

¹⁷ “Intellectual services” means any activity of an intellectual nature that does not lead to a measurable physical output.

¹⁸ The referenced definitions are found in Section 2 of the PPA and Regulation 3.

¹⁹ As per Regulation 3, “Consultants’ services” refers to activities of an intellectual and immaterial nature that do not lead to a measurable physical output. They include design, supervision, training, advisory, auditing, software development, and similar services.

²⁰ Act Section 1(3); Regulation 1(2)(b).

²¹ Act Section 1(4).

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The legislative and regulatory body of norms complies with all the following conditions: (a) Is adequately recorded and organized hierarchically (laws, decrees, Regulations, procedures,) and precedence is clearly established. (b) All laws and Regulations are published and easily accessible to the public at no cost. (c) It covers goods, works, and services (including consulting services) for all procurement using national budget funds.	3
The legislative and regulatory body of norms complies with (a) plus one of the above conditions.	2
The legislative and regulatory body of norms complies with (a) of the above conditions.	1
The system does not substantially comply with any of the above conditions. .	0

Score: 3. The legislative and regulatory instruments including standard bidding documents have been adequately developed and well established and they cover goods, works, services and intellectual services but their public accessibility is limited as they are mainly available online in an environment of limited internet connectivity.

Recommendations: Inconsistencies within the procurement legislative framework (*e.g.*, inconsistencies between the Act, Regulations and/or Procurement Manual), and areas where clarity is lacking, should be addressed in any future revisions to such legislative framework. Along the same lines, a general review of the legislative framework should be undertaken to ensure that the public procurement system functions independently and is not subject to manipulation through authorizations granted to various government entities under separate legislative acts. The NPPA website should be kept current, and a designated person should be made responsible for managing the website continuously. In any future revisions to the Act and Regulations, cross-references to other legislation (*e.g.* the GBAA 2005) should be updated and corresponding revisions to the substantive text should be made. Also, the definition of “procuring entity” should be aligned with the entities covered under the Act, and the application of the Act vis-à-vis entities that are less than majority owned by the State as well as public utilities, should be clarified. Clarity is also required to affirm that public procurement process, from the point of commitment, is undertaken only after a duly approved (parliamentary) budget has been appropriated for the purpose. As a general rule, also, defined terms should be used consistently in the Act and Regulations.

Due to low internet connectivity levels in Sierra Leone, it is also being recommended that some budget is set aside for the printing of the procurement documents so that they can be publicly available at all times.

Sub-indicator 1(b) — Procurement Methods. Assessment Score: 0

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable.

Part V of the Act sets forth several procurement methods for the procurement of goods, works and non-consultant services, including: (i) open competitive bidding, which may be conducted in a single stage or in two stages under specified circumstances; (ii) national competitive bidding (“NCB”); (iii) international competitive bidding (“ICB”); (iv) restricted bidding; (v) request for quotations; (vi) sole-source; and (vii) force account.²² Open competitive bidding is manifested in the form of NCB or ICB. Sections 39 and 40 of the Act arguably imply that NCB and ICB are types of open competitive bidding but this is not entirely clear, so the Act and Regulations could benefit from clarification in this regard.²³

Clarification regarding the use of international bidding procedures also is advised in light of certain inconsistencies between the conditions for its use stated in the Act and Regulations. In that regard, the Act provides that a procuring entity shall employ ICB procedures when (i) the estimated contract amount²⁴ exceeds the threshold specified in the First Schedule of the Act; or (ii) open competitive bidding is used and effective competition cannot be obtained unless foreign firms are invited to bid. However, the Regulations provide that a procuring entity shall conduct open or restricted bidding on an international basis, where: (i) the estimated value of the procurement exceeds the threshold specified in the First Schedule of the Act; or (ii) the goods, works or services are not available under competitive price and other conditions from three or more suppliers in Sierra Leone; or (iii) a national competitive bidding proceeding has failed to identify an acceptable bidder.²⁵ Also, international bidding in the context of restricted bidding is not addressed in the Act, which instead discusses only ICB.

In addition, the First Schedule of the Act mentions shopping procedures, but the Act does not otherwise provide for the use of this procurement method; nor do the Regulations mention shopping. It may be the case that the term “shopping” as used in the First Schedule of the Act refers to the request for quotations method, but this is not clear. This assumption is based on the fact that the Act and Regulations do not otherwise mention shopping and the fact that the Act and Regulations refer to thresholds related to the request for quotations method set forth in the First Schedule of the Act, but the First Schedule of the Act includes no such thresholds. These are issues to be addressed in the many revisions to the Act and Regulations.

The Act generally specifies that procuring entities shall conduct public procurement by means of advertised open bid procedures²⁶ for goods, works and services, and by means of request for proposals in the case of consultant services, unless an exception applies under the Act that would

²² Act Sections 37 to 46. Force account is not separately identified as a procurement method, but is discussed in Section 37, along with the conditions for its use.

²³ For example, Act Section 40(2) provides that ICB “may be used whenever open competitive bidding is used and effective competition cannot be obtained unless foreign firms are invited to bid.” No similar statement is included in the Act with respect to NCB.

²⁴ It must be noted that while the text of the Act refers to the estimated contract value, the First Schedule of the Act (and the Regulations) refer to the estimated value of the procurement, which is a matter of consistency to be addressed in any amendments to the Act and Regulations.

²⁵ Regulation 44.

²⁶ This appears to refer to the open competitive bidding method described in Section 38 of the Act.

permit the use of another method.²⁷ The Act provides that procurement committee approval is required for the use of certain other procurement methods as noted below,²⁸ but the Act is silent as to whether written justification is required for the use of any procurement method other than open competitive bidding or request for proposals as is required under the Regulations.²⁹ Clarification as to the precise requirements pertaining to the use of procurement methods other than open competitive bidding or request for proposals is recommended.

Clarification also is recommended with respect to the phrase “variation of the procurement method” as used in Regulation 41 (2). The use of this phrase suggests that variations in established procurement methods may be applied based on the grounds stated in that Regulation. However, the stated grounds actually appear to refer to the bases upon which restricted bidding or sole-source procurement may be appropriate as per the Act and other provisions of the Regulations, and also note the exemption for defense-related procurement as provided for in the Act. Clarification therefore is required as to whether Regulation 41 (2) intends to address the process for choosing a procurement method other than open competitive bidding or request for proposals, or whether Regulation 41 (2) instead introduces some process whereby modification (or variation) to an existing procurement method may be allowed. If the latter is intended, then there is a significant concern as to the transparency of the procurement system generally. Moreover, simply requiring approval by the procurement committee and/or written justification is not an adequate safeguard to the extent that a variation of an existing procurement method is intended. The Act and Regulations will need some updating to ensure there is no inconsistency or room for misinterpretations.

The following observations relate more specifically to the available procurement methods and the conditions for their use. As an overall observation, while specific conditions for use and basic procedures for using each procurement method are set forth in separate sections of the Act, other sections of the Act address procedural matters generally.³⁰ While the presentation of the methods for procurement of goods, works and non-consulting services generally is clear, there is room for improvement in the Act in terms of organization, especially with regard to basic procedural matters and their applicability/inapplicability to the various procurement methods.

The conditions for use of ICB or NCB as the procurement method is broadly based on estimated procurement value thresholds. Otherwise, the differences between ICB and NCB largely pertain to procedural matters, such as domestic versus international advertising requirements, timing for submissions and the like.³¹ The Act does not expressly provide that foreign bidders may participate in NCB procurements, but there also is no express prohibition on such participation, provided, however, that international advertising is not required under NCB. It is recommended that the right for such participation should be clearly stated in the Act.

The First Schedule of the Act specifies the estimated procurement value thresholds above/below which ICB, NCB or shopping (albeit not otherwise discussed in the Act as noted above) procedures are to be used. The Act and Regulations refer to thresholds for use of the request for quotations method, but the First Schedule of the Act includes no such thresholds. As an

²⁷ Act Section 43. Again, the term “consultant services” is not defined in the Act, but is understood generally as being akin to “intellectual services” as defined in the Act.

²⁸ Act Sections 41(1), 46(2).

²⁹ Regulation 149(1)(b).

³⁰ *See, e.g.*, Act Sections 48 to 58.

³¹ Act Sections 39, 40; Regulations 54, 58.

administrative matter, the “below” and “exceeds” wording related to the thresholds should be revised to read “at or below” or “at or above” a stated amount. As presently phrased, the exact amount is not covered under a threshold, which applies only to amounts below or in excess of that amount. While Regulation 10 allows that different thresholds may be set for different types of procuring entities, etc., thresholds should be consistent with what is provided for in the Schedules to the Act.

Furthermore, there is an apparent contradiction regarding the application of thresholds and the use of NCB procedures. Section 39 of the Act generally states that a procuring entity may use NCB procedures in procurement proceedings where the procuring entity decides that only domestic suppliers or contractors are likely to be interested in submitting bids. Section 39 (2) further provides that a procuring entity *is not required to use* NCB procedures if the estimated procurement value is less than the thresholds specified in the First Schedule of the Act. In contrast, the First Schedule states that a procuring entity *shall use* NCB procedures when the estimated value is below the stated thresholds. It therefore is unclear whether the use of NCB procedures is discretionary or mandatory in such cases.

The use of restricted bidding or sole-source procurement is subject to approval by the procurement committee, except that no such approval is required for sole source procurement based on a supplier’s exclusive right.³² With respect to restricted bidding and sole-source procurement, it also is worthy of note that the Regulations refer to “emergency procurement” as a procurement method,³³ but then go on to discuss emergency procurement in the context of restricted bidding or sole-source procurement. Regarding sole-source procurement, the Regulations set forth a broad condition for use that is not found in the Act and may be subject to misuse, that is, where only one supplier has the technical capability or capacity to meet the procurement requirement within the time required by the procuring entity.³⁴ Such circumstances properly are more narrowly prescribed in the Act, which limits use of sole-source procurement in such cases to matters of “extreme urgency.”³⁵ Also, additional conditions for use should not be introduced via Regulations. Clarification in these areas should be considered in any future revisions to the Act and Regulations.

Framework contracts are not mentioned in the Act, but are provided for in the Regulations – as a contract type rather than as a procurement method.³⁶ The Regulations also permit an entity designated to conduct the procurement of common use items through the use of framework contracts or other appropriate contractual arrangements for the purchase of common use goods, works or services; provided that any list of common use items to be so procured must be limited to items where the benefits of centralized purchasing can be demonstrated.³⁷ The Regulations do not address the method(s) that may be used to award a framework contract. Nor do the Act or Regulations otherwise discuss centralized purchasing. Such matters should be addressed in both the Act and Regulations.

³² Act Sections 41(1), 46(2).

³³ Regulation 42.

³⁴ Regulation 47(1)(a).

³⁵ Act Section 46(1)(d).

³⁶ Regulation 132.

³⁷ Regulation 21.

Notably, the Regulations, but not the Act, include a provision that refers to bid opening in the context of the submission of bids using a two-envelope system.³⁸ However, the conditions for use of a two-envelope system are not addressed. Moreover, the use of a two-envelope system should be discouraged, as it is usually limited to works, goods and non-consultant services. Yet some particular specialized bid documents could be an exception.

Under the Act, request for proposals is the method to be used for procurement of consultant services, subject to exceptions for use of the sole-source procurement method upon approval by the procurement committee.³⁹ The Regulations, however, indicate that exception to the use of the request for proposals method for procurement of consultant services also may occur where the estimated procurement value is less than the threshold for *request for quotations* specified in the First Schedule of the Act.⁴⁰ Not only is this additional exception inconsistent with the conditions for use set forth in the Act, it also raises questions as to appropriateness of such an exception, especially where the request for quotations method of procurement is contemplated for use only with “services,”⁴¹ which is defined in the Act as “any services other than intellectual services” as the term “services,” *i.e.*, non-consulting services.⁴²

More broadly, the Act might benefit from revision as to provisions setting forth basic procedural matters, some of which may apply to procurements for consultant services as well as procurements for goods, works and non-consultant services, such as Section 54 regarding non-disclosure of information.

(b) Competitive procurement is the default method of public procurement.

The use of competitive procurement as the default method of procurement is implicit in the Act. In that regard, the Act provides that a procuring entity shall conduct public procurement by means of advertised open bid procedures⁴³ for goods, works and services, and by means of request for proposals in the case of consultant services, unless an exception applies under the Act that would permit use of another method, as discussed above.

(c) Fractioning of contracts to limit competition is prohibited.

Under the Act, a procuring entity may not artificially divide or lower the value of a procurement in order to circumvent application of the procedures for public procurement or monetary thresholds established under the procurement legislative framework.⁴⁴

Notwithstanding such prohibition on artificially splitting a procurement, a procuring entity may divide a procurement into several lots to be tendered as one package where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity. In accordance with the Regulations, such division is appropriate where it is likely to

³⁸ Regulation 65(5).

³⁹ The procedures to be used in such procurements are set forth in Act Sections 43, and 59 to 62. As referenced in Section 59 of the Act, the First Schedule of the Act sets a threshold above which the solicitation of expressions of interest is required in connection with use of the request for proposals method.

⁴⁰ Regulations 45 and 46.

⁴¹ Act Section 44; Regulation 46. The introductory text of Act Section 44 could benefit from clarification to indicate that services may be procured using the request for quotation method as per Act Section 44(c).

⁴² Act Section 2.

⁴³ This appears to refer to the open competitive bidding method described in Section 38.

⁴⁴ Act Sections 29(3), 37(2).

increase the number of responsive bids by enabling the participation of bidders who are able to bid for some, but not all, types of items, or small enterprises who would not be qualified to bid for the complete package as a single contract. Consistent with the Act, the Regulations prohibit the division of a procurement for the purpose of avoiding contract approval thresholds, as well as for reasons relating to compatibility and interchangeability of items, supplier’s warranty or liability, and costs of servicing, maintenance or similar requirements.⁴⁵

Where procurement is divided into lots, which may result in separate contracts, the selection of the procurement method shall be determined by the estimated value of each individual lot and not the total value of all lots.⁴⁶ However, this is not the proper basis to be used for the selection of procurement method in such cases. Rather, the procurement method should be selected based on the total value of the procurement, *i.e.*, the total value of all lots. Selecting the procurement method based on individual lot values essentially would permit a procuring entity to divide procurement in such a way as to circumvent the Act’s express prohibition of such division.

(d) Appropriate standards for international competitive tendering are specified and are consistent with international standards.

The Act prescribes the conditions for use of ICB, which are broadly consistent with international practice. A procuring entity shall use ICB procedures when the estimated contract amount is higher than the value threshold specified in the First Schedule of the Act, and may use ICB whenever open competitive bidding is used and effective competition cannot be obtained unless foreign firms are invited to bid.⁴⁷ As noted above, consistency in the use of terms and the conditions for use of international bidding should be provided for in the Act and Regulations, which presently is not the case.⁴⁸ Where ICB is used: (i) the invitation to bid and bidding documents shall be in English; (ii) the invitation to bid shall be placed in a newspaper with adequate circulation to attract foreign competition; (iii) at least six (6) weeks shall be allowed for submission of bids; (iv) technical specifications shall be based on international standards or standards widely used in international trade to the extent compatible with national requirements; (v) bidders shall be permitted to express their bids and security documents in their respective domestic currencies or a currency widely used in international trade stated in the bidding documents; and (vi) general and special conditions of contract shall be of a kind generally used in international trade.⁴⁹

As a general matter, publication of bidding opportunities on a website of free access should be mandatory. This is true regardless of the procurement method to be employed.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
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⁴⁵ See generally, Regulation 33.

⁴⁶ Regulation 33(4).

⁴⁷ Act Section 40(1), (2); Regulation 37.

⁴⁸ Compare Act Section 40 and Regulation 44.

⁴⁹ Act Section 40(3); Regulations 54(2), 58(2).

The legal framework meets all the following conditions: (a) Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable. (b) Competitive procurement is the default method of public procurement. (c) Fractioning of contracts to limit competition is prohibited. (d) Appropriate standards for international competitive tendering are specified and are consistent with international standards.	3
The legal framework meets the conditions of (a) and (b) plus one of the remaining conditions.	2
The legal framework meets the conditions of (a) and (b).	1
The legal framework fails to substantially comply with any three of the conditions a) through d).	0

Score: 0. Parts ‘a’ and ‘c’ have not been satisfied, whereas ‘b’ and ‘d’ have been satisfied. Since ‘a’ has no score, a score of ‘0’ is the only possibility. .

Recommendations: All available procurement methods and their conditions for use, including without limitation any required justification and approval procedures, should be narrowly tailored and should be provided for in both the Act and Regulations in a consistent manner. Clarification also is recommended with respect to the intended purpose of the phrase “variation of the procurement method” as used in Regulation 41 (2). It is recommended that the Act should expressly provide that foreign bidders may participate in procurements conducted using NCB procedures. The use of two-envelopes in the bidding context should be discouraged. Thresholds should be consistent within the legislative framework. The procurement method should be selected based on the total value of a procurement, not on a lot-by-lot basis. In addition, publication of bidding opportunities on a website of free access should be mandatory. More generally, there is room for improvement in the Act in terms of organization, especially with regard to basic procedural matters and their applicability/inapplicability to the various procurement methods. For example, organization of the methods could be consolidated into a single section per method. Finally, consistency in the use of terms is essential to enhance transparency and proper application of the Act and Regulations.

Sub-indicator 1(c) — Advertising rules and time limits. Assessment Score: 3

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Requires that procurement opportunities other than sole source or price quotations be publicly advertised.

The Act and Regulations require publication of invitations to prequalify and invitations to bid in the Gazette and at least two national print media of wide circulation in Sierra Leone weekly for at

least the first two (2) weeks of the bidding period.⁵⁰ Such invitations also may be broadcast over radio or television, on the stations and programs and at a time most likely to target the widest spectrum of potential bidders.⁵¹ In accordance with the Act, invitations to prequalify and invitations to bid also must be published on the NPPA website, “when feasible,” although the Regulations seem to (properly) require such publication generally.⁵² The Act and Regulations should be reconciled to clarify whether such publication is mandated in all cases. In the case of ICB, the Act and Regulations require publication in at least one printed media of wide international circulation so as to attract foreign competition.⁵³ As a general matter, publication of bidding opportunities on a website of free access, such as the NPPA website, should be mandatory in all cases.

No publication requirements are stated regarding requests for quotations. However, a procuring entity is required to request quotations from as many bidders as practicable, but from at least three (3) bidders.⁵⁴ However, there is an exception to this rule of three in that a shortlist may consist of only two (2) bidders where only two suitable potential sources exist.⁵⁵ This exception is not provided for in the Act, and therefore presents an inconsistency to be rectified through future revisions. It also should be clarified how and by whom a lack of “suitable potential sources” is to be determined and approved.

Publication of a notice of the holding of sole-source procurement proceedings is required when the estimated value of the procurement exceeds the threshold set in First Schedule of the Act.⁵⁶ Such publication shall be in the Gazette, a newspaper of national circulation; and when feasible, on the Internet.

Where the request for proposals method is used for the procurement of consultant services and the estimated value of the procurement exceeds the threshold set in the First Schedule of the Act, or the assignment is particularly complex, a procuring entity is required to seek expressions of interest.⁵⁷ According to the Act, such expressions of interest shall be sought by publishing a notice in the Gazette, in national print media of wide circulation, and “whenever feasible,” on the Internet.⁵⁸ While the Regulations specify publication on the NPPA website, the Act provides only for publication on “the Internet.” Where appropriate, the notice may also be published in a relevant trade publication or technical or professional journal.⁵⁹ The Regulations, however, provide that notices seeking expressions of interest shall be published in the same manner as invitations to prequalify and invitations to bid.⁶⁰ Posting on a website of free access also should ideally be required.

⁵⁰ Act Section 48(1); Regulation 54(1)(c).

⁵¹ Regulation 54(1)(d).

⁵² Act Section 48(2) (requiring such publication when feasible); Regulation 54(1)(a) (mandating such publication).

⁵³ Act Sections 40(3), 48(1); Regulation 54(2).

⁵⁴ Act Section 45(1); Regulation 109(2).

⁵⁵ Regulation 109(3).

⁵⁶ Act Section 47(2).

⁵⁷ Act Section 59; Regulations 80, 81.

⁵⁸ Act Section 59(2); Regulations 80, 81(1).

⁵⁹ Act Section 59(2); Regulations 80, 81(1).

⁶⁰ Regulation 81(2).

The Regulations state that procuring entities may develop a shortlist without seeking expressions of interest where restricted bidding is justified.⁶¹ No such exception is provided for in the Act. The inclusion of different (albeit not necessarily contradictory) conditions in the Act and Regulations introduces some inconsistency, which should be rectified through amendments.

(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. Such timeframes are extended when international competition is sought.

The Act requires a procuring entity to set deadlines for submission of bids, applications for prequalification and other expressions of interest so as to allow sufficient time for their preparation and submission, with a view to maximizing competition.⁶² More specifically, at least four (4) weeks shall be allowed for submission of bids where NCB or national restricted bidding is used.⁶³ The period for submission of bids is extended to at least six (6) weeks in the case of ICB or international restricted bidding.⁶⁴ However, such minimum bidding periods shall not apply where restricted bidding is used on grounds of emergency, in accordance with the Act and Regulations.⁶⁵

A specific period of time is not stated regarding the preparation of quotations where the request for quotations method is used. Rather, procuring entities simply must give bidders adequate time to prepare and submit quotations.⁶⁶

With respect to use of the request for proposals method in the procurement of consultant services where the estimated value of the procurement exceeds the threshold set in the First Schedule of the Act (or the assignment is particularly complex), notices seeking expressions of interest, generally, shall be published at least thirty (30) days prior to the deadline for submission.⁶⁷

(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or in a unique Internet official site, where all public procurement opportunities are posted, that is easily accessible.

The Act and Regulations require publication of invitations to prequalify and invitations to bid in the Gazette and at least two (2) national print media of wide circulation in Sierra Leone.⁶⁸ In accordance with the Act, invitations to prequalify and invitations to bid also must be published on the NPPA website, “when feasible,” although the Regulations seem to require such publication generally.⁶⁹ The Act and Regulations should be reconciled to clarify whether such publication is mandated in all cases, which should be the practice. Under ICB, publication also is required in at

⁶¹ Regulation 80(2).

⁶² Act Section 24.

⁶³ Act Section 39(4); Regulation 58(2).

⁶⁴ Act Section 40(3)(c); Regulation 58(2).

⁶⁵ Regulation 58(3).

⁶⁶ Act Section 45(3).

⁶⁷ Act Section 59; Regulations 80, 81(1).

⁶⁸ Act Section 48(1); Regulation 54(1).

⁶⁹ Act Section 48(2) (requiring such publication when feasible); Regulation 54(1)(a) (mandating such publication).

least one printed media of wide international circulation so as to attract foreign competition.⁷⁰ Notices seeking consultant expressions of interest shall be published in the same manner as invitations to prequalify and invitations to bid.⁷¹

(d) Content of publication includes sufficient information to enable potential bidders to determine their ability and interest in bidding.

Generally, the required content to be included in the publications is sufficiently described in the Act and Regulations. For example, a notice of an invitation to bid or an invitation to prequalify shall include information on: (i) the identity and address of the procuring entity; (ii) the nature and time-frame of the procurement, including place of delivery of goods or services, and location of works; (iii) the manner of obtaining and price of bidding/prequalification documents; (iv) the place and deadline for submission of bids or applications to prequalify; (v) such other matters as may be prescribed in the Regulations and standard forms issued by the NPPA.⁷² In that regard, the Regulations add that an invitation to prequalify notice also should include a statement of the key requirements and criteria to pre-qualify.⁷³ As a general matter, prescribed content should be set out in the Act, which is the primary legislation.

Per the Regulations, a notice inviting requests for expressions of interest for the procurement of consultant services shall contain at least: (i) details of the scope of the assignment; (ii) a statement of the key criteria for short-listing, which shall be related to the bidders' experience, qualifications, personnel and any other factor related to their ability to successfully perform the assignment; (iii) details of the information to be included with the expression of interest, including any information or documentation required to verify the bidder's eligibility or qualifications; and (iv) the date, time and address for submission and any special instructions on sealing, marking or submission of expressions of interest.⁷⁴ Again, such content should be stated in the Act.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
<p>The legal framework meets the following conditions :</p> <ul style="list-style-type: none"> (a) Requires that procurement opportunities other than sole source or price quotations be publicly advertised. (b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. Such timeframes are extended when international competition is sought. (c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or in a unique Internet official site, where all public procurement opportunities are posted, that is easily accessible. (d) Content of publication includes sufficient information to enable potential bidders to determine their ability and interest in bidding. 	3

⁷⁰ Act Sections 40(3), 48(1); Regulation 54(2).

⁷¹ Regulation 81(2).

⁷² Act Section 49(5); Regulations 49(2) (prequalification notice); Act Section 53(2) (bid notice).

⁷³ Regulation 49(2)(c).

⁷⁴ Regulation 80(3).

The legal framework meets the conditions of (a) and (b) plus one of the remaining conditions.	2
The legal framework meets the conditions of (a) plus one of the remaining conditions.	1
The legal framework only meets the conditions of (a) above.	0

Score: 3.

Recommendations: Inconsistencies between the Act and Regulations, and areas where clarity is lacking (such as with respect to publication requirements and the development of shortlists), should be addressed in future revisions. Key procurement details, such as content of notices and the like, should be stated in the Act as the primary procurement legislation. Also, publication of bidding opportunities on a website of free access should be mandatory.

Sub-indicator 1(d) — Rules on participation. Assessment Score: 0

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements; requires the use of pass/fail basis for determining qualifications to the extent possible; limits domestic price preference, if allowed, to a reasonable amount (e.g. 15% or less); and requires justification for set asides that limit competition.

Participation based on qualification. Section 21 of the Act provides the general qualification requirements for participation in public procurement, although some of the enumerated criteria relate more to matters of eligibility than to procurement-specific qualification considerations.⁷⁵ The qualification requirements shall apply equally to all bidders without discrimination.⁷⁶

The principle of nondiscrimination, as further set forth in the Act, provides that all eligible and qualified bidders, without discrimination, shall have equal access to participate in public procurement, subject only to the exceptions provided for in the Act.⁷⁷ However, a procuring entity nonetheless may limit participation based on nationality in accordance with Regulations.⁷⁸ The Regulations do not specify the basis for such limitation, which raises a question as to whether other laws or Regulations may create legal barriers and discriminatory conditions that would limit participation despite the inclusion of principles of nondiscrimination in the Act.

Pass/fail basis for determining qualifications to the extent possible. A procuring entity is required to state all qualification criteria in the prequalification and bidding documents.⁷⁹ A procuring entity shall apply only those stated criteria in the evaluation, and shall do so on a

⁷⁵ Act Section 21(1).

⁷⁶ Act Section 21(4).

⁷⁷ Act Section 37(1).

⁷⁸ Act Section 48(3).

⁷⁹ Act Section 21(4).

meets/does not meet basis and not by using a point system for comparing the relative level of qualifications of participating bidders.⁸⁰ With specific regard to prequalification, a procurement unit shall evaluate applications to prequalify on a pass or fail basis against the criteria in the prequalification document.⁸¹

Domestic preference. A procuring entity may grant a margin of domestic preference for the benefit of: (i) bids for work by domestic contractors; (ii) bids for domestically produced goods; or (iii) domestic suppliers of services, provided that the margin of preference shall be authorized by, and is subject to the approval of, the NPPA.⁸² The margin of preference shall be calculated in accordance with the Regulations, which provide that any percentage of preference shall be between five (5) and ten (10) percent, subject to periodic review by the NPPA.⁸³

A procuring entity may apply a margin of domestic preference to eligible bids where such intent is indicated in the bidding documents, and in accordance with any rules or schemes for domestic preference issued by the NPPA through circulars (none issued so far).⁸⁴ Bidding documents, and any rules or schemes issued by the NPPA through circulars, shall clearly state: (i) conditions of eligibility for the margin of preference, in terms of ownership, location of bidder or production facilities, origin of labor, raw material or components, extent of subcontracting, association with local partners, or any other relevant factor; (ii) the documentation required as evidence of eligibility for the margin of preference; and (iii) the percentage of the margin of preference and the manner in which it will be applied during the evaluation.⁸⁵ In addition, a procuring entity must note any margin of preference in the record of the procurement proceedings.⁸⁶

Requires justification for set asides that limit competition. There does not appear to be a culture of set asides, which also are not provided for in the legislative framework

(b) Ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory association with other firms.

Registration. The Act does not provide for registration as a condition to participate in public procurement in Sierra Leone. However, the Regulations do contemplate registration of suppliers and contractors in various forms. There also is some general confusion regarding supplier/contractor registration under the legal framework.

First, procuring entities, or any special agency designated to conduct the procurement of common use items, shall establish registers of suppliers in order to provide information on potential bidders to facilitate the development of shortlists and the identification of sole-sources.⁸⁷

Second, procuring entities shall maintain a register of suppliers (excluding contractors and supervising engineers) assessed to be of a suitable standard to meet the specialist requirements of

⁸⁰ Act Section 21(2), (4).

⁸¹ Regulation 51(1).

⁸² Act Section 36.

⁸³ Act Section 36(2); Regulation 76(3).

⁸⁴ Regulation 76(1).

⁸⁵ Regulation 76(2).

⁸⁶ Act Section 36(2).

⁸⁷ Regulation 28.

the procuring entity for purposes of restricted bidding and request for quotations.⁸⁸ Without clarifying the relevant register(s) of suppliers, the Regulations provide that procuring entities are not obligated to invite all registered bidders to submit bids under restricted bidding or request for quotations procedures, but shall ensure a rotation of registered bidders on successive shortlists.⁸⁹

Pursuant to the Regulations, a procuring entity may invite bids from a shortlist of bidders in the case of restricted bidding or request for quotations.⁹⁰ In developing a shortlist, a procuring unit may use (among other things), registered suppliers that are prequalified or included on standing lists.⁹¹ The relevant provisions imply that the register of suppliers referenced in Regulation 28 would be the same as the register of suppliers referenced in Regulation 52(1), but this is not clear.

Third, the Ministry of Works and Housing and Technical Maintenance (the “MOHTM”) shall maintain a central register of approved contractors and supervising engineers, who are grouped into three (3) classes on the basis of their financial and technical capabilities.⁹² The Regulations do not state the requirements for each such category. The intended use of such MOHTM central register is unclear.

Fourth where formal prequalification is conducted for a specific procurement, or where bidders respond to an invitation under open competitive bidding, suppliers meeting the qualification criteria shall be placed on the Register of Suppliers.⁹³ It is unclear what is meant by the general reference to “the Register of Suppliers,” or whether this provision applies to the MOHTM central register of approved contractors and supervising engineers.

Also, although registration generally is not mandatory to compete in procurement, it appears that participation in public procurement may be restricted to registered suppliers and contractors in the case of restricted bidding or request for quotations, and with respect to the procurement of common use items, unless formal prequalification is conducted for a specific procurement. In fact, registration lists are made for purposes of easy reference for the MDAs in case they need to engage in any restrictive bidding or request for quotations. It is meant to make the MDAs better prepared in such cases.

Finally, a Supplier Registration Form exists, but the requirement for and purpose of such form is not clear. In any event, such form should be used in a generic fashion so as not to provide a barrier to competition by foreign contractors. For example, entries on the form related to licensing, tax identification numbers, etc. should accept international equivalents for such items.

Mandatory Association. The Act does not require mandatory association with other firms for participation in public procurement. However, a margin of preference may be applied to bids based on a bidder’s association with local partners.⁹⁴ The percentage of any such preference shall be limited, for example, in accordance with the domestic preference percentage limitation

⁸⁸ Regulation 52(1); *see also* Regulation 24(2) (prequalification may be used to register suppliers to facilitate the preparation of shortlists under restricted bidding or request for quotations procedures).

⁸⁹ Regulation 52(5).

⁹⁰ Regulations 53(1)(c), 55(1).

⁹¹ Regulations 55(2)(a), 109(4)(a); *see* Regulation 28.

⁹² Regulation 52(2).

⁹³ Regulation 52(4).

⁹⁴ Regulation 76(2)(a).

established by the Regulations.⁹⁵ It also is important that such provision not be used in practice to impose a *de facto* mandatory local partner association requirement on foreign firms, lest such firms otherwise find themselves out of the running for contract award based on the applicability of a margin of preference for firms that associate with a local partner.

(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.

Section 34 of the Act sets forth provisions governing bidder and supplier conduct, which among other things: (i) require bidders and suppliers to abide by their obligations under the Act, Regulations, contracts, and other applicable instruments; (ii) prohibit bidders and suppliers from engaging in or abetting corrupt or fraudulent practices; (iii) prohibit bidders from engaging in any activity, prior to or after bid submission, designed to deprive the procuring entity of the benefits of free and open competition.⁹⁶ A procuring entity shall reject a bid if the bidder offers, gives or agrees to give an inducement and promptly shall notify the rejection to the bidder concerned, the NPPA, and to the relevant law enforcement authorities.⁹⁷ In addition, a procuring entity may disqualify a bidder if it finds at any time that the information submitted concerning the qualifications of the bidder was materially inaccurate or materially incomplete.⁹⁸ Furthermore, bidders and suppliers who engage in fraudulent, corrupt or coercive practices in connection with public procurement are subject to prosecution pursuant to the applicable criminal laws, including the Anti-Corruption Act.⁹⁹

As a general administrative but nonetheless very significant matter, references in the Act and Regulations to the Anti-Corruption Act specify the Anti-Corruption Act of 2000. However, the Anti-Corruption Act of 2000 was repealed and replaced by a new Anti-Corruption Act in 2008. Thus, the Act and Regulations essentially refer to a non-existent Anti-Corruption Act, which creates a significant concern that a strict application of the terms of the Act and Regulations would make recourse under the Anti-Corruption Act unavailable.

Section 34 of the Act also addresses conflicts of interest, providing that a procuring entity shall not award a contract to a bidder (or its affiliate) who is responsible for preparing the specifications or bidding documents for the contract, or for supervising the execution of a contract, except for firms that together are performing under a turnkey or design and build contract.¹⁰⁰ However, matters relating to conflicts of interest generally would be better addressed in a separate section of the law.

⁹⁵ Regulation 76(3).

⁹⁶ Act Section 34(1) to (3). These provisions are repeated in Regulation 156(1) to (3).

⁹⁷ Act Section 34(4); Regulation 156(4).

⁹⁸ Act Section 21(5). Along those lines, a procuring entity may require bidders to provide, as evidence of the bidder's eligibility and qualifications, documentation such as: (i) a signed declaration that the bidder does not have a conflict of interest in relation to the procurement; (ii) a signed declaration that the bidder, or any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of procurement proceedings; and (iii) a signed declaration that the bidder is not subject to debarment pursuant to the Act or Regulations and that any of its directors or officers have not been involved with a bidder or supplier currently subject to debarment. Regulation 22(3)(c) to (e).

⁹⁹ Act Section 34(6); Regulation 156(6).

¹⁰⁰ Act Section 34(5); Regulation 156(5).

With regard to debarment, a potential bidder or supplier shall not be debarred except on the following grounds: (i) provision of false information supplied in the process of submitting a bid; (ii) collusion between the bidder and another bidder or a bidder and a public officer concerning the formulation of any part of the bidding documents; (iii) connivance to interfere with the participation of competing bidders; (iv) misconduct relating to the submission of bids, including corruption, collusion, price fixing, a pattern of under-pricing of bids, breach of confidentiality, and any other misconduct referred to in Section 34 of the Act; (v) non-performance of contractual obligations under a contract deemed serious enough to warrant debarment, provided that the non-performance was not due to circumstances beyond the control of the supplier; (vi) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract; (vii) non-settlement of tax obligations after assessment by the Natural Revenue Authority or the evasion of tax by any means; or (viii) conviction of a crime related to business or professional activities.¹⁰¹

The Act is silent as to who may bring a petition to debar a bidder or supplier, but the Regulations state that such petition may be brought by a procuring entity, the NPPA, the Auditor General or any other oversight organ authorized by the laws of Sierra Leone.¹⁰² The Act and Regulations provide for minimal due process regarding the debarment process in that the NPPA may exclude a bidder or supplier from participation in public procurement for a minimum period of one (1) year and a maximum period of six (6) years only after (i) consultation with the affected procuring entity to consider all the facts of the case; (ii) reasonable notice to the bidder or supplier involved of the cause of the proposed actions; and (iii) reasonable opportunity for the bidder or supplier to respond to the proposed action.¹⁰³ With respect to debarment, the ethics-related provisions of the Procurement Manual provide for a debarment period of five (5) years for ethics violations. Stating such a definitive debarment period is inconsistent with the debarment-period range provided for in the Act and Regulations.

The Regulations provide for additional due process.¹⁰⁴ For example, the NPPA must initiate the required actions immediately upon receipt of a petition to debar, and the notification to be provided to the bidder or supplier must give details of the petition and inform the bidder or supplier of its right to a hearing or to submit written evidence, prior to any decision to exclude, as long as such request or evidence is submitted within ten (10) working days of receipt of the notice. The Regulations also specify the information that the NPPA is to consider in investigating a petition, and state the procedures that shall apply to any debarment hearing, which may be held upon the request of a bidder or supplier. Finally, during the investigation of any petition to debar a bidder or contractor, the bidder shall be permitted to participate in public procurement and shall be required to continue performance of any contract, but any recommended contract award to the bidder shall be delayed, pending the outcome of the investigation. Therefore, while some additional detail is provided in the Regulations, important information as to the debarment process, including the due process accorded the accused, is left unexplained in the primary legislation.

Moreover, a bidder may be precluded from meaningful participation in a procurement process while an investigation is pending and thus without having had the full benefit of due process.¹⁰⁵

¹⁰¹ Act Section 35(2); Regulation 157(1).

¹⁰² Regulation 157(2).

¹⁰³ Act Section 35(1); Regulation 157(1).

¹⁰⁴ Regulation 157.

¹⁰⁵ Regulation 157(6).

Specifically, during the investigation of any petition to debar a bidder or contractor, the bidder shall be permitted to participate in public procurement and shall be required to continue performance of any contract, but any recommended contract award to the bidder shall be delayed pending the outcome of the investigation. Such a *de facto* suspension from meaningful participation not only raises fairness concerns vis-à-vis a bidder that has not been found guilty of any wrongdoing, but also could lead to significant delays in the procurement process depending on the efficiency with which an investigation is concluded. To the extent that suspension is intended, then it should be provided for in the legislative framework.

It also does not appear that the procurement legislative framework provides for any right to appeal a debarment decision. Concerns about the NPPA’s responsibility for debarment decisions are addressed below in the conflicts of interest context.

(d) Establishes rules for the participation of government owned enterprises that promote fair competition.

The Act and Regulations are silent with respect to the participation of government-owned enterprises in public procurement proceedings. The Act does, however, provide for the conduct of “force account” procurement proceedings whereby a procuring entity may carry out procurement with self-supervision, utilizing the procuring entity’s own personnel and equipment or those of another government institution.¹⁰⁶ Rules for the participation of government-owned enterprises that promote fair competition should be established in the Act and Regulations.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
<p>The legal framework meets the following conditions:</p> <p>(a) Establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements; requires the use of pass/fail basis for determining qualifications to extent possible; limits domestic price preferential, if allowed, to a reasonable amount (<i>e.g.</i> 15% or less); and requires justification for set asides that limit competition.</p> <p>(b) Ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory association with other firms.</p> <p>(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.</p> <p>(d) Establishes rules for the participation of government owned enterprises that promote fair competition.</p>	3
<p>The law and Regulations meet the conditions of (a) and (b) plus one of the remaining conditions.</p>	2
<p>The law and Regulations meet the conditions of (a) plus one of the remaining conditions.</p>	1
<p>The law and Regulations do not meet the conditions of (a) through d) above.</p>	0

¹⁰⁶ See Act Sections 2 and 37(4) to (7).

Score: 0. None of the above are adequately met.

Recommendations: The Act leaves open the possibility that Regulations could be issued that would limit participation based on nationality. Future revisions should forestall such possibility. In future revisions it should be made clear that discriminatory practices shall not be used in connection with the participation of foreign firms in public procurement, and any preference applied for domestic participation shall be limited. It should be considered whether matters relating to conflicts of interest would better be addressed in dedicated, distinct provisions of the Act rather than combined with other subject matter. The legislative framework also could benefit from clarification regarding contractor registration. Review of the debarment process should be considered with respect to treatment of the subject matter in the Act, conditions for debarment, adequacy of due process, and conflict of interest concerns (as subsequently discussed). Also, inconsistencies within the procurement legislative framework, such as with respect to the debarment period, should be addressed in any future revisions. Future revisions should set parameters and conditions for the participation of government-owned enterprises in public procurement. In general, efforts should be undertaken to ensure that the Act and Regulations are revised, as appropriate, to update and appropriately reflect revisions in corresponding and cross-referenced legislation.

Sub-indicator 1(e) — Tender documentation and technical specifications. Assessment Score: 3

There are three (3) detailed assessment questions and four (4) scoring criteria under this sub-indicator as listed below:

(a) Establishes the minimum content of the tender documents and requires that content is relevant and sufficient for tenders to be able to respond to the requirement.

The Act establishes the minimum content required to be included in bidding documents for the procurement of goods, works and non-consulting services. Such required minimum content is relevant, and broadly sufficient, for bidders to be able to respond to the procurement requirement. The minimum required content of bidding documents includes information pertaining to matters such as: (i) details of the procurement; (ii) qualification requirements; (iii) pertinent meetings/site visits; (iv) bid preparation and submission; (v) pricing elements; (vi) evaluation and award criteria and methodology; (vii) domestic preference; (viii) lots/packaging; (ix) consideration of alternatives to the technical or contractual specifications; (x) bids for only a portion of the requirements; (xi) bid validity period; (xii) securities; (xiii) contract conditions; (xiv) conflict of interest restrictions and anti-fraud and corruption rules; (xv) right to review; and (xvi) such other matters as may be required in Regulations, manuals and standard forms prescribed by the NPPA.¹⁰⁷ Care should be taken that the final catch-all category not be used to include restrictive provisions in the bidding documents.

A request for quotations more generally shall contain a clear statement of the requirements of the procuring entity as to quality, quantity, terms and time of delivery, and any other special

¹⁰⁷ Act Section 43(3); Regulation 56.

requirements.¹⁰⁸ Additional information to be included in a request for quotations is set forth in the Regulations.¹⁰⁹

When the procuring entity engages in sole-source procurement on any ground except on the basis of an exclusive right, the procuring entity shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery.¹¹⁰ The Regulations more specifically provide that where a procuring entity conducts a sole-source procurement on the grounds that only one supplier is able to meet its needs, the procurement unit shall prepare a written request for a bid containing a description of the goods, works or services and a statement of the proposed form and terms and conditions of contract.¹¹¹ The same requirement applies, where time permits, when a procuring entity engages in sole-source procurement based on an emergency need.¹¹²

In the consulting services context, minimum content similar to the required minimum content of bidding documents for the procurement of goods, works and non-consulting services also is required to be included in requests for proposals.¹¹³

A fee may be charged for bidding documents, but such fee is limited to the cost of printing and distribution.¹¹⁴ The inclusion in the fee of any element of profit is expressly prohibited.¹¹⁵ In addition, potential bidders may inspect the bidding documents prior to purchase.¹¹⁶

(b) Requires the use of neutral specifications citing international standards when possible.

The Act prohibits the use of specifications, etc. that create “unjustified obstacles to participation by qualified bidders, and unnecessarily and without justification limit competition.”¹¹⁷ However, the use of terms such as “unjustified” and “unnecessarily” creates a potential loophole allowing for the possible use of restrictive specifications that would limit competition. Although the Act does not set international standards as the norm generally, in the ICB context the Act does provide that technical specifications shall be based on international standards or standards widely used in international trade to the extent compatible with national requirements.¹¹⁸ The Act and Regulations could benefit from the inclusion of clarifying language with respect to setting international standards as the norm, as appropriate.

(c) Requires recognition of standards which are equivalent when neutral specifications are not available.

¹⁰⁸ Act Section 45(2).

¹⁰⁹ Regulations 108(2), 110(2).

¹¹⁰ Act Section 47(1).

¹¹¹ Regulation 113(1)(a).

¹¹² Regulation 116(1)(c).

¹¹³ Act Section 59(4); Regulation 83.

¹¹⁴ Act Section 49(2); Regulation 59(4) (limiting fee to cost of printing, copying and distribution).

¹¹⁵ Regulation 59(4).

¹¹⁶ Regulation 59(6).

¹¹⁷ Act Section 23(2); *see also* Regulations 36(3), 37.

¹¹⁸ Act Section 40(3).

The Act requires recognition of equivalent standards if neutral specifications are not available.¹¹⁹

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The legal framework meets the following conditions: (a) Establishes the minimum content of the tender documents and requires that content is relevant and sufficient for tenders to be able to respond to the requirement. (b) Requires the use of neutral specifications citing international standards when possible. (c) Requires recognition of standards which are equivalent when neutral specifications are not available.	3
The legal framework substantially meets the conditions of (a) plus one of the remaining conditions.	2
The legal framework meets the conditions of (a).	1
The content of the bidding documents is totally or largely left at the discretion of the procuring entity.	0

Score: 3.

Recommendations: As presently drafted, the Act and Regulations could be read broadly as permitting procuring entities to include restrictive provisions in the bidding documents. As such, any future revision of the Act and Regulations should clarify that procuring entities may not, in their discretion, include restrictive provisions in the bidding documents that would limit competition and run counter to the principle of nondiscrimination as set forth in the legislative framework. The Act and Regulations also could benefit from the inclusion of clarifying language setting international standards as the norm, as appropriate.

Sub-indicator 1(f) — Tender evaluation and award criteria. Assessment Score: 3

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents.

The Act and Regulations specify that bids are to be evaluated in accordance with the criteria and methodology established in the bidding documents.¹²⁰ With respect to goods, works and non-consulting services, contract award is to be made to the bidder having submitted the lowest evaluated and substantially responsive bid.¹²¹ The Regulations repeat that principle, but refer

¹¹⁹ Act Section 23(1); Regulation 37(1).

¹²⁰ Act Sections 21(4), 53(4); Regulations 51, 77(2).

¹²¹ Act Section 56(1).

only to a “responsive bid,” rather than to a “substantially responsive bid.”¹²² Although this may appear to be only a subtle difference, there is a real possibility of material confusion if the language is not aligned.

The Act prohibits negotiations with bidders regarding contracts for goods, works or non-consulting services, except in cases where the lowest evaluated responsive bid exceeds the contract budget by a substantial margin.¹²³ In such cases, subject to approval by the procurement committee and applicable guidelines, the procuring entity may negotiate a contract with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in scope that can be reflected in a reduction of price.¹²⁴ However, it should be made clear in the Act that a substantial reduction in scope or modification to the contract documents may require rebidding for purposes of transparency, fairness and competition.

Despite the blanket prohibition on negotiations regarding contracts for goods, works or non-consulting services, when a procuring entity engages in sole source procurement on any ground except on the basis of an exclusive right, the procuring entity is permitted to negotiate with the sole bidder as specified in the Act.¹²⁵ For purposes of clarity, the Act might benefit from revision to more clearly reflect this exception.

Regarding the evaluation of quotations under the request for quotations method, the Act provides that a purchase order shall be placed with the bidder that provided the lowest-priced quotation meeting the delivery and other requirements of the procuring entity.¹²⁶ Regulation 111(3) similarly states that the quotation with the lowest evaluated price, which is substantially responsive to the requirements of the procuring entity, shall be recommended for award of contract.¹²⁷ In the request for quotations context, a bidder’s quotation may not be altered or negotiated.¹²⁸

In the consulting services request for proposals context, neither the Act nor the Regulations expressly states that proposals are to be evaluated solely in accordance with the criteria and methodology established in the request for proposals. Although such principle arguably may be implied (for example, from the language of Regulations 95 and 96), it should be expressly stated in the Act.

Generally, contracts for consulting services are to be awarded based on quality and cost.¹²⁹ However, subject to approval of such procurement method by the procurement committee, contracts for consulting services may be awarded based on technical quality alone when the services are: (i) of an exceptionally complex nature; (ii) may have a considerable impact on future projects or national economy; or (iii) may lead to the submission of proposals that are difficult to compare.¹³⁰

¹²² Regulation 78(2)(k).

¹²³ Act Section 55.

¹²⁴ Act Section 55(2)(b).

¹²⁵ Act Section 47(1); Regulations 115 and 118.

¹²⁶ Act Section 45(4).

¹²⁷ Regulation 111(3). Here again, revision to remove the subtle language differences, *i.e.*, “meeting the . . . requirements” versus “substantially responsive to the requirements,” should be considered.

¹²⁸ Act Section 45(3); Regulation 111(2).

¹²⁹ Act Section 60; Regulation 84(3).

¹³⁰ Act Section 61; Regulation 84(4).

With respect to consulting services, negotiations are allowed with the selected consultant, but simultaneous negotiations with several consultants are prohibited.¹³¹ Procedures for such negotiations are set forth in the Regulations.¹³²

(b) Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible.

Pursuant to the Act, in the bidding documents, evaluation criteria shall be quantified in monetary terms or expressed in the form of pass or fail requirements, if possible, or, where not possible, by relative weights.¹³³ A procuring entity is to conduct its evaluation in accordance with the criteria and methodology stated in the bidding documents.¹³⁴

The Regulations similarly provide that the evaluation shall consist of a comparison of each bid to the technical requirements of the description of goods, works or services on a pass or fail basis, to determine whether the bids are substantially responsive. The procuring entity may include in the bidding document additional evaluation criteria related to specified factors and designed to measure the advantage or disadvantage of a factor to the procuring entity. Such advantage or disadvantage shall be quantified in monetary terms and applied as an increase or decrease to the bid price, for purposes of evaluation only. The bidding documents shall state the methodology for calculating and applying the adjustment to the bid price.¹³⁵

There is, however, some confusion created by the Regulations with regard to technical evaluation. Like the Act, Regulation 72(1), (3) and (4) requires a procuring entity to conduct the technical evaluation based only on the technical requirements stated in the bidding documents. Regulation 72(2) likewise provides that the technical evaluation shall determine whether bids are/are not substantially responsive to the technical standard defined in the bidding document and shall not be used to assess the relative quality of bids or to award points in any way. But, in language that seems to contradict the foregoing provisions, Regulation 72(7) states: “When a point system is used for evaluation of technical proposals, all bids scoring less than the threshold set for qualification shall not proceed to the next stage – evaluation of financial proposals [and those financial envelopes shall be returned unopened].” This provision thus introduces the possibility that a point system may be used in the evaluation of bids, which seems to contradict the apparent prohibition on the use of such manner of evaluation as expressed elsewhere in the Act and Regulations. Moreover, criteria not evaluated in monetary terms should be evaluated on a pass/fail basis, rather than through the use of a scoring system, to the extent possible.

The uncertainty surrounding this provision is compounded by additional language found in the Regulations but not in the Act, which suggests that bids may be submitted using a two-envelope system.¹³⁶ Conditions for use of such two-envelope system vis-à-vis the submission of bids are not set forth anywhere in the Act or Regulations. Moreover, the use of two-envelopes in the bidding context should be discouraged. The Act should clarify whether this provision is allowed only for selection of consultants.

¹³¹ Act Section 62.

¹³² Regulation 106.

¹³³ Act Section 49(3)(f).

¹³⁴ Act Section 53(4).

¹³⁵ Regulation 57.

¹³⁶ Regulation 65(5).

(c) The evaluation of proposals for consulting services gives adequate importance to the quality and regulates how price and quality are considered.

In the consulting services context, requests for proposals must state the criteria to be used in evaluating proposals, and their relative weight as compared to price.¹³⁷ In addition, a procuring entity shall consider price only after completion of the technical evaluation.¹³⁸

Consultant selection may consider both quality and cost based on: (i) the optimum balance of quality and cost, considering the technical quality of the proposal, the consultant's relevant experience and the expertise of its staff, the proposed work methodology, and price (*i.e.*, Quality and Cost Based Selection (“QCBS”)); (ii) the quality of the technical proposal submitted within a predetermined fixed budget (*i.e.*, Fixed Budget Selection (“FBS”)); or (iii) the basis of the lowest priced financial proposal, having obtained an acceptable technical score pre-disclosed in the request for proposals (*i.e.*, Least Cost Selection (“LCS”).¹³⁹ A consultant instead may be selected solely on the basis of technical quality (*i.e.*, Quality Based Selection (“QBS”)), when the services are: (i) of an exceptionally complex nature/highly specialized; (ii) may have a considerable impact on future projects or national economy; or (iii) may lead to the submission of proposals that are difficult to compare.¹⁴⁰ However, the procurement committee must approve the use of QBS as the selection method.¹⁴¹

Further elaboration and additional conditions for use of the various selection methods are set forth in the Regulations rather than in the Act. In that regard, the Regulations provide that QCBS is the default selection method for consultant services, and that other methods may be used only in stated circumstances,¹⁴² which is a substantive matter that should be stated in the Act. The conditions for use of QBS set forth in the Regulations elaborate on what is stated in the Act, providing that QBS may be used for: (i) highly specialized assignments, where it is difficult to define precise terms of reference and inputs and bidders are expected to demonstrate innovation in their bids; (ii) assignments that will have a high downstream impact and the procuring entity wishes to contract the best consultant; or (iii) assignments that can be carried out in substantially different ways and the value of the services depends on their quality.¹⁴³ FBS may be used for assignments that are simple and can be precisely defined, and where the budget is fixed.¹⁴⁴ LCS may be used for assignments of a standard or routine nature, where well established practices and standards exist.¹⁴⁵ Conditions for the use of selection methods also are substantive matters that should be stated in the Act.

¹³⁷ Act Section 59(4)(c).

¹³⁸ Act Section 59(5).

¹³⁹ Act Section 60; Regulation 84.

¹⁴⁰ Act Section 61; Regulation 84(4). The language of Section 61 of the Act and Regulation 84(4) differs, but this summary generally captures the conditions for use of QBS. Revision to more closely align the language might be considered.

¹⁴¹ Act Section 61.

¹⁴² Regulation 84(3).

¹⁴³ Regulation 84(4).

¹⁴⁴ Regulation 84(5).

¹⁴⁵ Regulation 84(6).

In terms of the application of the evaluation criteria stated in a request for proposals, the Regulations provide that: (i) each criterion shall be allocated a maximum number of points; (ii) the total for all criteria shall equal 100; and (iii) the number of points allocated to each criterion shall be directly related to its importance to the procurement.¹⁴⁶ The Regulations further note that a request for proposals normally should include sub-criteria to provide further guidance on the allocation of points under each main criterion.¹⁴⁷

(d) During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process;

Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except with respect to information that is to be made available as part of the record of procurement proceedings, on request and after a bid, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.¹⁴⁸

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The legal framework mandates that: (a) The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents. (b) Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible. (c) The evaluation of proposals for consulting services gives adequate importance to the quality and regulates how price and quality are considered. (d) During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process;	3
The legal framework covers the conditions of (a) and (b) plus one of the remaining conditions.	2
The legal frame work covers (a) but does not fully cover the other conditions.	1
The legal framework does not adequately address any of the conditions (a) through (d) above.	0

Score: 3.

Recommendations: To the extent that negotiations with the lowest evaluated bidder may be permitted where the lowest evaluated responsive bid exceeds the contract budget by a substantial margin, it should be made clear that any negotiated substantial reduction in contract scope instead

¹⁴⁶ Regulation 86(3).

¹⁴⁷ Regulation 86(4).

¹⁴⁸ Act Section 54; *see* Act Section 32(3), (4).

may require rebidding. The Act and Regulations also could benefit from clarification regarding the exception to the prohibition on negotiations in the case of contracts for goods, works or non-consulting services where sole-source procurement is used. It should be expressly provided in all cases that bids/quotations/proposals are to be evaluated solely in accordance with the criteria and methodology set forth in the tender documents. Future revisions should clarify the prohibition on the use of point system evaluation (except in the case of consulting services), and should specify that criteria not evaluated in monetary terms should be evaluated on a pass/fail basis to the extent possible. The use of two-envelopes in the bidding context should be discouraged and the Act should clarify whether this provision is allowed only for selection of consultants. Substantive matters should be stated in the Act and not only in the Regulations. The language of the Act and Regulations should be aligned in order to minimize the risk of confusion in application (*e.g.*, the use of both terms “responsive bid” and “substantially responsive bid”).

Sub-indicator 1(g) — Submission, receipt and opening of tenders. Assessment Score: 3

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission.

Clarity in the legal requirements for the submission, receipt, and opening of bids is essential to promote fair competition, provide transparency, establish predictability of the procedures, and protect the integrity of the public procurement process as a whole. The Act and Regulations make provision for such considerations.

The Act provides the manner in which bids must be submitted, *i.e.*, in writing, duly signed and in a sealed envelope.¹⁴⁹ The Act notes that the confidentiality and security of bids must be assured, but does not establish standards for safeguarding submitted bids before they are opened, which standards instead are set forth in the Regulations.¹⁵⁰ Bids received after the deadline for submission of bids shall be returned unopened.¹⁵¹

The general requirements for bid opening are set forth in the Act and Regulations, which provide that bid opening shall take place at the time and place indicated in the bidding documents, and that the time of bid opening shall coincide with the deadline for submission of bids, or follow immediately thereafter, allowing a minimum time interval for logistical reasons.¹⁵² The following information shall be read out and recorded at bid opening: (i) bidder’s name; (ii) total amount of each bid; (iii) any discounts or alternatives offered; and (iv) presence or absence of any required bid security and essential supporting documents.¹⁵³ Bidders or their representatives may attend the bid opening, and any bidder may request and receive a copy of the bid opening record.¹⁵⁴ According to the Act, a bid (except a late bid) may not be disqualified or rejected at bid

¹⁴⁹ Act Section 50(1). Such requirements are subject to the use other forms of communication as the NPPA may authorize procuring entities to use pursuant to Sections 50(3) and 28(2) of the Act.

¹⁵⁰ Regulation 64.

¹⁵¹ Act Section 50(1); Regulation 65(4).

¹⁵² Act Section 52(1); Regulation 66(1).

¹⁵³ Act Section 52(2); Regulation 66(4).

¹⁵⁴ Act Section 52(2); Regulation 66(2), (6).

opening.¹⁵⁵ The Regulations repeat this prohibition, but add that a bid also may not be accepted or evaluated at bid opening.¹⁵⁶ This is another example of an area in which the Act and Regulations should be reconciled in order to ensure that prohibitions, etc. are stated in the Act, which is the primary legislation, and are not set forth only in the Regulations.

Matters pertaining to proposal opening are not detailed in the Act but instead are left for explanation in the Regulations. For example, late proposals are to be returned unopened.¹⁵⁷ The Regulations also address the opening of technical proposals, stating that bidders' representatives may attend the opening, and specifying that the following details shall be read out and recorded: (i) the bidder's name; (ii) whether or not a separate sealed financial proposal has been submitted, if required; and (iii) any other information required by the request for proposals.¹⁵⁸ The Regulations specify that no proposal shall be accepted, rejected (except late proposals), or evaluated in any way at the proposal opening.¹⁵⁹ Bidders' representatives also may attend the opening of financial proposals, where the following information shall be read out and recorded: (i) the bidder's name; (ii) the bidder's total technical score; and (iii) the total bid price.¹⁶⁰

With regard to late submissions generally, there is a matter that merits consideration in connection with any future revisions to the Act and Regulations. Namely, in the request for quotations context it should be considered whether to specify that a quotation received after the deadline for submission shall be returned to the bidder unopened. Regulation 110(2), which addresses late quotations, presently does not include such a requirement.

(b) Records of proceedings for bid openings are retained and available for review.

A procuring entity must preserve all documentation relating to procurement proceedings in accordance with applicable rules concerning archiving of government documentation, for a specified period of time.¹⁶¹ The Regulations include a detailed list setting forth the minimum documentation that shall be included in the procurement record.¹⁶² In addition, a procuring entity must prepare and maintain a summary report of procurement proceedings, which report shall include specific information as stated in the Act.¹⁶³ Parts of the summary record may be made available to bidders on request.¹⁶⁴ However, the Act and Regulations expressly prohibit the disclosure of: (i) information, if its disclosure would be contrary to law, impede law enforcement, not be in the public interest, prejudice legitimate commercial interests of the parties, or inhibit fair

¹⁵⁵ Act Section 52(3).

¹⁵⁶ Regulation 66(5).

¹⁵⁷ Regulation 91(2).

¹⁵⁸ Regulation 92(1), (4).

¹⁵⁹ Regulation 92(5).

¹⁶⁰ Regulation 100(1), (2).

¹⁶¹ See Section 32(1) of the Act, which provides that such documentation shall be maintained for at least six (6) years after the date of final contract completion or the date of rejection of all bids or cancellation of the proceeding, as applicable. *See also* Regulation 149(2).

¹⁶² Regulation 149(1).

¹⁶³ Act Section 32(2); Regulation 150.

¹⁶⁴ Act Section 32(3), (4); Regulation 150(2).

competition under the Act; or (ii) information relating to the procurement process, other than the summary report of procurement proceedings.¹⁶⁵

(c) Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited.

As a general matter, in the disclosure of the summary record of procurement proceedings, in the debriefing of bidders, or in any other context, a procuring entity shall not, except when ordered to do so by a competent court, and subject to the conditions of such an order, disclose:

(i) information, if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interest of the parties or would inhibit fair competition; or (ii) information relating to the procurement process, other than the required summary of proceedings.¹⁶⁶

More specifically, the Act and Regulations provide for the safeguarding and confidentiality of bids prior to bid opening. Under the Act, any method to be used for the submission of bids must assure the confidentiality and security of bids, including the prevention of the opening and reading of bids by anyone until bid opening.¹⁶⁷ The Regulations further require a procurement unit to make arrangements for the receipt and safekeeping of bids up until the deadline for submission of bids by means such as: (i) the use of a locked tender box; or (ii) receipt of bids by staff responsible for issuing signed receipts and keeping bids in a secure location until bid opening, in which case the procurement unit shall maintain a record of all bids received.¹⁶⁸

Where a tender box is used for the receipt of bids, the procurement unit shall seal the tender box at the date and time of the deadline for submission of bids stated in the bidding document.¹⁶⁹

Immediately after bid closing, the tender box and/or bids received by hand by the deadline for submission of bids shall be taken to the location for bid opening.¹⁷⁰ Following bid opening, opened bids shall be taken immediately to a secure location, where they shall be kept until the evaluation begins.¹⁷¹

The Regulations include parallel requirements regarding proposals submitted under a request for proposals procedure.¹⁷² Where the request for quotations method is used, the Regulations provide that all quotations shall be kept securely until after the deadline for submission of quotations, and that the contents of any quotation timely received in an unsealed form shall be kept confidential and shall not be revealed to any person, other than the officer responsible for receiving the quotation.¹⁷³

The Act and Regulations also prohibit disclosure of specific sensitive information during debriefing. In accordance with the Act, the procuring entity may inform an unsuccessful bidder

¹⁶⁵ Act Section 32(5); Regulation 151. Section 54 of the Act likewise restricts disclosure of bid evaluation details.

¹⁶⁶ Regulation 151.

¹⁶⁷ Act Section 50(3).

¹⁶⁸ Regulation 64(1), (3).

¹⁶⁹ Regulation 65(1).

¹⁷⁰ Regulation 65(6).

¹⁷¹ Regulation 66(8).

¹⁷² Regulations Chapter VI Section C.

¹⁷³ Regulation 110(3).

only of the reasons why its own bid was unsuccessful.¹⁷⁴ The Regulations expand on this text, stating that debriefing may be requested concerning failed prequalification applications.¹⁷⁵ Notably, the Regulations, but not the PPA, expressly prohibit a procuring entity from providing any bidder the details of any other bids, other than information that is publicly available from bid openings or published notices.¹⁷⁶

Finally, the Act and Regulations impose penalties on public officials who improperly disclose or otherwise misuse confidential information, a matter that also is addressed in the ethics-related provisions of the Procurement Manual. For example, any public officer involved in requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of contracts, shall keep confidential the information that comes into his or her possession relating to procurement proceedings and to bids, including bidders’ proprietary information.¹⁷⁷ The Regulations more broadly impose such obligation on “public officials” generally, providing that a public official shall keep confidential the information that comes into his or her possession relating to procurement proceedings and to bids, including bidders’ proprietary information.¹⁷⁸

(d) The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders.

The manner for submission and receipt of bids is clearly set forth in the Act and Regulations, as noted in the foregoing discussion.¹⁷⁹ Although alluded to in the Act, the manner for submission and receipt of proposals are left for explanation in the Regulations.¹⁸⁰ In addition, matters relating to bid, quotation, proposal submission and receipt are to be stated in the applicable bidding documents, as previously discussed.

The Act permits cancellation of procurement proceedings if insufficient or no responsive bids are received.¹⁸¹ It should be clarified that a lack of competition should not be permitted solely on the basis of the number of bidders where the bid was satisfactorily advertised and prices are reasonable in comparison to market values.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
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¹⁷⁴ Act Section 27.

¹⁷⁵ Regulation 128(3).

¹⁷⁶ Regulation 128(4).

¹⁷⁷ Act Section 33(1)(e).

¹⁷⁸ Regulation 154(1)(e). Generally, commercially sensitive information collected by the NPPA should not be disclosed as per Section 16(1) of the Act. Any officer of the NPPA who, in the course of employment, wilfully discloses data or information obtained in the course of such employment to a person not authorized to receive that information commits an offence and shall be liable on conviction to a fine not exceeding one million leones or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment. Act Section 16(3). Although likely not the intended result, use of the introductory phrase “in the course of employment” may be read as permitting disclosure subsequent to the officer’s employment with the NPPA.

¹⁷⁹ Act Section 50 and Regulations 64, 65 (regarding bids); Act Section 58 and Regulation 48 (regarding two-stage bidding).

¹⁸⁰ Regulations 85, 90, 91, 99(2) (regarding proposals); Regulation 110 (regarding quotations).

¹⁸¹ Act Section 25(2)(b)(iv).

The legal framework provides for the following conditions: (a) Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission. (b) Records of proceedings for bid openings are retained and available for review. (c) Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited. (d) The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders.	3
The legal framework provides for (a) and (b) plus one of the remaining conditions.	2
The legal framework provides for (a) plus one of the remaining conditions.	1
There is no requirement in the legal framework for public opening of tenders.	0

Score: 3.

Recommendations: The Act should include provisions governing the manner for submission and receipt of proposals. It should be provided in all cases that late submissions are to be returned unopened. In the context of cancellation, future revisions should consider that lack of competition should not be determined solely on the basis of the number of bidders where the bid was satisfactorily advertised and prices are reasonable in comparison to market values. The Act and Regulations could benefit from clarification to the extent that their provisions are not aligned.

Sub-indicator 1(h) — Complaints. Assessment Score: 1

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) The right to review for participants in a procurement process

Part VI of the Act and Section D of the Regulations discuss the complaints procedure. A potential or actual bidder that claims to have suffered, or is likely to suffer, loss or injury due to a breach of a duty imposed on the procuring entity by the Act, the Regulations or the bidding document, may submit a complaint (application for review) at any stage of the procurement proceedings.¹⁸² The Act and Regulations state the minimum information that is to be included in a complaint.¹⁸³

(b) Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review.

Prior to the entry into force of a contract, a complaint shall be submitted for first-instance review to the head of the procuring entity.¹⁸⁴ No final time limit is imposed with respect to the filing of a complaint (*e.g.*, there no statute of limitations as to a finite period after which no complaint may

¹⁸² Act Section 63(1); Regulation 159(1).

¹⁸³ Act Section 63(2); Regulation 159(2).

¹⁸⁴ Act Section 64(1); Regulation 159(3).

be submitted). However, to be considered timely and therefore subject to review, a complaint must be submitted to the head of the procuring entity within fourteen (14) calendar days of when the bidder became, or should have become, aware of the circumstances giving rise to the complaint, whichever date is earlier.¹⁸⁵ The Act also provides, however, that other deadlines may be established in Regulations. It should not be the case that statutory deadlines can be altered by regulation as the foregoing language suggests could be the case. Unless the parties resolve the complaint by mutual agreement, the head of the procuring entity shall suspend the procurement proceedings, and, within five (5) working days after submission of the complaint, shall issue a written decision that states the reasons for the decision and any corrective measures to be taken.¹⁸⁶

By contrast, a complaint shall be submitted for first-instance review to the Independent Procurement Review Panel if a contract has entered into force.¹⁸⁷ A complaint also may be submitted to the Review Panel if: (i) the head of the procuring entity has failed to issue a decision within five (5) working days after submission of a complaint to the head of the procuring entity; or (ii) the bidder appeals against the decision of the head of the procuring entity.¹⁸⁸ A complaint to the Review Panel concerning a contract that has entered into force is timely only if it is submitted within ten (10) working days from when the bidder became, or should have become, aware of the circumstances giving rise to the complaint, whichever date is earlier.¹⁸⁹ To be timely, all other complaints to the Review Panel must be submitted within ten (10) working days from the elapse of the time prescribed for decision by the head of the procuring entity, or from the date on which the decision of the head of the procuring entity was communicated to the bidder (complainant).¹⁹⁰ There otherwise is no final time limit after which a complaint no longer may be filed.

The timely submission of a complaint to the Review Panel suspends the procurement proceedings until the Review Panel issues a decision on the complaint, unless the procuring entity certifies that urgent public interest considerations such as natural disasters, medical emergencies, civil strife and outbreak of war, require the procurement to proceed.¹⁹¹ In order to be considered by the Review Panel, a complaint not only must be timely, but also must be accompanied by an administrative fee of 2% of the bidder's bid price, up to a maximum of Le 2 million (which is the equivalent of approximately USD 446.91 as of June 14, 2011).¹⁹² The Review Panel shall issue a written decision within ten (10) working days after its receipt of a timely complaint and administrative fee, and such decision shall state the reasons for the decision and the corrective

¹⁸⁵ Act Section 64(2). Regardless of venue, a complaint concerning alleged improprieties in a solicitation (for applications to prequalify or bids) that are apparent prior to bid opening is timely only if submitted prior to bid opening. Act Section 63(3).

¹⁸⁶ Act Section 64(3); Regulation 160(2).

¹⁸⁷ Act Section 65(1)(c); Regulation 159(4).

¹⁸⁸ Act Sections 64(4) and 65(1); Regulation 159(4). Although Regulation 159(4) refers to the submission of an application for review to the NPPA, there are no related provisions, and it appears that this is an errant reference that instead should refer to the Review Panel. It is imperative that this provision be clarified in any revisions to the Regulations, as complaints review should not be within the purview of the NPPA.

¹⁸⁹ Act Section 65(1)(c).

¹⁹⁰ Act Section 64(5).

¹⁹¹ Act Section 65(6); Regulation 161(2); *see* Act Section 65(7) and (8) regarding certification requirements to overcome automatic suspension of performance.

¹⁹² Act Section 65(2); Regulation 161(1).

measures to be taken, if any.¹⁹³ As a general matter, any fee to be charged should be minimal, *i.e.*, to cover only administrative costs, and should not be tied to the bid price.

The legislative framework is lacking any enforcement provisions vis-à-vis complaints decisions. It is important that a mechanism for enforcement of decisions be included.

The Act does not provide for any form of judicial review concerning procurement complaints, and the lack of such review seems to run counter to the Constitution. In that respect, Article 134 of the Constitution regarding the High Court provides that a claim by a person against the government may be enforced as of right by proceedings taken against the government for that purpose, without the grant of a fiat or the use of the process known as Petition of Right. Because the right to judicial review is provided for in the Constitution, such review should be provided for with respect to procurement complaints. Providing the judiciary a role in the public procurement complaint system would help promote transparency and accountability in public procurement.

Although the Act establishes the Review Panel for the purpose of conducting *independent* administrative review of complaints and challenges to award decisions,¹⁹⁴ there is some question as to whether the Review Panel truly is independent from NPPA influence. The constitution of the Review Panel as three members appointed by the Minister of Finance from among eminent Sierra Leoneans with a background in public procurement, the Sierra Leone Chamber of Commerce, industry and agriculture, the business community, university, legal profession and other relevant fields, suggests that the body should function independently.¹⁹⁵ However, the NPPA's Secretariat provides administrative, secretarial and other support to both the NPPA and the Review Panel.¹⁹⁶ In addition, as head of the Secretariat, the Chief Executive shall be responsible to the NPPA for the day-to-day management of the affairs of both the NPPA and the Review Panel.¹⁹⁷ It also is unclear to whom the Review Panel ultimately reports.

(c) Establishes the matters that are subject to review

The Act and Regulations do not expressly establish the types of matters that are/are not subject to review, but do include among the grounds for which a complaint may be dismissed challenges to an affirmative determination of a competing bidder's qualifications.¹⁹⁸ As a general good practice, complaints should be permitted with respect to any decision of the procuring entity during the procurement procedure in which a violation of the public procurement law or its principles may have occurred.

(d) Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.

The legislative framework establishes timeframes for issuance of decisions by the procuring agency and the administrative review body as noted above.

¹⁹³ Act Section 65(3); Regulation 161(4).

¹⁹⁴ Act Section 20.

¹⁹⁵ Act Section 20(2).

¹⁹⁶ Act Section 12(1).

¹⁹⁷ ActSection 12(4)(a).

¹⁹⁸ Act Section 65(4)(e); Regulation 161(5)(e).

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The legal framework provides for the following: (a) The right to review for participants in a procurement process. (b) Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review. (c) Establishes the matters that are subject to review. (d) Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.	3
The legal framework provides for (a) and (b) plus one of the remaining conditions.	2
The legal framework provides for (a) plus one of the remaining conditions.	1
The right for review of the proper application of the procurement process is not provided in the legal framework.	0

Score: 1. All conditions except ‘b’ are met, leading to a score of ‘1’. ‘Cc’ also needs some elaboration as to what can and cannot be included as basis for complaints.

Recommendations: It should not be the case that statutory deadlines can be altered by regulation. Consideration should be given to eliminating the complaints fee, or to charging only a *de minimis* administrative cost. The right to judicial review should be provided for with respect to procurement complaints, which would help promote transparency and accountability in public procurement. The same is true with regard to enforcement provisions. Matters of concern pertaining to the independence of the Review Panel should be addressed in future revisions. The Review Panel should be clearly established as an independent review entity. It should be made clear in future revisions that complaints may be made with respect to any decision of the procuring entity during the procurement procedure in which a violation of the public procurement law or its principles may have occurred. References in the Regulations to the submission of an application for review to the NPPA must be clarified in any revisions.

Indicator 2. Existence of Implementing Regulations and Documentation:
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Sub-indicator 2(a) – Implementing Regulations exist that provide defined processes and procedures not included in higher-level legislation. Assessment Score: 2

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There are a clear, comprehensive and consolidated set of Regulations available in a single and accessible place.

The administrative Regulations for the implementation of the Act are consolidated and published as the Regulations (Regulations on Public Procurement, First Edition 2006). Although this CPAR includes certain recommendations pertaining to the Regulations, on the whole, the Regulations are clear and comprehensive, and provide defined processes and procedures that are not included in the Act. There are, however, some inconsistencies between the Act and

Regulations that should be reconciled as discussed herein. The Regulations are available on the NPPA website.

(b) They are updated regularly.

The first edition of the Regulations was issued in 2006. Draft amendments to the Act and Regulations were introduced in 2009, and remain pending until the end of this CPAR exercise, which will bring to light the need for further amendments. There have not been regular updates, which should be done in the future.

(c) The responsibility for maintenance is defined.

The NPPA is responsible for making the Regulations, which is done by statutory instrument.¹⁹⁹ Included among the regulatory functions assigned to the NPPA is responsibility for drafting and revising procurement and supply management legislation, Regulations, circulars, standard bidding documents or similar, which shall be done in consultation with stakeholders in both the public and private sectors, and through liaison with the Minister of Justice regarding the introduction or issuance of all legal documents.²⁰⁰

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There are Regulations that supplement and detail the provisions of the procurement law that meet the following requirements: (a) They are clear, comprehensive and consolidated as a set of Regulations available in a single and accessible place. (b) They are updated regularly. (c) The responsibility for maintenance is defined.	3
The Regulations meet the conditions of (a) plus one of the remaining conditions.	2
The Regulations exist but there is no regular updating, the responsibility for updating is not clearly defined or there are many important omissions in the Regulations or inconsistencies with the law.	1
There are no Regulations or the existing ones do not meet substantially any of the requirements listed above.	0

Score: 2. A score of ‘2’ is attributed here, because the regular updating of the Regulations has not been met.

Recommendations: Updating of the Regulations on a regular basis is required in future (through circulars if need be), and inconsistencies between the Regulations and the Act should be reconciled.

Sub-indicator 2(b) – Model tender documents for goods, works, and services. Assessment Score: 3

¹⁹⁹ Act Section 68(1).

²⁰⁰ Regulation 8.

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There are model invitation and tender documents provided for use for a wide range of goods, works and services procured by government agencies.

The Second Schedule of the Act calls for the development of standard bidding documents (“SBDs”) for the procurement of Goods, Works, and Services using various procurement methods. A number of standard bidding documents and contract forms, including General Conditions of Contract (“GCC”), presently are available on the NPPA website. However, while these available materials generally are consistent with what is provided for in the Procurement Manual,²⁰¹ they do not meet the standard documentation requirements set forth in the Act in that they do not cover all of the specific types of procurement for which SBDs are to be issued in accordance with the Second Schedule of the Act; for example, the SBDs for health goods and information technology (IT) goods are still missing from the suite. Such inconsistency is a matter for consideration in connection with any revision to the public procurement system.

(b) There is a standard and mandatory set of clauses or templates that are reflective of the legal framework, for use in documents prepared for competitive tendering.

The Act and Regulations require that a procuring entity use the most appropriate format from among the standard bidding documents specified in the Second Schedule of the Act, or as specifically approved for use by the NPPA.²⁰² A proposed variation to a standard bidding document or the substitution of other formats of bidding documents must be fully justified in writing by the procurement unit and approved by the procurement committee. Such variations or substitutions shall only be permitted where: (i) the use of a specific alternative format is required by a donor providing the funds; (ii) the procurement is a highly specialized or complex requirement where the standard bidding documents do not provide an appropriate basis for the bidding process or contractual requirements, provided that the procurement unit has sought the advice of the NPPA in writing on any substantial variation of an existing standard bidding document or on substitution of an alternative bidding document.²⁰³ It is important that variations to the standard bidding documents not be used in such a way as to circumvent or materially alter the procurement processes and requirements established in the Act and Regulations.

In addition, a procuring entity shall use the contract formats included in the standard bidding documents issued by the NPPA.²⁰⁴ Where no relevant standard bidding documents or contract formats for a specific procurement exist, a procuring entity shall use only such formats as have otherwise been approved by the NPPA.²⁰⁵

²⁰¹ Procurement Manual Sections 1.6.1 and 1.6.2.

²⁰² Act Section 49(1); Regulation 40; *see also* Regulation 56(1) (providing that a procuring entity shall use the appropriate standard bidding document format issued by the NPPA for drafting individual bidding documents). There is, however, an inconsistency in the Procurement Manual (Section 1.6), which requires only that Standard Bidding Documents be used “wherever practical.”

²⁰³ Regulation 41(3). Section 1.6 of the Procurement Manual instead requires written approval by the NPPA for use of any other format, except that procurements funded by, and using donor standard bidding documents, are specifically excluded from the requirement for prior NPPA approval.

²⁰⁴ Regulation 129(1).

²⁰⁵ Regulation 129(2).

(c) The documents are kept up to date with responsibility for preparation and updating clearly assigned.

Among the responsibilities assigned to the NPPA in the Act is the responsibility for issuing standard forms of contract and standard bidding documents for mandatory use by all procuring entities.²⁰⁶ With respect to drafting and revising standard bidding documents, the Regulations provide that the NPPA shall exercise this responsibility in consultation with stakeholders in both the public and private sectors, and through liaison with the Minister of Justice regarding the introduction or issuance of all legal documents, including the general conditions of contract and contract forms in standard bidding documents.²⁰⁷ The NPPA also is responsible to provide training for the private sector in the preparation of bids using standard bidding documents, among other things.²⁰⁸ The Act should state more clearly the responsibility of NPPA to keep the documents current (which presently is mentioned only in the Regulations).

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
(a) There are model invitation and tender documents provided for use for a wide range of goods, works and services procured by government agencies. (b) There is a standard and mandatory set of clauses or templates that are reflective of the legal framework, for use in documents prepared for competitive tendering. (c) The documents are kept up to date with responsibility for preparation and updating clearly assigned.	3
Model documents and a minimum set of clauses or templates are available, but the use of such documents is not mandatory or regulated. The documents are not updated regularly.	2
Model documents are not available, but a set of mandatory clauses is established for inclusion in tender documents.	1
There are no model documents and the procuring entities develop their own documents for with little or no guidance.	0

Score: 3. By and large all conditions above have been met adequately.

Recommendations: The standard bidding documents and contract forms presently available do not meet the standard documentation requirements set forth in the Act, which is a matter for consideration in connection with any future revision to the public procurement system and legislative framework. Moreover, variations to the standard bidding documents shall not be used to circumvent or materially alter the procurement processes and requirements established in the Act and Regulations. The Act also should state more clearly the responsibility of NPPA to keep the documents current (which presently is mentioned only in the Regulations).

Sub-indicator 2(c) – Procedures for pre-qualification. Assessment Score: 3

²⁰⁶ Act Section 14(2)(f).

²⁰⁷ Regulation 8.

²⁰⁸ Regulation 4(2).

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Provide for limitations on the content of pre-qualification criteria that are based on the needs of the specific procurement.

The Act and Regulations provide for prequalification, and include procedural safeguards to ensure that prequalification not be used to limit competition. To that end, prequalification procedures must be nondiscriminatory and transparent, and must provide a right of review for applicants who are not prequalified.²⁰⁹ For example, qualification requirements shall be set forth in the prequalification or bidding documents,²¹⁰ and shall be evaluated in accordance with criteria set forth in the bidding documents.²¹¹ Prequalification or bidding documents also shall address the application of qualification criteria vis-à-vis joint venture partners and subcontractors.²¹²

The Regulations require that qualification criteria be set to ensure that a bidder has the legal capacity for public procurement and is capable of effectively performing the proposed contract. The Regulations expressly limit qualification criteria to those criteria necessary for the effective performance of the proposed contract, further stating that such criteria shall not be unduly restrictive or designed to reduce competition.²¹³ In addition, the Regulations specify that qualification criteria shall be procurement-specific, taking into account the size, complexity and technical requirements of the proposed contract, and may relate to: (i) technical competence and resources; (ii) available capacity to perform the proposed contract; (iii) financial position; and/or (iv) experience and satisfactory performance of similar contracts.²¹⁴ Consistent with these broad categories of qualification criteria, the Act provides the following more specific examples of qualification criteria that may be applied: (i) professional and technical qualifications; (ii) equipment availability; (iii) past performance; (iv) after sales service; (v) spare parts availability; (vi) legal capacity; (vii) financial resources and condition; (viii) professional offences; (ix) assessment by the National Revenue Authority to ascertain payment of taxes; and (x) payment of social security contributions.²¹⁵

The procuring entity shall state in the prequalification or bidding documents, the documentary evidence required from bidders as to their qualifications.²¹⁶ Notably, in determining the required documentation, a procuring entity should ensure that the requirements do not discriminate unfairly against foreign bidders and shall permit the submission of equivalent documents from the

²⁰⁹ See, e.g., Act Section 21; Regulations 22, 26.

²¹⁰ Act Section 21(4); Regulation 22(2).

²¹¹ Act Sections 21(4), 53(4); Regulations 51, 77(2).

²¹² Regulation 27.

²¹³ Regulation 26(1), (2).

²¹⁴ Regulation 26(3), (4).

²¹⁵ Act Section 21(1).

²¹⁶ Regulation 26(5); see Regulation 22(3) (giving examples of such documentation); see also Section 21(3) of the Act (stating that a procuring entity may demand from potential bidders and applicants for prequalification documentation reflecting their qualification data); Regulation 22(2) (stating that bidders shall be required to provide signed statements or documentary evidence to certify their eligibility and qualifications).

relevant authorities in the bidder’s country of origin or the submission of statements certifying that equivalent documentation is not issued in the bidder’s country of origin.²¹⁷

(b) Specify the use of pass/fail for application of qualification criteria.

The Act specifies that a procuring entity shall apply qualification criteria on a meets/does not meet basis and not by using a point system for comparing the relative level of qualifications of participating bidders.²¹⁸ With specific regard to prequalification, the Regulations provide that a procurement unit shall evaluate applications to prequalify on a pass or fail basis against the criteria in the prequalification document.²¹⁹

(c) Provide guidance on when to apply a pre-qualification procedure.

As provided in the Act, prequalification shall be used for: (i) procurement of large of complex works in which the cost of bid preparation is high; (ii) procurement of particularly high value or complexity; and (iii) groups of similar items bundled together for a consolidated purchase.²²⁰ The Regulations provide that prequalification is appropriate if: (i) the goods, works or services are highly complex, specialized or require detailed design or methodology; (ii) the costs of preparing a detailed bid would discourage competition; (iii) the evaluation process is particularly detailed and the evaluation of a large number of bids would require excessive time and resources; or (iv) bidding is for a group of contracts, which arguably adds an additional consideration to what is provided for in the Act.²²¹ The Regulations further provide that prequalification also may be used to pre-qualify bidders for a group of similar contracts or to register suppliers to facilitate the preparation of shortlists under restricted bidding or request for quotations procedures.²²² Pre-qualification should not be used for the purpose of shortlists in restricted bidding and registry systems. There is some concern that the use of different language to describe the conditions for use of pre-qualification, however slight, could lead to confusion.

Post-qualification is to be conducted in the absence of prequalification, as well as to verify the information of the prequalified lowest evaluated responsive bidder.²²³

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Procedures exist that define pre-qualification which: <ul style="list-style-type: none"> (a) Provide for limitations on the content of pre-qualification criteria that are based on the needs of the specific procurement (b) Specify the use of pass/fail for application of qualification criteria. (c) Provide guidance on when to apply a pre-qualification procedure. 	3
Procedures exist that cover (a) plus one of the remaining conditions.	2

²¹⁷ Regulation 22(4).

²¹⁸ Act Section 21(2), (4).

²¹⁹ Regulation 51(1).

²²⁰ Act Section 21(6).

²²¹ Regulation 24(1).

²²² Regulation 24(2).

²²³ Act Sections 21(8), 53(9); Regulations 25(2), 77(1) and (4).

Procedures exist that cover (a).	1
Procedures for the application of pre-qualification procedures do not exist.	0

Score: 3.

Recommendations: All stakeholders should be trained on the use of the documents. Although the legislative framework includes procedures that define and provide parameters for the use of pre-qualification, there is some concern that the use of different language in the Act and Regulations to describe the conditions for use of pre-qualification could lead to confusion. The language of the legislative framework should be aligned. Also prequalification should not be used for the purpose of making shortlists for restricted bidding or for the purpose of making registry systems in the Ministries, Departments and Agencies (MDAs).

Sub-indicator 2(d) – Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion. Assessment Score: 3

There are 2 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate.

Contracts for consultant services generally are to be awarded based on quality and cost, but may be awarded based on technical quality alone.²²⁴ The conditions under which selection may be based on technical quality alone are discussed above under Sub-indicator 1(f)(a).

(b) Clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.

Also as previously discussed, the methods and procedures for consultant selection are set forth in Sections 60 and 61 of the Act, and Regulations 84 and 86. Specifically, Regulation 84 states the conditions for use of various selection methods. Regulation 86 addresses the application of evaluation criteria and allocation of points with respect to the evaluation, but notes that a request for proposals normally should include sub-criteria to provide further guidance on the allocation of points under each main evaluation criterion. Accordingly, while the Regulations provide general guidance, they do not set forth clear procedures and methodologies for the assessment of technical capacity and for combining price and technical capacity under different circumstances. However, both the Procurement Manual and SBDs do include procedures and methodologies for such assessment and for combinations of price and technical capacity.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
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²²⁴ Act Sections 60, 61; Regulations 84, 86.

The legal framework and its implementing Regulations provide for the following: (a) Conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate. (b) Clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.	3
Implementing Regulations meet a) above but leave b) to the discretion of the procuring entity.	2
Implementing Regulations leave the possibility of use of technical capacity in selection but neither the law nor the Regulations elaborate on the procedure.	1
Neither the law nor implementing Regulations cover this procedure.	0

Score: 3.

Recommendations: It should be considered whether the Regulations adequately set forth clear procedures and methodologies for the assessment of technical capacity and for combining price and technical capacity under different circumstances. To the extent that this is not the case, revision should be made to ensure consistency in approach and application.

Sub-indicator 2(e) – User guide or manual for contracting entities. Assessment Score: 3

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There is a unique procurement manual detailing all procedures for the correct administration of procurement Regulations and laws.

The NPPA published the Procurement Manual in 2006. The Procurement Manual is available on the NPPA website. Any revisions to the Regulations should correct the reference to the “Public Procurement Manual, 2005” included in Regulation 101(1)(b).

The Procurement Manual addresses key principles and procedures set forth in the Act and Regulations. In many areas the Procurement Manual states “Actions” to be taken or provides other guidance to participants in the public procurement process. However, the Procurement Manual appears in some instances to be inconsistent with the Act and Regulations. It is imperative that any procurement manual be consistent with the legal framework to which it relates, and any revisions to the Procurement Manual should ensure that full consistency with the Act and Regulations is achieved.

The Procurement Manual provides that, in the event that a public entity has its own NPPA-approved specialist procurement Regulations and procedures manual, the provisions of the Procurement Manual apply only when there is no conflict with procedures or standard documentation as detailed in the specialist manual.²²⁵ The Procurement Manual devotes an entire section to the deviations policy, noting that NPPA approval is required for any deviation.²²⁶

²²⁵ Procurement Manual Section 1.1.3.

²²⁶ Procurement Manual Section 1.2.

Although the Procurement Manual provides that deviations *may not be* approved if they conflict directly with: (i) professional procurement standards and the Code of Ethics; (ii) the Constitution of Sierra Leone, or (iii) established national and international law and international treaties,²²⁷ such deviations are not expressly prohibited.

These provisions of the Procurement Manual raise a significant concern as to the potential for inconsistency among procuring entities in the conduct of public procurement practices. Moreover, these provisions arguably go so far as to call into question the efficacy of the public procurement system as a whole to the extent that the requirements and procedures set forth in the procurement legislative framework may be set aside through some NPPA-approved deviation process, the standards for which are not specified. To the extent that a public entity may be permitted to use procurement procedures or standard documentation that deviate from, or are in conflict with, the procedures or standard documentation prescribed in the Procurement Manual, there is a real concern that procuring entities may be permitted to use public procurement procedures and practices that are not aligned with what is required under the Act and Regulations. Equally disconcerting is the fact that any such deviations would be approved by the NPPA. While it may be appropriate in some circumstances for a procuring entity to tailor standard procedures or documentation to its particular needs, authorizing a procuring entity to conduct public procurement in a manner that conflicts with such standard procedures or documentation undermines the strength of the public procurement system as a whole.

(b) The manual is updated regularly;

The Procurement Manual was first issued in 2006, and has not been updated since.

(c) The responsibility for maintenance of the manual is clearly established.

The NPPA is generally responsible for formulating, drafting and revising public procurement policies and standards under the Act and Regulations.²²⁸ Likewise, the Procurement Manual specifies that the NPPA is responsible for revising the Procurement Manual.²²⁹

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
(a) There is a unique procurement manual detailing all procedures for the correct administration of procurement Regulations and laws. (b) The manual is updated regularly; (c) The responsibility for maintenance of the manual is clearly established.	3
There is no unique manual but there is an obligation for the procuring agencies to have one that meets conditions (b) and (c.)	2
There is no manual and no obligation to have one but many procurement agencies have an internal manual for administration of procurement.	1
There is no manual or requirement to have one.	0

²²⁷ It is presumed but not certain that the reference to the “Code of Ethics” means the ethics-related provisions of the Procurement Manual.

²²⁸ Act Section 14(2); Regulation 8.

²²⁹ Procurement Manual Section 1.3.

Score: 3.

Recommendations: The Procurement Manual must be consistent with the legal framework, and any revisions to the Procurement Manual should ensure that full consistency with the Act and Regulations is achieved. To that end, the Procurement Manual should not permit deviations from the procurement procedures required by the Act and Regulations, or from the standard bidding documents. The potential for such deviation poses a significant concern with respect to transparency, and consistency with and proper application of the legislative framework and the core procurement principles set forth therein. Therefore, the Procurement Manual should be reviewed to ensure consistency with the legislative framework, and should not be used to introduce deviations from or exceptions to the legislative requirements. As a general administrative matter, legislative and supporting materials should be reviewed to ensure that cross-references are to the appropriate documents and correct versions thereof.

Sub-indicator 2(f) – General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements. Assessment Score: 3

There are 2 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There are GCC for the most common types of contracts and their use is mandatory.

As discussed above, the NPPA is responsible for issuing standard forms of contract for mandatory use by all procuring entities.²³⁰ In addition, a procuring entity shall use the contract formats included in the standard bidding documents issued by the NPPA, or approved by the NPPA where no such format exists.²³¹ As previously noted, the SBDs (including GCCs) that have been issued do not cover all the specific types of procurement for which SBDs are to be issued in accordance with the second schedule of the Act.

(b) The content of the GCC is generally consistent with internationally accepted practice.

The GCC content generally is prescribed in Chapters IX and X of the Regulations. Consistent therewith the GCC broadly address important matters such as: (i) price adjustment; (ii) payment terms, including among other things, schedule, conditionality, currency, advance payments, progress payments, retention, required documentation, and payment securities; (iii) inspections and tests; (iv) technical standards; (v) modifications and variations; and (vi) termination. Provisions regarding these matters, and the general contents of the GCC, are broadly based on the World Bank's standard bidding documents and contract forms.

With regard to price adjustment, the Act expressly prohibits adjustment unless it is specifically provided for in the contract to take into account changes in economic circumstances.²³² The Regulations add that, for contracts with duration of more than twelve (12) months, a procuring entity may include a price adjustment provision where it determines that it is more economical for

²³⁰ Act Section 14(2)(f); Regulation 8.

²³¹ Regulation 129.

²³² Act Section 31(1); Regulation 135(1).

the procuring entity to accept the risk of increased costs than to pay an additional cost for the supplier to accept the risk.²³³ The Act and Regulations specify certain stipulations that must be included in a contract if price adjustment is permitted, such as conditions and procedures for use, applicable formulas and indices, frequency of application, etc.²³⁴ A contract also may provide that, when the application of price adjustment leads to a modification exceeding a stipulated percentage of the initial price or a stipulated percentage of the balance of the contract, the procuring entity may terminate the contract.²³⁵ The Regulations, but not the Act, also permit a procuring entity to renegotiate the contract in order to stay within the budget or otherwise minimize costs for the procuring entity in such circumstances.²³⁶ As a general matter, it is not appropriate to include in Regulations conditions, such as this one, that alter what is permitted under the law. In addition, this particular alteration gives a procuring entity a potentially wide opening to renegotiate contracts in circumstances that would require termination of the contract under the Act and under good international practice generally. The Regulations should not allow renegotiation when price deviation causes an increase in excess of the pre-agreed percentage. Although this potentiality may be mitigated to some extent by the requirement in the Act (but not repeated in the Regulations) that any price variation shall be subject to approval by the appropriate procurement committee, this is a matter that should be addressed in any revisions to the Act and Regulations.²³⁷

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Both of the following apply: a) There are GCC for the most common types of contracts and their use is mandatory. b) The content of the GCC is generally consistent with internationally accepted practice.	3
There are GCC for the most common types of contracts, consistent with international practice, but their use is not mandatory.	2
There are GCC for the most common types of contracts but they do not conform to internationally accepted practice and their use is not mandatory.	1
There are no GCC and individual agencies use the form of contract of their choice.	0

Score: 3.

Recommendations: The standard documents (including GCC) presently available differ from the standard documents called for under the Second Schedule of the Act, which is a matter that should be reconciled in any future revisions. To the extent that the Regulations include conditions that alter what is permitted under the Act, future revisions should be made to align such conditions in accordance with the Act, for example with respect to price adjustment. Also, the Regulations should not allow renegotiation when price deviation causes an increase in excess of the pre-agreed percentage.

²³³ Regulation 135(2).

²³⁴ Act Section 31(2); Regulation 135(3).

²³⁵ Act Section 31(3); Regulation 135(4)(a).

²³⁶ Regulation 135(4)(b).

²³⁷ Act Section 31(4).

Pillar II: Institutional framework and Management Capacity

Pillar II. Institutional Framework and Management Capacity	Assessed score
3) Integration and mainstreaming of the public procurement system into the public sector governance system.	
a) – Procurement planning and data on costing are part of the budget formulation and multiyear planning.	2
b) – Budget law and financial procedures support timely procurement, contract execution, and payment.	2
c) – Procurement actions not initiated without budget appropriations.	3
d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.	1
4) Normative and regulatory functions.	
a) – Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework.	3
b) – The responsibilities include at least those required in this sub indicator (see description of the indicators and sub – indicators)	3
c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b).	1
d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.	0
5. Institutional development capacity.	
a) – System for collecting and disseminating procurement information and accessibility.	1
b) – Systems and procedures for collecting and monitoring national procurement statistics.	1
c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity.	2
d) – Quality control standards and staff performance evaluation for capacity development.	1

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

Sub-indicator 3(a) – Procurement planning and associated expenditures are part of the budget formulation process and contribute to multiyear planning. Assessment Score: 2

There are 2 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There is a regular planning exercise instituted by law or regulation that: (i) starts with the preparation of multiyear plans for the government agencies, from which annual operating plans are derived, (ii) followed by annual procurement plans and estimation of the associated expenditures, and (iii) culminates in the annual budget formulation.

Section 29 (1) of the PPA also provides for mandatory annual procurement planning by all MDAs to ensure that procurement actions are not initiated by MDAs prior to the establishment of plans and in the absence of an budget appropriation and release of the appropriation. The objective is to ensure that MDAs can meet their obligations on contracts without creating the potential for expenditures arrears – a form of non-transparent financing.

(b) Procurement plans are prepared in support of the budget planning and formulation process.

The legal framework is clear in this context. Section 29 (2 & 4) of the PPA Act provides for procurement planning to be carried out by all MDAs in support of the budget planning and formulation process.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
(a) There is a regular planning exercise instituted by law or regulation that: <ul style="list-style-type: none"> • starts with the preparation of multiyear plans for the government agencies, from which annual operating plans are derived • followed by annual procurement plans and estimation of the associated expenditures • And culminates in the annual budget formulation. (b) Procurement plans are prepared in support of the budget planning and formulation process.	3
The majority of procurement plans are prepared based on the annual and multiyear operating plans independently from budget allocation but they are revised to meet the forward budget estimates for the sector or agency allocations before expenses are committed.	2
Procurement plans are normally prepared based on the annual and multiyear operating plans. Links with budget planning are weak and plans are not required to match the budgetary allocation available before expenses are committed.	1
There is no integrated procurement and budget planning of the nature described. Procurement plans are drawn without obvious and direct connection with the budget planning exercise and there is no requirement to match procurement plans with availability of funds before expenses are committed.	0

Score: 2. Annual procurement planning in support of the budget processes has become a feature of the budgetary planning framework in MDAs, pursuant to the requirements of the PPA. Although the implementation progress of the PPA was gradual, the government has issued a notification in August 2010 to fully apply the requirement for implementation of procurement planning to all procuring entities. Deadlines for providing the 2011 procurement plans is annually set on October 31, 2010. There is however weakness in making multi-year procurement plans. Most plans are limited to annual plans that are linked to budget submissions of the MDAs.

Recommendations: Procurement plans prepared at the time of budget submission from the MDAs to MoFED should be revised consistent with the revised monetary values finally allocated to MDAs against their approved appropriations. Particularly for multi-year procurement contracts, the NPPA will support the MDAs to include their related multi-year costs in the forward estimates under the framework of the MTEF of the GoSL.

Sub-indicator 3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment. Assessment Score: 2

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Budget funds are committed or appropriated within a week from the award of the contract to cover the full amount of the contract (or amount to cover the portion of the contract to be performed within the budget period).

The GBAA as well as the FAR have clear provisions that ensure that no funds are committed without an appropriation and a release of funds order (authority to spend). The integrated financial management system in use supports a ‘work-flow’ process that ensures that purchase orders are issued only upon the availability of released appropriations for MDAs. This process does not cover subvented agencies that are not part of the integrated financial management system.

(b) There are published business standards for processing of invoices by the government agencies that meet obligations for timely payment stated in the contract.

This condition is not met. There are no published standards but rather tacit ones, implying that when goods are delivered or progress certificates are issued for payments to be made against contracts, payments generally are made unless there are other compliance issues under the contract. Nevertheless, publishing delivery standards is necessary to reduce corruption potential.

(c) Payments are authorized within four weeks following approval of invoices or monthly certifications for progress payments.

This condition is met. When invoices are approved against approved commitments for which appropriated funds have been released, or when progress payment certificates are provided, there is no evidence that payments are released beyond four (4) weeks. The problem arises only where certain conditions contained in the contract have not been met; however, with the approval of invoices or production of progress certificates, failure to comply with other contractual conditions seems unlikely.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Budget and financial procedures in place meet the requirements of (a) to c) above.	3
Budget and financial procedures in place meet the requirements of a) but there are no published business standards. Authorization of payments is generally timely.	2
Procedures in place take longer than stated in a) and conditions b) and c) are not generally met.	1
The procedures in place do not meet the requirements in a material way.	0

Score: 2. Except for publication of business standards, the budget and financial procedures are in place as affirmed by the GBAA and FAR, and the authorization to pay for goods, services or works rendered is generally timely.

Recommendations: The MoFED, in consultation with the NPPA, would need to develop service standards for procurement of goods, works and services and ensure the Accountant General monitors compliance with the standards across MDAs.

Sub-indicator 3(c) – No initiation of procurement actions without existing budget appropriations. Assessment Score: 3

There are 2 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) The law requires certification of availability of funds before solicitation of tenders takes place.

The PPA clearly specifies that commitments and their related expenditures should only be entered into when an approved appropriation exists and such appropriation or part of it has been released for spending. With the use of an IT-based Integrated Financial Management Information System (IFMIS) in place, a purchase order must first be approved in the system – confirming availability of expendable funds—before procurement actions can be initiated. Only when the purchase order has been approved, will the system allow the supplier/contractor to begin the supply/work process.

(b) There is a system in place (e.g. paper or electronic interface between the financial management and the procurement systems) that ensures enforcement of the law.

The IFMIS has control features that link financial management to procurement actions through a ‘purchasing’ module. This strengthens the conformance with the requirements of the GBAA and FAR. However, the system is still at the nascent stage and needs further work and development.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The system meets requirements (a) and (b) above.	3
The system meets requirement (a) but requirement (b) is not fully enforced due to weaknesses in the system.	2
The system meets requirement (a) only.	1
There system does not meet requirements (a) and (b).	0

Score: 3.

Recommendations: There is need to sensitize stakeholders on the provisions of the PPA.

Sub-indicator 3(d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming. Assessment Score: 1

This sub-indicator is a measurement of the feedback mechanism needed to ensure that information on contracts covering major budget expenditures is provided to the budgetary and financial management systems in a timely manner to support the overall public financial management system. IFMIS has a procurement/purchasing module that is implemented and ensures that progress or completion certificates are provided and fed into the system for budget execution. However, there is poor reconciliation of delivery with the budget programming as major civil works contracts regularly fall in the category of expenditure arrears, particularly in FY 2010.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The procurement system is sufficiently integrated with the financial management and budgetary systems to provide information on the completion of all major contracts.	3
Information on completion of the majority of large contracts is submitted as described above.	2
Information on the completion of contracts is erratic or is normally submitted with considerable delay after the fiscal budgetary period.	1
The procurement system does not generally provide this information.	0

Score: 1. Information on the completion of contracts is erratic or is normally submitted with considerable delay after the fiscal budgetary period.

Recommendations: In the review of the Act, stronger conditions need to be introduced to ensure that information on contracts is made available in a regular and timely manner. To this end, because the IFMIS provides for a commitment control sub-module as a key budget control tool that is being applied by at least eight (8) IFMIS-productive MDAs for their respective transactions and by the Accountant General for the rest of the non-IFMIS productive MDAs, the potential exists for the strict and unfettered implementation of the module to ensure that all commitments engendered through contracts are fed into the system, monitored systematically, and paid for against approved budget appropriations. As long as government policies ensuring that IFMIS business processes which mirror the GBAA (2005) and FAR (2007) are enforced and respected, the condition can be met.

Indicator 4. The country has a functional regulatory body

Sub-indicator 4 (a) – The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework. Assessment Score: 3

Section 3 of the Act establishes the NPPA as a body corporate having perpetual succession, and being capable of acquiring, holding and disposing of any property (whether movable or immovable) and of suing and being sued in its corporate name and, subject to the Act, of performing all such acts as bodies corporate may by law perform. However, while the NPPA is established as an independent body, the Ministry of Finance and Economic Development retains involvement in procurement matters.

Section 14 of the PPA provides that the NPPA is established for the purpose of regulating and monitoring public procurement in Sierra Leone, and advising the government on issues relating to public procurement. Section 14 also enumerates the functions assigned to the NPPA, which are further elaborated in Regulations 4 to 12. Section 14(4) specifically states that the NPPA shall not be subject to the direction or control of any person or authority in the performance of its functions under the Act. The legislative framework provides the NPPA with an appropriate level of authority that should enable it to function effectively. The NPPA belongs to the MoFED for administrative purposes, but with regards to daily operations, the NPPA is fully independent in practice. Nonetheless, there is some question as to the NPPA's independence from the MOFED as discussed below.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There is a normative or regulatory body or the functions are clearly assigned to various units within the government which is specified in the legal and regulatory framework in unambiguous way without gaps or overlaps.	3
There is a regulatory body or functional designation to various units within government, but it is not established as part of the legal and regulatory framework and there are gaps or overlaps of regulatory responsibilities.	2
Only part of the functional responsibilities of a regulatory body are assigned throughout the government leaving significant parts of the work unassigned.	1
Separate functional responsibilities to regulate the procurement system are not recognized as part of the legal and regulatory framework and are not effectively performed.	0

Score: 3.

Recommendations: The NPPA's separation and independence from the MOFED could benefit from clarification, as elaborated on below. For example, the NPPA's dependence on the MOFED for annual budgets causes some degree of question as to the NPPA's independence.

Sub-indicator 4(b) – The body has a defined set of responsibilities that include but are not limited to the following: Assessment Score: 3

The functions assigned to the NPPA, as enumerated in Section 14 of the Act and Regulations 4 to 12, broadly include responsibilities relating to: (i) formulating, drafting, revising and ensuring compliance with public procurement policies and standards; (ii) issuing standard bidding documents and standard forms of contract and for mandatory use by procuring entities; (iii) monitoring public procurement; (iv) providing advice to procuring entities; (v) providing interpretation of the Act and other instructions governing the procurement process; (vi) publishing and providing procurement information, including a database of suppliers, contractors and consultants, and records of prices;²³⁸ (vii) reporting on procurement to other parts of the government; (viii) developing and supporting implementation of initiatives for improvements of the public procurement system; and (ix) providing implementation tools and documents to support training and capacity development of implementing staff; (x) training for the private sector in the preparation of bids using standard bidding documents, among other things; and (xi) investigating and suspending contractors *et al.* from procurement practice, and maintaining a list of suspended contractors *et al.* To the extent that Regulation 4(1) implies that the NPPA can be assigned functions in the Regulations in addition to the functions assigned to it under the Act, this should not be the case.

²³⁸ Although the context suggests that such database relates to suppliers, contractors and consultants who have been awarded contracts, this is not clear from Section 14(2)(j) of the Act. The actual database content thus should be clarified, and such database list should not be used as a form of mandatory registration. The same comments apply regarding the database of suppliers, contractors and consultants to be maintained by procurement committees as per Section 18(13)(h) of the Act.

Section 14(2) makes clear that nothing in the functions assigned to the NPPA shall be construed to include the power to participate in the award of any specific procurement contract. However, the broad language of Regulation 6(1) as to the NPPA’s monitoring functions, including advising on any aspect of procurement procedures and processes, may call that limitation into question.

In addition, although the Act and Regulations clearly designate the NPPA with responsibility for monitoring public procurement, the ethics-related provisions of the Procurement Manual provide that regular monitoring of procurement will be undertaken by the Auditor General and Ministry of Finance, further noting that the Procurement Manual also introduces a formal system of routine reporting on procurement to the NPPA and that the NPPA will assess issues of professional efficiency and effectiveness in procurement, may call for detailed assessments or explanations on individual procurements, and will issue reports of findings in consultation with the Auditor General. Thus, the monitoring process as described in the ethics-related provisions of the Procurement Manual may be read as meaning that primary monitoring responsibility is retained by the Auditor General and Ministry of Finance. The monitoring authority should be clarified.

As a general matter, there is some question as to the whether one body would have the required broad expertise and/or adequate capacity to carry out a myriad of functions, especially where such functions cover a wide range of subject matter and responsibility. It must be ensured that the NPPA is provided the necessary resources in this regard.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
All the eight functions listed in the sub indicator are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility.	3
At least five functions are assigned to an appropriate agency or agencies and there is no overlap or conflict in responsibilities.	2
Four or less functions are assigned to appropriate entities and there are overlaps and conflicts in responsibilities.	1
Functions are not clearly assigned and/or assignments are often in conflict with other agency responsibilities.	0

Score: 3.

Recommendations: Like the Act, the Regulations should make clear that nothing in the functions assigned to the NPPA shall be construed to include the power to participate in the award of any specific procurement contract, or to otherwise intervene in procurement operations. The delegation of primary procurement monitoring responsibility also could benefit from clarification. The Regulations should not be used to assign additional functions to the NPPA. The NPPA must be provided the necessary resources to effectively carry out its many functions.

Sub-indicator 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 the responsibilities. Assessment Score: 1

A regulatory body must have a high level and authoritative standing in government to be effective, including a degree of independence to enable it to carry out its responsibilities without interference. Adequate funding is necessary to ensure proper staffing and resources to keep the services at the level of quality required. The head of the regulatory body needs to be of sufficient level within the governance structure to enable the body to exercise its authority and responsibilities.

As noted above, the NPPA is established as an autonomous body, and shall not be subject to the direction or control of any person or authority in the performance of its functions.²³⁹ The governing body of the NPPA is a Board, consisting of the following members appointed by the President and subject to the approval of Parliament: (i) a Chairman who is competent and knowledgeable in public procurement and public service; (ii) a representative of the Attorney-General and Minister of Justice; (iii) five (5) persons appointed for their knowledge and experience in public procurement and public service, of whom two (2) shall represent public sector interests and three (3) shall represent the broad cross section of the private business community and professional associations; and (iv) the Chief Executive. Section 6 provides that the Board shall be responsible for the control and supervision of the NPPA, and shall provide such policy guidance and advice as will secure the efficient implementation of the functions, and enhance the overall performance of, the NPPA.²⁴⁰ However, the same Act also mentions that the NPPA should report to the Minister of Finance, so this has led to uncertainties with regards to the level of independence of the NPPA. It is recommended that these inconsistencies are addressed in the revisions/updating of the Act and Regulations. The salaries of board members also need to be approved by the MOFED, further casting a doubt over the NPPA's independence.

Although appointment of Board members is made by the President and is subject to the approval of Parliament, a person will cease to be a Board member, among other reasons, upon resignation by written notice to the Minister of Finance.²⁴¹ It should be considered whether such resignation notice more appropriately should be submitted to the appointing authority, *i.e.*, the President.

Section 12 of the Act provides for the establishment of a Secretariat to provide administrative, secretarial and other support to the NPPA and Review Panel. The Secretariat shall be headed by the Chief Executive. The Chief Executive shall be responsible for the day-to-day management of the affairs of both the NPPA and the Review Panel. The dual responsibilities of the Secretariat and Chief Executive in these areas may raise conflict of interest issues. Ideally, the Review Panel should be made a fully independent body.

With respect to the funding of the NPPA, the activities of the NPPA shall be financed by a fund consisting of: (i) moneys appropriated for the purposes of the NPPA by Parliament; and (ii) grants made to the NPPA by any agency or authority.²⁴² It is questionable whether true independence from other agencies/authorities can be achieved where a portion of the NPPA's funding may depend on such entities.

Finally, there is a significant concern as to whether the independent functioning of the NPPA could be undermined through separate legislation whereby other government entities are given authority to take action with respect to matters of public procurement. For example, under the

²³⁹ Act Sections 3, 14(4).

²⁴⁰ Act Section 4.

²⁴¹ Act Section 5(2)(f).

²⁴² Act Section 12(6).

GBAA, , subject to that act or any other enactment, the Minister of Finance may make Regulations with respect to: (i) the conditions under which public procurement contracts may be entered into; and (ii) the security to be given to secure due performance of public procurement contracts.²⁴³ It is unclear how such authority of the Minister of Finance comports with the regulatory functions of the NPPA set out in Section 14 of the Act and Regulation 8.

The NPPA has a shortage of staff and funding. The initial structure has not been put in place yet, but is evolving. The NPPA needs extra technical and financial support to aid in its expansion plans. The offices are going to be extended and there are plans to have outpost stations in other districts to assist in procurement functions/outcomes at the decentralized level. The NPPA also is in the process of improving its staffing level to cope with full assignments

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The regulatory body (or the assignment of responsibilities for the regulatory function if there is not a body) is at an adequate level in government and financing is secured by the legal/regulatory framework.	3
The body is at an adequate level but financing is subject to administrative decisions and can be changed easily.	2
The level of the body is too low or financing is inadequate for proper discharge of its responsibilities.	1
The level of the body is low, financing is inadequate and the body has no or little independence to perform its obligations.	0

Score: 1. A score of ‘1’ is attributed here since the NPPA is still understaffed and underfunded in order to fulfil its mandate efficiently and effectively. Also their independence is called into question.

Recommendations: Future revisions might consider whether changes should be made with respect to appointment and resignation to enhance consistency and independence. It should be considered whether structural revisions should be introduced to eliminate the potential conflict of interest and independence issues concerning the dual responsibilities of the Secretariat and Chief Executive, and remuneration matters. The Act and Regulations also should more clearly set forth matters pertaining to the Chief Executive. Another matter for consideration is the potential adverse impact that the receipt of funds from government agencies may have on the NPPA’s independence. As an administrative matter, any future revisions should consider dividing Section 12 of the Act in several separate sections addressing distinct subject matter currently grouped together under this one section, *e.g.*, the Secretariat, financial matters/recordkeeping. More globally, a general review of the broader legislative framework should be undertaken to ensure that the NPPA’s independence and regulatory authority is not undercut through authorizations granted to other government entities under separate legislative acts. The NPPA has a shortage of staff and funding, and needs technical and financial support to aid in its expansion plans.

²⁴³ Government Budgeting and Accountability Act, 2005, Section 31.

Sub-indicator 4(d) – The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions. Assessment Score: 0

The Act provides for separation of the NPPA’s responsibilities regarding the execution of procurement transactions. Specifically, the Act makes clear that nothing in the functions assigned to the NPPA shall be construed to include the power to participate in the award of any specific procurement contract.²⁴⁴ However, the Act also should prescribe the NPPA from engaging in other activities whereby the NPPA could be in a position to otherwise intervene in procurement operations.

As noted previously, there also is the potential for conflicts of interest based on the Secretariat’s and Chief Executives’ dual responsibilities vis-à-vis the NPPA and the Review Panel.

Another area of potential conflict of interest arises from the NPPA’s responsibility for debarment decisions as set forth in Section 35 and Regulation 157. Ideally, a procurement regulatory body, such as the NPPA shall not interfere with procurement operations as it otherwise would create a conflict of interest with its regulatory function. Therefore, ideally, the entity responsible for sanctioning a company in relation to fraudulent and corrupt practices, etc. should be independent. Alternatively, where the governance structure contemplates that one entity will be responsible for the exercise of multiple functions, then appropriate separation of such functions or other mitigating measures (such as implementation of a "glass-wall" among staff members tasked with different functions) should be maintained. Where, as here, such responsibility instead is vested in the procurement regulatory body, and absent any indication of having in place appropriate separation of internal functions or other mitigating measures, conflict of interest concerns are present.

Thus, although the Act appears to seek to establish the NPPA’s responsibilities in such a way as to avoid conflicts of interest and direct involvement in the execution of procurement transactions, it is not clear that such avoidance actually is achieved.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The body meets the requirement stated above.	3
The body does not meet the requirement as stated above.	0

Score: 0. Due to the perceived conflict of interest prevalent due to NPPA’s involvement with the IPRP and the debarment of firms, this indicator scores ‘0’.

Recommendations: Future revisions to the legislative framework enhancing the NPPA’s independence and more clearly segregating functions so as to avoid potential conflicts of interest and direct involvement of the NPPA in the execution of procurement transactions are recommended as described above in this indicator 4(d).

²⁴⁴ Act Section 14(2).

Indicator 5. Existence of institutional development capacity

Sub indicator 5(a) – The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information. Assessment Score: 1

In addition, the NPPA has a system of uploading procurement information on its website on a daily basis for procurements in the public sector. However, this information is not updated regularly and the information that is provided is sparse and the site is often down. Also, internet connectivity is not wide reaching in Sierra Leone, so the information is not easily accessible to all.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There is an integrated information system that provides as a minimum, up-to-date information as described above and is easily accessible to all interested parties at no or minimum cost. Responsibility for its management and operation is clearly defined.	3
There is an integrated system of the characteristics described that provides up-to-date information for the majority of contracts at the central government level but access is limited.	2
There is a system but it only provides information on some of the contracts and the system accessibility is limited.	1
There is no procurement information system except for some individual agency systems. Entities keep information on contract awards and some statistics.	0

Score: 1.

Recommendations: It should be ensured that a system is developed to capture information on all procurements in the public sector. A proper record-keeping and reporting system with respect to procurement information also should be put in place. Such information should be available for upload onto the NPPA’s website which should be kept current. Adequate staffing, funding, and technical support also should be secured in order to facilitate the full and proper functioning of the NPPA.

Sub-indicator 5(b) – The country has systems and procedures for collecting and monitoring national procurement statistics. Assessment Score: 1

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There is a system in operation to collect data

The NPPA has a system in operation for collecting procurement statistics. Basically, the NPPA

sends out a questionnaire (XLS format) and asks the MDAs to fill in the form. When the forms are returned, the NPPA runs annual reports based on the data provided on the forms (*i.e.* those statistics). There is significant room for improvement in data collection, which includes proper record-keeping and reporting mechanisms as already eluded to above.

(b) The system collects data on procurement by method, duration of different stages of the procurement cycle, awards of contracts, unit prices for most common types of goods and services and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements.

The NPPA conducts procurement surveys on compliance and performance. Also price surveys are conducted.

(c) Reliability of the information is high (verified by audits)

It appears that the acquired information is reliable, but although this has not been verified by audits.

(d) Analysis of information is routinely carried out, published and fed back into the system.

The mechanism to feed back information into the system is weak and is not carried out regularly.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The country has a system that meets the four requirements (a) through (d) listed above.	3
The country has a system that meets (a) plus two of the remaining conditions.	2
The system is in place to meet (a) plus one of the remaining conditions.	1
There is no statistical data collection system in place.	0

Score: 1. There is a man made system in place which captures the information mentioned in ‘b’ above, but the reliability of this information has not been verified by audits. Nor are analyses carried out routinely, published or fed back into the system. For this reason a score of ‘1’ applies.

Recommendations: The NPPA will need to design an improved system for record keeping, data collection, data analysis and frequent reporting.

Sub-indicator 5 (c) – A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and Regulations and how they should be implemented. Assessment Score: 2

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

There is a training and capacity building strategy that provides for:

(a) Substantive permanent training programs of suitable quality and content for the needs of the system.

There is no concrete capacity building strategy in Sierra Leone; although there are some training programs that were designed by Crown Agents together with the NPPA that are being used in current day training sessions.

(b) Evaluation and periodic adjustment based on feedback and needs.

Evaluation and periodic adjustment based on feedback and needs are not yet being done.

(c) Advisory service or help desk to address questions by procuring entities, suppliers, contractors and public.

A help desk exists under the NPPA to address such queries.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There is a training and capacity building strategy that provides for: (a) Substantive permanent training programs of suitable quality and content for the needs of the system. (b) Evaluation and periodic adjustment based on feedback and need. (c) Advisory service or help desk to absolve questions by procuring entities, suppliers, contractors and the public.	3
There is a training and capacity building strategy that provides for a) above.	2
The existing program is insufficient to meet the needs of the system and there is no procurement help desk or advisory service.	1
No formal training or help desk programs exist.	0

Score: 2. The conditions that are met are the existence of a help desk at the N PPA and the existence of training materials and the holding of training sessions for procurement practitioners. There is, however, a need for a proper procurement capacity building strategy and for evaluations and feedback mechanisms to be built into the training programs. The table provides for a score somewhere between ‘1’ or ‘2’ since the existing program is insufficient, but there is a help desk. So a score of ‘2’ is chosen by the team.

Recommendations: The NPPA needs to design a procurement capacity building strategy that addresses (a) supporting the civil service’s efforts in creating a professional procurement cadre in Sierra Leone, (b) supporting domestic training institutes and tertiary education institutes through building the capacity in-house to deliver certified procurement training;(c) delivering the training to as many stakeholders as possible in Sierra Leone; and, (d) building evaluation and feedback mechanisms into the training programs

Sub-indicator 5(d) – Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues. Assessment Score: 1

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Quality control standards provide quality assurance standards and a monitoring system for procurement processes and products

Section 14 (2) of the PPA, Section 4 (1) of the PPM and PPR 4 and 5 provide for quality assurance standards for processing procurement actions, but the monitoring system is lacking or very weak.

(b) Quality control standards provide for a staff performance evaluation process based on outcomes and professional behaviours.

There are no annual staff performance evaluations.

(c) Quality control standards ensure that operational audits are carried out regularly to monitor compliance with quality assurance standards.

The quality of operational audits carried out by the internal audit units is improving, but there are no measurable standards to allow for effective monitoring of delivered quality vis-a-vis procured quality. The internal audit performs largely transactional audits related to financial compliance and the function has no capacity to monitor technical quality on delivered contracts. Equally, the procurement staff has limited capacity to monitor compliance with the quality assurance standards. Evaluation of the performance procurement staff (or other staff) does not have any direct relationship with their compliance with these standards. The procurement regulatory instruments also do not provide for such forms of quality assurances, or for any linkage to staff evaluation criteria.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The procurement system complies with (a) through (c) above.	3
The procurement system complies with (a) and (b) above but there is no regular auditing to monitor compliance.	2
The procurement system has quality standards but does not monitor nor use the standards for staff performance evaluation.	1
The system does not have quality assurance or staff performance evaluation systems.	0

Score: 1. Quality assurance standards and monitoring systems exist in the Law and Regulations but compliance therewith is not used as an input to evaluate staff performance (Score 1).

Recommendations: Staff performance evaluations should be linked to the level of compliance of staff with the quality standards as defined in the PPA and Regulations, and such compliance should be included as part of the public service performance evaluation system managed under the auspices of the HRMO in central government and other HR units in SOEs. Efforts should be made by relevant government entities to strategize among themselves to monitor compliance. The supreme audit institution needs significant technical support to enable it to carry out annual procurement audits effectively.

Pillar III: Procurement Operations and Market Practices

Pillar III. Procurement Operations and Market Practices	Assessed score
6. Efficiency of procurement operations and practices.	
a) – Adequacy of procurement competence among government officials.	2
b) – Procurement training and information programs.	1
c) – Norms for the safekeeping of records and documents related to transactions and contract managt.	2
d) – Provisions for delegation of authority.	2
7. Functionality of the public procurement market.	
a) – Effective mechanisms for partnerships between the public and private sector.	1
b) – Private sector institutions are well organized and able to facilitate access to the market.	2
c) – Systemic constraints inhibiting the private sector’s capacity to access the procurement market.	2
8. Existence of contract administration and dispute resolution provisions.	
a) – Procedures are clearly defined for undertaking contract administration responsibilities.	1
b) – Contracts include adequate dispute resolution procedures.	0
c) – Procedures exist to enforce the outcome of the dispute resolution process.	0

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

Sub-indicator 6(a) – The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities. Assessment Score: 2

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There are defined skill and knowledge profiles for specialized procurement jobs.

A procurement cadre is being created in Sierra Leone, but it is still at a nascent stage. Job descriptions have been created which include some required qualifications but further work on national qualifications and career path creation in procurement is necessary.

(b) There is systematic matching of skills against requirements for competitive recruitment.

Recruitment under the present ‘cadre development’ for procurement is based on specific requirements necessary for those posts. New staff is hired based on competitive recruitment procedures. But pre-existing staff, currently conducting procurement, did not go through such cadre procedures.

(c) Positions are filled through competitive methods based on qualifications.

Positions currently are filled through competitive methods based on qualifications by the civil service, but pre-existing staff in operation did not go through this process.

(d) Staff required undertaking procurement activities on an *ad hoc* basis have the knowledge they need to undertake the activity or have access to professional staff that can provide this knowledge.

In many cases, staff do not have the knowledge needed to undertake procurement activities on an ad hoc basis, nor do they have access to professional staff that can provide this knowledge.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The system meets the requirements (a) through (d) listed above.	3
The system meets (a) plus one of the remaining conditions.	2
The system only meets (a) above.	1
The system does not meet any of the requirements.	0

Score: 2. Since the procurement cadre is being implemented, there are job descriptions containing some qualifications, and staffs are being hired based on specifications for the particular job, we would score this indicator ‘2’ as opposed to ‘1’.

Recommendations: The NPPA will need to work more closely with the civil service commission and outside experts (consultants) to create separate job descriptions, national qualifications and career paths for the procurement profession in Sierra Leone. In addition to this, the NPPA will need to align this work with the capacity building work that is supposed to provide the necessary training to address the qualifications required for those cadre posts (in country).

Sub-indicator 6(b) – The procurement training and information programs for government officials and for private sector participants are consistent with demand. Assessment Score: 1

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Training programs’ design is based on a skills gap inventory to match the needs of the system.

The widespread procurement training programs in universities, NGOs and the private sector was borne out of skills gap identification.

(b) Information and training programs on public procurement for private sector are offered regularly either by the government or by private institutions.

Information and training programs on public procurement for private sector are not offered regularly.

(c) The waiting time to get into a course (for public or private sector participants) is reasonable, say one or two terms.

Because training programs are not offered regularly, waiting times to get into a course (for public or private sector participants) are not reasonable.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The training and information programs available meet all the requirements listed in (a)-(c) above.	3
The training programs are sufficient in terms of content and frequency (waiting time) for government participants but there are few information programs for private sector.	2
There are training programs but they are deficient in terms of content and supply.	1
There is no systematic training or information program for public or private sector participants.	0

Score: 1. Training programs exist, but they are deficient in terms of content and supply.

Recommendations: The training modules will need to be assessed and revised in accordance with the capacity building strategy that needs to be designed.

Sub-indicator 6(c) – There are established norms for the safekeeping of records and documents related to transactions and contract management. Assessment Score: 2

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

a) The legal/regulatory framework establishes a list of the procurement records that must be kept at the operational level and what is available for public inspection, including conditions for access.

The Act requires a procuring entity to preserve all documentation relating to procurement proceedings in accordance with applicable rules concerning archiving of government documentation, for at least six (6) years following the date of final completion of the contract or the date of rejection of all bids or cancellation of the proceeding, as the case may be.²⁴⁵ Per the Regulations, such documentation shall be maintained in an individual file for each procurement requirement, marked with the relevant procurement reference number.²⁴⁶ Regulation 149(1) provides a non-exhaustive list of the types of information, documents and communications that are to be included in the procurement file, such as: (i) the authorized procurement requisition, including the description of goods, works or services required; (ii) the procurement plan, including the justification for the use of any method other than open competitive bidding or request for proposals; (iii) a copy of any invitation to pre-qualify or call for expressions of interest notice and any pre-qualification documents; (iv) all applications to pre-qualify or expressions of interest received and the evaluation of qualifications or comparison of expressions of interest; (v) the invitation to bid notice or any shortlist or list of pre-qualified bidders; (vi) the bidding documents, request for proposals or other solicitation document issued, including any

²⁴⁵ Act Section 32(1). With respect to the record retention period, Regulation 149(2) also refers to a period of at least six (6) years after contract termination, which would be a good addition to any amended Act. Similarly, a good addition to any amended Regulations would be a reference to a period running from the date of rejection of all bids as stated in the Act.

²⁴⁶ Regulation 149(1).

clarifications or amendments issued and minutes of any pre-bid meetings; (vii) the record of solicitation documents issued, bids received and all bid or proposal openings; (viii) all bids, proposals or quotations received, other than bids or proposals returned unopened to bidders; (ix) copies of all clarifications requested and responses received; (x) the evaluation report, including any individual score sheets or other documentation; (xi) records of any negotiations; (xii) any notice of proposed award; (xiii) any notice of bid acceptance; (xiv) a copy of the contract or purchase order document; (xv) copies of letters rejecting and debriefing unsuccessful bidders; (xvi) a copy of any published notice of contract award; (xviii) copies of original securities, negotiable documents or financial instruments; (xix) copies of all contract variations and modifications; (xx) all documentation and correspondence relating to contract administration; (xxi) copies of all documentation demonstrating performance of the contract, such as inspection reports, delivery documentation, interim certificates and payment authorizations; (xxii) any documentation relating to cancellation of a procurement process or termination of a contract; (xxiii) information relating to any applications for review; and (xxiv) all approvals from the procurement committee and any other award authority.

In addition, Section 32(2) of the Act requires a procuring entity to prepare and maintain a summary report of procurement proceedings, including as applicable: (i) a description of the object of the procurement; (ii) a list of participating bidders, their profile and qualifications, and the qualification criteria applied; (iii) bid prices; (iv) bid evaluation criteria; (v) a summary of the evaluation of bids; (vi) a summary of any review proceedings and decisions thereon; (vii) requests for clarifications and responses thereto; (viii) a statement of grounds for cancellation of procurement proceedings; (ix) a statement of grounds for the choice of a procurement method other than open bidding or request for proposals; (x) a statement of grounds for reduction of bid preparation periods; (xi) information concerning rejection of bids; and (xii) such other information as may be required by the Regulations. The Regulations do not require the inclusion of any other information.

As prescribed in Sections 32(3), certain information included in the summary report may be made available, on request, to a person after a bid, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract. However, in accordance with Section 32(4), other information included in the summary report may be made available, on request, only to suppliers, contractors or consultants that submitted bids, proposals, offers or quotations, or applied for pre-qualification, after a bid, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.

The Act expressly prohibits disclosure of information, if its disclosure would: (i) be contrary to law; (ii) impede law enforcement (iii) not be in the public interest;²⁴⁷ (iv) prejudice legitimate commercial interests of the parties, or (v) inhibit fair competition under the Act.²⁴⁸ The disclosure of information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, other than the summary to be included in the summary report also is expressly prohibited.²⁴⁹

Records and documents maintained by procuring entities on procurement shall be made available

²⁴⁷ More commonly, such a prohibition on disclosure is expressed in a manner that prohibits disclosure that would be contrary to the public interest.

²⁴⁸ Act Section 32(5).

²⁴⁹ Act Section 32(5).

for inspection by the NPPA, Anti-Corruption Commission and Auditor General upon request.²⁵⁰ Notably, these provisions also state that, upon request, donor officials also shall have access to procurement files for the purpose of audit and review where donor funds have been used for the procurement.²⁵¹

(b) The records should include:

- Public notices of bidding opportunities
- Bidding documents and addenda
- Bid opening records
- Bid evaluation reports
- Formal appeals by bidders and outcomes
- Final signed contract documents and addenda and amendments
- Claims and dispute resolutions
- Final payments
- Disbursement data (as required by the country's financial management system).

As set forth above, Regulation 149(1) provides a lengthy non-exhaustive list of the types of information, documents and communications records and documents that are to be included in the procurement file. This list includes the key information that generally should be maintained by a procuring entity. Although the list is not intended to be exhaustive, the Regulations might benefit from further revision to expressly include on the list documentation relating to contract claims and dispute resolution, and disbursement data. Section 32(2) of the Act also requires a procuring entity to prepare and maintain a summary report of procurement proceedings.

(c) There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles.

As discussed above, a procuring entity shall preserve all documentation relating to procurement proceedings for at least six (6) years following the date of final completion of the contract or the date of rejection of all bids or cancellation of the proceeding, as the case may be.²⁵² We have not been provided information to confirm whether such period is compatible with any applicable statute of limitations for investigating and prosecuting cases of fraud and corruption and/or with the audit cycles.

Records management also is addressed in Chapter 3 of the Procurement Manual. More generally, records in the custody of government offices also are subject to the provisions of the Public Archives Act 1965, as amended.

(d) There are established security protocols to protect records either physical or electronic.

The Act and Regulations do not establish security protocols for the protection of records, except that Regulation 152 requires original securities, negotiable documents, financial instruments or similar documents to be kept in a locked safe or other secure, locked location.²⁵³ Safeguarding of

²⁵⁰ Act Section 32(6); Regulation 149(3).

²⁵¹ Act Section 32(6); Regulation 149(3).

²⁵² Act Section 32(1); Regulation 149(1).

²⁵³ See also Procurement Manual Section 18.1.1.

electronic records is not addressed.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The procurement system complies with the requirements (a) through (d) listed above.	3
The procurement system complies with requirements (a), plus two of the remaining conditions.	2
The procurement system complies with (a) but not with the rest.	1
There is no mandatory list of documents or retention policy leaving it to the discretion of the procuring entity.	0

Score: 2. Conditions ‘a’ and ‘b’ are met and condition ‘c’ partially met (due to missing information), but ‘d’ is not; creating a score of ‘2’.

Recommendations: The Act and Regulations need to be updated to include security protocols for the protection of records. It also is unclear whether the retention period is compatible with any applicable statute of limitations for investigating and prosecuting cases of fraud and corruption and/or with the audit cycles.

Sub-indicator 6(d) – There are provisions for delegating authority to others who have the capacity to exercise responsibilities. Assessment Score: 2

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Delegation of decision making authority is decentralized to the lowest competent levels consistent with the risks associated and the monetary sums involved.

Delegation of authority and accountability to the lowest competent level is acknowledged in the Act. However, the thresholds for approval of contract awards set in the First Schedule of the Act require procurement committee-level approval for award of all but relatively low value contracts.

A procurement committee may delegate the authority to make contract award decisions to a procurement unit, depending on estimated maximum contract values and subject to reporting requirements, but guidance is not provided with respect to such values.²⁵⁴ The Regulations further provide that authority over issues pertaining to lower-value contract awards or contract modifications may be delegated by the procurement committee to the procurement unit or head of procuring entity; provided that the procurement committee shall provide retrospective verification and approval at its next meeting.²⁵⁵ It is unclear whether, in practice, such approval is provided as a matter of course, or whether the procurement committee actually could withhold approval and, if so, what the resultant impact would be on the prior decision. In addition, the Regulations provide that the procurement committee may appoint an evaluation committee for any

²⁵⁴ Act Sections 18(6), (7).

²⁵⁵ Regulation 14(5).

procurement requirement that exceeds the authority of the procurement unit delegated by the procurement committee. The Evaluation Committee is responsible for the evaluation of bids and preparation of an evaluation report with recommendations for approval in accordance with the authority levels set forth in the First Schedule of the Act.²⁵⁶ To the extent that a matter subject to delegation is not covered in the Act, revision is advised because delegation authorities should not be granted by the Regulations if not provided for in the Act.

Similarly, the head of a procuring entity may delegate responsibility for signature of small contracts to the head of procurement unit or other senior official of the entity.²⁵⁷ Again, however, no threshold for “small contracts” is stated.

(b) Delegation is regulated by law.

There is provision in the regulatory (the PPA) framework for delegation of authority.

(c) Accountability for decisions is precisely defined.

The Act contains a general statement to the effect that a procuring entity shall be responsible, and vote controllers and other officials concerned shall be accountable, for public procurement in accordance with applicable laws.²⁵⁸ Measures intended to promote the accountability of government procurement participants are set forth in the Regulations.²⁵⁹

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The system meets all requirements listed in a) to c) above.	3
The law establishes delegation and accountabilities but the system concentrates decisions at a high level creating congestions and delays.	2
Delegation is regulated in very general terms creating a need to clarify accountability for decision making.	1
Delegation is not regulated by law and left at the discretion of the procuring entity. There is lack of clarity on accountability.	0

Score: 2. Almost all of the conditions above are met, except that thresholds for delegation of decision making are not clearly defined for “smaller value” procurement. A score of ‘2’ is applied.

Recommendations: Matters relating to delegation and accountability could benefit from further elucidation in the Act and Regulations.

Indicator 7. Functionality of the public procurement market

²⁵⁶ Regulation 67(1).

²⁵⁷ Act Section 57(4).

²⁵⁸ Act Section 18(3).

²⁵⁹ Regulations Chapter XI, Section B.

Sub-indicator 7(a) – There are effective mechanisms for partnerships between the public and private sector. Assessment Score: 1

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Government encourages open dialogue with the private sector and has established formal mechanisms for open dialogue through associations or other means.

There are some mechanisms for partnership/dialogue between the private and public sector. Examples include the annual procurement forum organized by the NPPA and attended by all stakeholders to the procurement process. Individual workshops and sensitization programs are also organized with the private sector and civil society organizations.

(b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.

The GoSL does not have programs in place to help build capacity among private companies.

(c) The government encourages public/private partnerships and the mechanisms are well established in the legal framework to make possible such arrangements

A bill proposing a Public-Private Partnership (“PPP”) act has been drafted (“PPP Bill”), but the PPP Bill has not yet been passed by Parliament.²⁶⁰ As such, there is no PPP act in Sierra Leone at the moment. The PPP Bill also contemplates the issuance of related regulations as appropriate. Enactment of the PPP Bill into law would serve as a first step in the establishment of a legal framework governing public-private partnerships.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
(a) Government encourages open dialogue with the private sector and has several established and formal mechanisms for open dialogue through associations or other means. (b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace. (c) The government encourages public/private partnerships and the mechanisms are well established in the legal framework to make possible such arrangements.	3
The system meets (a) plus one other condition above.	2
The system only provides for (a) above.	1
There are no obvious mechanisms for dialogue or partnership between the public and private sector.	0

²⁶⁰ Bill No. 2010 entitled “The Public-Private Partnership Act, 2010,” published in *Supplement to the Sierra Leone Extraordinary Gazette* Vol. CXLI, No. 74, dated 27 October 2010.

Score: 1. There are fora for dialogue and partnerships between the public and private sectors, but conditions ‘b’ and ‘c’ are not satisfied, so a score of ‘1’ applies.

Recommendations: A mechanism to develop PPPs is required. The PPP Bill needs to be passed as a first step. Also, programs should be established to help build capacity among private companies.

Sub-indicator 7(b) – Private sector institutions are well organized and able to facilitate access to the market. Assessment Score: 2

This sub-indicator looks at the capacity within the private sector to respond to public procurement in the country. An important aspect to assess is the organizational capacity of the Small and Medium Enterprises (SMEs) and the access they have to information and other services to promote their participation. A well organized and competitive private sector should result in keen competition, better prices and an equitable distribution of business.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The private sector is competitive, well organized and able to participate in the competition for public procurement contracts.	3
There is a reasonably well functioning private sector but competition for large contracts is concentrated in a relatively small number of firms.	2
The private sector is relatively weak and/or competition is limited owing to monopolistic or oligopolistic features in important segments of the market.	1
The private sector is not well organized and lacks capacity and access to information for participation in the public procurement market.	0

Score: 2. For smaller value contracts there is local capacity to compete for public tenders and consultancy services. However, for larger contracts it is necessary to look to the regional and wider international markets, such as Ghana, Nigeria and Kenya. As the Sierra Leone economy expands it is likely that the local capacity will increase and that the private sector will become more vibrant. Currently, a few of the larger companies win most of the medium value contracts for which there is local capacity.

Recommendations: Mechanisms for competitive public procurement across the larger competitors should be developed. And private sector development should be promoted by the government and supported by the donors with technical expertise and investment.

Sub-indicator 7(c) – There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector’s capacity to access the procurement market. Assessment Score: 2

Participation in competition for public contracts depends on many conditions, including some that

are controlled or within the control of the government. Access to credit, reasonable contracting provisions that are seen to fairly distribute risks associated with performance of contracts, fair payment provisions that help offset the cost of doing business with the government are examples which can improve access by the private sector to the government marketplace. Alternatively, when the conditions are difficult for the private sector, the degree of competition will suffer. A survey of private sector participants should be carried out to help assess this item. The narrative of the assessment should describe the main constraints.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There are no major constraints inhibiting private sector access to the public procurement market.	3
There are some constraints inhibiting private sector access to the public procurement market, but competition is sufficient.	2
There are multiple constraints inhibiting private sector access to the public procurement market which often affect competition levels.	1
There are major constraints that discourage competition and the private sector firms are generally reluctant to participate in public procurement.	0

Score: 2. There is a willing private sector that wants to participate in public procurement to service the market but there are constraints such as access to credit, late payments, and access to modern technology. Under the given constraints there is still a sufficient level of competition among those SMEs who operate in this domestic market.

Recommendations: Building the financial capacity of the private sector is crucial as is access to financial services from the financial markets and banking systems.

Indicator 8. Existence of contract administration and dispute resolution provisions.

Sub-indicator 8(a) – Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner. Assessment Score: 1

There are 5 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Procedures for acceptance of final products and for issuance of contract amendments are part of the legal/regulatory framework or are incorporated as standard clauses in contracts.

The Act addresses matters of contract administration only in passing/in a cursory manner. Such matters instead are left to be addressed in the Regulations. Specifically, Chapter X of the Regulations sets forth provisions relating to matters of contract administration, such as inspection, acceptance, modifications, variations and termination. Payment-related considerations are

separately addressed in Chapter IX,²⁶¹ but perhaps instead should be included within Chapter X regarding contract administration. It also should be considered whether matters of contract administration, which are of critical importance to the proper functioning of a public procurement system, more appropriately should be addressed in the higher-level Act.

Acceptance of final products. A procuring entity is responsible for ensuring that all goods, works and services are subject to inspection and verification by a formal Inspection and Receipt Committee, prior to their acceptance.²⁶² The Inspection and Receipt Committee is to be constituted as per Regulation 145, and shall consist of at least three (3) persons, including: (i) a representative of the procurement unit;²⁶³ (ii) a supervising engineer, contract manager or public officer with appropriate technical knowledge; and (iii) a storekeeper or representative of the end user department or unit. The Inspection and Receipt Committee shall issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.²⁶⁴

In addition, a procuring entity is required to designate a member or team of staff as the contract administrator for each contract. Included among the responsibilities assigned to the contract administrator is the responsibility for managing the acceptance procedures.²⁶⁵

With regard to the GCC, acceptance is alluded to in GCC clauses on inspection and tests in the SBDs for Goods and Small Goods.²⁶⁶ A similar inspections and tests clause is included in the GCC for Local Purchase Order,²⁶⁷ which may be used for low-value procurement of goods, works or non-consultant services. With respect to works, completion and taking over are addressed, but only briefly, in some GCC.²⁶⁸ Regarding consultant services, some contract forms include a clause that simply identifies the client personnel responsible for accepting the contract deliverables.²⁶⁹

Issuance of contract amendments. Also included among the responsibilities assigned to the contract administrator is the responsibility to prepare or coordinate the preparation of any required contract variations, change orders or modifications, and to obtain all required approvals before they are issued.²⁷⁰

Regulation 146 sets forth procedures for processing contract modifications, which are described as changes to the terms and conditions of a contract other than contract variations. The process is initiated with the preparation of a written contract modification by a procurement unit, and cannot

²⁶¹ Regulations 135 to 141.

²⁶² Regulation 144(1). Requirements related to inspections and tests are to be stated in the bidding documents and conditions of contract per Regulation 143.

²⁶³ Regulation 18(1)(t) also provides that a procurement unit is to assist with the inspection and acceptance of goods, works and services, including participating in an Inspection and Receipt Committee as required.

²⁶⁴ Regulation 144(3).

²⁶⁵ Regulation 142(4)(g).

²⁶⁶ SBDs for Goods and Small Goods, GCC Clause 8.

²⁶⁷ SBDs for Goods and Small Goods, GCC Clause 7.

²⁶⁸ See e.g., SBD for Works ICB, GCC Clauses 55, 56; SBD for Works NCB, GCC Clause 28; SBD for Small Works, GCC Clause 28.

²⁶⁹ See, e.g., Form of Contract for Consultant Services Small Assignments TB Payments, Clause 4; Form of Contract for Consultant Services Small Assignments LS Payments, Clause 4.

²⁷⁰ Regulation 142(4)(e), (f).

be concluded (*i.e.*, a contract modification cannot be issued) until the procurement unit has obtained the approval of the appropriate awarding authority as specified in the First Schedule of the Act.²⁷¹ To be valid, a contract modification must be signed by authorized representatives of both the procuring entity and the supplier.²⁷² This process applies only to modifications that would increase the original contract value by no more than twenty five percent (25%), because modifications in excess of such increase are to be treated as a new procurement requirement.²⁷³ It should be taken into account that lower value modifications also could be so material by their nature that they also should be treated as a new procurement requirement.

Contract variations are regulated by Regulation 147, but procedures for processing contract variations, such as approval requirements, are left to be addressed in the contract. Generally, where appropriate, in order to facilitate adaptations to unanticipated events or changes in requirements, a contract may permit: (i) the contract administrator, supervising engineer or other designated official to order variations to the description of goods, works or services, the price or the completion date; or (ii) defined compensation events to justify variations in the price or in the completion date.²⁷⁴ Where a variation results in a change in price, any additional funds shall be committed, prior to issuance of the variation order, unless such funds are already provided by any contingency amount already included in the contract.²⁷⁵ The contract may include a maximum limit on the variations which can be issued without a contract modification in accordance with Regulation 146, and shall clearly state any approval requirements for contract variations.²⁷⁶

Some GCC contain clauses addressing contract amendments/variations.²⁷⁷

(b) Clauses are generally consistent with internationally accepted practices (see IFI standard contracts for good practice examples).

As a general observation, the standard bidding documents, including the GCC, are broadly based on the World Bank's standard bidding documents and forms. However, it has been noted that there are some differences from the World Bank's standard bidding documents.²⁷⁸ With specific regard to GCC clauses pertaining to matters of contract administration, such as inspection and

²⁷¹ Regulation 146(1), (2), (4).

²⁷² Regulation 146(3).

²⁷³ Regulation 146(4), (5).

²⁷⁴ Regulation 147(1).

²⁷⁵ Regulation 147(2).

²⁷⁶ Regulation 147(3), (4).

²⁷⁷ *See, e.g.*, SBDs for Goods and Small Goods, GCC Clauses 18, 19 (change orders, contract amendments); SBD for Works ICB, GCC Section D (variations); Local Purchase Order, GCC Clauses 17, 18 (change orders, contract amendments); Form of Contract for Consultant Services CTB Assignments, Clause 2.6 (modification); Form of Contract for Consultant Services LS Remuneration, Clause 2.4 (modification)), but amendments/variations are not addressed in all GCC (*see, e.g.*, SBD for Works NCB; SBD for Small Works; Form of Contract for Consultant Services Small Assignments TB Payments; Form of Contract for Consultant Services Small Assignments LS Payments).

²⁷⁸ For example, the World Bank's Standard Bidding Documents for Procurement of Works (ITB 41.1) provides for submission of the performance security within twenty-eight (28) days of the receipt of notification of award. The Sierra Leone SBD for Procurement of Works ICB requires submission of a performance security within fourteen (14) days after receipt of the Letter of Acceptance (ITB 34.1), which shall be issued within fourteen (14) days following notification of award (ITB 33.3). Therefore, the entire period could be more or less than twenty-eight (28) days depending on the timing of receipt of the Letter of Acceptance.

acceptance, quality control, and contract amendments, such clauses are generally consistent with accepted international practice. Nonetheless, as discussed above, not all GCC adequately address contract administration matters. For example, acceptance is only alluded to, or is addressed in only a cursory manner, in certain SBDs. Similarly, some, but not all, GCC contain clauses addressing contract amendments.

(c) Quality control (QC) procedures for goods are well defined in the model contracts/documents or in the Regulations. QC is carried out by competent officers, inspection firms or specialized testing facilities.

Included among the responsibilities assigned to the contract administrator under Regulation 142 is the responsibility to ensure that there is adequate cost, quality and time control, where required.²⁷⁹ The QC procedures thus are not defined, and the conditions under and manner in which they should be applied are vague, *i.e.*, “where required.” The legislative framework could benefit from further elucidation in this area.

QC procedures are not expressly addressed in the GCC of the SBDs for Goods and Small Goods, but QC broadly may be considered to be provided for in the GCC clauses regarding inspections and tests.²⁸⁰ The same may be said regarding the inspections and tests clause in the GCC for Local Purchase Order.²⁸¹

(d) Supervision of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors.

Supervision of civil works, *per se*, is not addressed in the Act or Regulations. Please see the foregoing discussion with respect to inspection and acceptance generally.

Quality control/supervision is addressed in the clauses included in Section C of the GCC of the SBD for Works ICB, which assigns responsibility for checking the Contractor’s work to the Client’s Project Manager. No such clauses are included in the SBD for Works NCB or SBD for Small Works, but the Client’s Project Manager generally is made responsible for matters pertaining to contract performance.

(e) Final payments are processed promptly as stipulated in the contract.

The Regulations provide for a payment period of thirty (30) days from the procuring entity’s acceptance of the goods, works or services, unless this is varied in the conditions of the contract, and upon submission of required documentation.²⁸² The contract may provide for advance payments and progress payments to suppliers, and retention by the procuring entity under conditions specified in the Regulations.²⁸³

It should be noted with respect to payments that the government Budgeting and Accountability Act, 2005 imposes additional review, approval and certification requirements pertaining to actions to be taken by the head of the relevant budgetary agency and the Minister of Finance,

²⁷⁹ Regulation 142(4)(d).

²⁸⁰ GCC Clause 8.

²⁸¹ GCC Clause 7.

²⁸² Regulations 136, 140.

²⁸³ Regulations 137, 138, 139. Payment security may be required as per Regulation 141.

which must be satisfied before payment may be made to a contractor/supplier consultant.²⁸⁴ Not only might such requirements lead to delays in payments, they also create the potential that payments could be withheld due to some failure to fully satisfy such requirements. Such concerns are in addition to those mentioned above regarding the authorization that the Government Budgeting and Accountability Act, 2005 grants to the Minister of Finance to make Regulations with respect to public procurement contracting matters.²⁸⁵ In practice, most payments are late. Measures should be put in place to make the payment process more efficient.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Contract administration procedures provide for (a) to (e) above.	3
Contract administration procedures provide for (a) plus three of the remaining requirements.	2
Contract administration procedures provide for (a) plus two of the remaining requirements.	1
Contract administration procedures do not meet the requirements of (a) to (e) above.	0

Score: 1. Conditions ‘a’, ‘b’, and ‘d’ are met, but ‘c’ and ‘e’ are not, so a score of ‘1’ applies.

Recommendations: Future revisions to the Act and Regulations should more fully address key elements of contract administration. Also, the SBDs should be revised to ensure comprehensiveness and consistency. A general review of the broader legislative framework should be undertaken to ensure that the public procurement system functions independently and is not subject to manipulation through authorizations granted to other government entities under separate legislative acts. Measures should be put in place to streamline and make the payment process more efficient.

Sub-indicator 8(b) – Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract.
Assessment Score: 0

There are 5 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There is an Arbitration law in the country.

There is no arbitration law.

(b) The law is consistent with generally accepted practices for neutrality of arbitrators, due process, expediency and enforceability.

Not applicable.

²⁸⁴ See generally Part V of the Government Budgeting and Accountability Act, 2005.

²⁸⁵ Government Budgeting and Accountability Act, 2005, Section 31.

(c) The country accepts as a matter of course international arbitration for international competitive bidding.

The country accepts as a matter of course international arbitration for ICB.

(d) Provisions for Alternative Dispute Resolution (ADR) are standard in contracts.

The general conditions of contract of the standard bidding documents generally provide for recourse to arbitration where the contracting parties are unable to amicably resolve a dispute as set forth below. The Procurement Manual provides that arbitration should be the preferred method of resolving major disputes wherever practical.²⁸⁶

(e) ADR provisions conform to the international standard wording (may refer to IFI standard bidding documents for sample of good international practice).

The dispute resolution provisions of the GCC of the SBD generally conform to international good practice standards in providing (or at least suggesting a preference) for arbitration when the contracting parties are unable to amicably resolve a dispute. Under some GCC, the dispute shall be referred to arbitration conducted in accordance with the UNCITRAL Arbitration Rules for contracts with foreign contractors or consultants, and shall be referred to adjudication or arbitration in accordance with the laws of Sierra Leone for contracts with suppliers or consultants that are nationals of Sierra Leone.²⁸⁷ The Forms of Contract for Consultant Services CTB Assignments and LS Remuneration GCC/SCC include a provision that an arbitration decision shall be enforceable in any court of competent jurisdiction, but such provision is not consistently included in the GCCs.

For any dispute not amicably resolved, the Local Purchase Order specifies arbitration in accordance with the rules of procedure of an authorized arbitration service within Sierra Leone.²⁸⁸ The GCC for the Forms of Contract for Consultant Services Small Assignments TB Payments and Small Assignments LS Payments provide for arbitration in accordance with the laws of Sierra Leone in such cases.²⁸⁹

Where contracting parties are unable to amicably resolve a dispute pursuant to the ICB Works GCC, the contractor should first refer the dispute for review by the Employer's Head of Entity. If no agreed resolution is achieved at that level, then the dispute is to be referred for decision to an adjudicator. Either party may refer the decision of the adjudicator to arbitration, which shall be conducted in accordance with the arbitration procedures of the institution named in the Contract Data Sheet, but no institutions are suggested in the Standard Bidding Documents for Works ICB or User Guide.²⁹⁰ In contrast, under the NCB Works GCC and Small Works GCC, a dispute that

²⁸⁶ Procurement Manual Section 1.7.

²⁸⁷ See, e.g., SBD for Procurement of Goods, GCC Clause 28; Form of Contract for Consultant Services CTB Assignments, GCC/SCC Clause 8; Form of Contract for Consultant Services LS Remuneration, GCC/SCC Clause 7.

²⁸⁸ GCC Clause 27.

²⁸⁹ GCC Clause 12.

²⁹⁰ SBD for Procurement of Works ICB, GCC Clauses 24, 25.

is not amicably resolved is referred for resolution to a panel of three (3) independent experts.²⁹¹ If the dispute still is not resolved, it can be brought to arbitration in accordance with the law governing the contract as per the general conditions of contract of the standard bidding documents for works, or referred to the civil law court as per the standard contract data section of such standard bidding documents.²⁹² More commonly, one would expect to find a larger works, or ICB works, contract to include a clause providing for referral of a dispute to an expert panel, and perhaps a referral to an adjudicator provision in a smaller works contract. In fact, referral of a dispute to a panel of experts in the large works context is a common international practice (e.g., dispute adjudication board in FIDIC *Conditions of Contract for Construction*). It should be considered whether such a clause appropriately should be included in the ICB Works GCC, as already is the case with the NCB Works GCC and Small Works GCC.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The system meets all the good practice standards (a) to (e) above	3
The system meets (a) plus three of the remaining good practice standards.	2
The system meets (a) plus two of the remaining good practice standards.	1
The system does not use ADR as a normal dispute resolution mechanism in public contracts.	0

Score: 0. Condition ‘a’ is not met above so the only score applicable in this case is ‘0’.

Recommendations: Sierra Leone should formulate and pass an arbitration law. Revisions to the GCCs also should be considered as per the above observations.

Sub-indicator 8(c) – Procedures exist to enforce the outcome of the dispute resolution process. Assessment Score: 0

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) The country is a member of the New York Convention on enforcement of international arbitration awards.

The country is not a member of the New York Convention.

(b) The country has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts.

It is not apparent from the procurement legislative framework that procedures are in place to enable the winner in a dispute to seek enforcement of the outcome by going to court.

²⁹¹ SBD for Procurement of Works NCB, GCC Clause 34; SBD for Procurement of Small Works, GCC Clause 34.

²⁹² SBD for Procurement of Works NCB, GCC Clause 34 and Contract Data Clause 34.1; SBD for Procurement of Small Works, GCC Clause 34 and Contract Data Clause 34.1.

(c) The country has a process to monitor this area of contract administration and to address performance issues.

There is no process in place to monitor this area of contract administration or to address performance issues, although the PPA and Regulations do broadly outline matters of contract administration, and the Procurement Manual addresses contract management matters generally.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The procurement system in the country meets the requirements of a-c above	3
The country meets two of the three conditions above.	2
The country meets condition a).	1
The country does not meet any of the requirements.	0

Score: 0. The conditions above are not generally met, so a score of '0' applies.

Recommendations: The GoSL should consider becoming a signatory to the New York Convention on enforcement of international arbitration awards. Procedures should be put in place to enable the winner in a dispute to seek enforcement of the outcome by going to court. Procedures to monitor the dispute resolution process and to address performance issues also should be put in place.

Pillar IV: Transparency and Integrity of the Procurement System

Pillar IV. Integrity and Transparency of the Public Procurement System	Assessed score
9. Effectiveness of control and audit systems	
a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement.	1
b) – Enforcement and follow-up on findings and recommendations of the control.	1
c) – The internal control system provides timely information on compliance to enable management action.	1
d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.	2
e) – Auditors are sufficiently informed about procurement requirements.	1
10. Efficiency of appeals mechanism.	
a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	3
b) – Capacity of the complaint review system and enforcement of decisions.	2
c) – Fairness of the complaints system.	2
d) – Public access to decisions.	1
(e) – Independence of the administrative review body.	0
11. Accessibility to information.	
Publication and distribution of information.	2
12. Ethics and anticorruption policy and measures.	
a) - Legal provisions on corruption, fraud, conflict of interest, and unethical behaviour.	2
b) – Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices.	3
c) – Enforcement of rulings and penalties.	2
d) – Measures exist to prevent and detect fraud and corruption in public procurement.	2
e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors.	1
f) – Mechanism for reporting fraudulent, corrupt, or unethical behavior.	3
g) - Codes of Conduct/Codes of Ethics for participant and provision for disclosure for those in decision making positions.	3

Indicator 9 - The country has effective control and audit systems

Sub-indicator 9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework. Assessment Score: 1

There are 4 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function.

The Audit Act and the GBAA (2005) both affirm the independence of the audit and control functions in government through the external audit and internal audit departments. Audit encompasses all public expenditures, whether on procurements or on personnel costs. The focus

of audits tends, however, to be directed mainly to fiduciary aspects of underlying expenditures – *i.e.* compliance with rules and procedures, and transaction related matters.

(b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures.

Implementation of control mechanisms in MDAs, based on clearly defined procedures is uneven. A number of MDAs have functioning internal audit departments that serve to strengthen internal management of the entities and reinforce controls from a systemic perspective. The capacity is, however, weak as the staffing complement is yet to achieve optimal levels for full exercise of control mechanisms across the board.

(c) Proper balance between timely and efficient decision making and adequate risk mitigation.

The lack of proper use of risk-based internal control mechanisms is one of the characteristics undermining the efficiency and effectiveness of measures designed to avert risks. Internal audit reports are produced and submitted but the follow-up process is rather weak. Delays in reporting and inefficiencies in quality of reports are also common.

(d) Specific periodic risk assessment and controls tailored to risk management.

Specific periodic risk assessment and controls tailored to risk management generally are lacking. Some elements of risk assessment and attribution are carried out during annual audits – focusing on financial aspects – but these are limited.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The system in the country provides for: (a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function. (b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures. (c) Proper balance between timely and efficient decision making and adequate risk mitigation. (d) Specific periodic risk assessment and controls tailored to risk management.	3
The system in the country meets a) plus two of the above.	2
The system meets a) but controls are unduly burdensome and time-consuming hindering efficient decision making.	1
Controls are imprecise or lax and inadequate to the point that there is weak enforcement of the laws and Regulations and ample risk for fraud and corruption.	0

Score: 1. Although there is an independent oversight structure and mechanism in place, these do not respond effectively to identify or mitigate risks through a coherent risk management process.

Moreover, internal audit departments in MDAs remain inadequately strengthened to reinforce the control processes in MDAs.

Recommendations res: Strengthening the internal audit function across MDAs and focusing the function on systemic risk control measures would need to be established through intensive training and enhancements in staffing strength. Equally, the external audit function would need to conduct specialist training on procurement audits beyond the focus on compliance and regularity.

Sub-indicator 9(b) – Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance. Assessment Score: 1

The purpose of this indicator is to review the extent to which internal and external audit recommendations are implemented within a reasonable time. This may be expressed as percentage of recommendations implemented within six months, a year, over a year or never implemented.

Routine audits are performed in accordance with the Regulations and laws, but responses, observations, and recommendation are rarely implemented.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Internal or external audits are carried at least annually and recommendations are responded to or implemented within six months of the submission of the auditors' report.	3
Audits are carried out annually but response to or implementation of the auditors' recommendations takes up to a year.	2
Audits are performed annually but recommendations are rarely responded to or implemented.	1
Audits are performed erratically and recommendations are not normally implemented.	0

Score: 1. Internal audits are conducted on a majority of MDAs quarterly, but the recommendations of these reports are selectively and/or not generally implemented. External audits are conducted annually within nine (9) months of receipt of draft accounts from the audited entities; however, while about 79% recommendations (as reported by the Sierra Leone Audit Service) are responded to within the allowed statutory requirement of thirty (30) days, a significant number of recommendations, in value terms, remains unaddressed. .

Recommendations: The government has to come up with a mechanism that ensures that all recommendations are adopted of audit reports. This may need to include some form of penalties for failing to respond to audit recommendations.

Sub-indicator 9(c) – The internal control system provides timely information on compliance to enable management action. Assessment Score: 1

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There are written standards for the internal control unit to convey issues to management depending on the urgency of the matter.

There are laid down rules in internal audit manuals as well as external audit manuals that should be followed to comply with internal control standards and to be commented upon in periodic reporting to management throughout the year.

(b) There is established regular periodic reporting to management throughout the year.

While internal audit reports are submitted to management for most MDAs quarterly, these reports lack impact and effectiveness in terms of substance and scope.

(c) The established periodicity and written standards are complied with.

The quarterly reporting standards established in respect of internal audit reports, pertaining to internal controls, are not fully complied with for a number of MDAs. External audit reports comment on internal controls but the risk-based focus is not applied.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
All requirements (a) through (c) listed above are met.	3
Requirement (a) plus one of the above are met.	2
Only requirement (a) is met.	1
There is no functioning internal control system	0

Score: 1. Standards for internal control are established through relevant legislations – GBAA, FAR, Audit Act, and in internal audit and external audit manuals – but compliance with established reporting requirements is weak.

Recommendations: Periodic reporting and compliance with report action points require enforcement. Capacity development programs for internal auditors and external auditors should be strengthened and sanctions should be established and enforced for non-compliance with recommendations to implement internal control measures.

Sub-indicator 9(d) – The internal control systems are sufficiently defined to allow performance audits to be conducted. Assessment Score: 2

There is a manual that states internal control procedures, but some improvement is needed. There is sufficient information retained to enable auditors to verify that the written internal control procedures are adhered to.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
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There are internal control procedures including a manual that state the requirements for this activity which is widely available to all staff.	3
There are internal control procedures but there are omissions or practices that need some improvement.	2
There are procedures but adherence to them is uneven.	1
The internal control system is poorly defined or non-existent.	0

Score: 2. Manuals for control procedures are available for both the internal and external audit functions but the practice in the application of the procedures is weak across audit institutions.

Recommendations: (i) enhancing capacity of auditors through training; (ii) aligning career progression with performance criteria linked to improvements in application; and (iii) defining improved internal control measures.

Sub-indicator 9(e) – Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance. Assessment Score: 1

The objective of this indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits receive adequate training or are selected following criteria that explicitly requires that they demonstrate sufficient knowledge of the subject. Auditors should normally receive formal training on procurement requirements, principles operations, laws and Regulations and processes. Alternatively, they should have extensive experience in public procurement or be supported by procurement specialists or consultants.

There are no trained internal and external auditors on procurement principles, operations and laws and Regulations.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There is an established program to train internal and external auditors to ensure that they are well versed in procurement principles, operations, laws, and Regulations and the selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits.	3
If auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.	2
There is a requirement that the auditors have general knowledge of procurement principles, operations, laws, and Regulations but they are not supported generally by specialists in procurement.	1
There is no requirement for the auditors to have knowledge of procurement and there is no formal training program and no technical support is provided to the auditors.	0

Score: 1. The requirement exists for auditors to be proficient in all aspects of auditing, including on procurement audits. However, there is no existing mechanism to support the auditors to

acquire and use specialist knowledge on procurement audits although some support could henceforth be obtained from the NPPA.

Recommendations: A focused and specialised procurement capacity building program catering to the requirements of auditors (internal and external) should be introduced.

Indicator 10 Efficiency of appeals mechanism.

Sub-indicator 10(a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law. Assessment Score: 2

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) Decisions are rendered on the basis of available evidence submitted by the parties to a specified body that has the authority to issue a final decision that is binding unless referred to an appeals body.

As discussed above, the legislative framework provides that complaints may be submitted to the head of the procuring entity and/or the Review Panel in accordance with Part VI of the Act and Section D of the Regulations. Decisions on such complaints are to be made based on: (i) information and evidence contained in the complaint; (ii) information from the procuring entity's procurement records; (iii) information provided by staff of the procuring entity; (iv) information from other bidders; and (v) information in the investigation and decision of the head of the procuring entity, where applicable.²⁹³ The operation of the complaints review system in practice is addressed under Sub-indicator 10(c) below.

(b) An appeals body exists which has the authority to review decisions of the specified complaints body and issue final enforceable decisions.

A complaint that was first decided by the head of the procuring entity subsequently may be appealed to the Review Panel.²⁹⁴ The legislative framework does not provide for any appeal of a decision of the Review Panel. Nor does the legislative framework provide for any form of judicial review concerning procurement complaints, which seems to be contrary to the Constitution as previously discussed. The legislative framework also is lacking any enforcement provisions.

(c) There are times specified for the submission and review of complaints and issuing of decisions that do not unduly delay the procurement process.

Complaints to the head of the procuring entity must be submitted within fourteen (14) calendar days, or other deadlines set in the Regulations, of the earlier of when the bidder became, or should have become aware, of the circumstances giving rise to the complaint.²⁹⁵ The head of the

²⁹³ Regulation 161(1) and (3).

²⁹⁴ Act Section 65(1)(a).

²⁹⁵ Act Section 64(2). The Regulations do not set any other deadlines.

procuring entity shall issue a written decision within five (5) working days after submission of a timely complaint.²⁹⁶

A complaint to the Review Panel concerning a contract that has entered into force must be submitted within ten (10) working days of the earlier of when the bidder became, or should have become, aware of the circumstances giving rise to the complaint.²⁹⁷ All other complaints to the Review Panel must be submitted within ten (10) working days from the elapse of the time prescribed for decision by the head of the procuring entity, or from the date on which the decision of the head of the procuring entity was communicated to the bidder (complainant).²⁹⁸ The Review Panel is required to issue a written decision within ten (10) working days after its receipt of a timely complaint (and administrative fee).²⁹⁹

Regardless of venue, a complaint concerning alleged improprieties in a solicitation (for applications to prequalify or bids) that are apparent prior to bid opening is timely only if submitted prior to bid opening.³⁰⁰

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The country has a system that meets the requirements of (a) through (c) above	3
The country has a system that meets (a) and (b) above, but the process is not controlled with regard to (c).	2
The system only provides for (a) above with any appeals having to go through the judicial system requiring a lengthy process.	1
The system does not meet the conditions of (a) –(c) above, leaving only the courts.	0

Score: 2. A score of ‘2’ would have to be attributed to this sub-indicator as there is still a major shortcoming in that the authority of the IPRP is not addressed in the legislation and there is no appeals procedure in place to appeal against a decision of the IPRP. This will need to be addressed in the next update of the act and Regulations.

Recommendations: Matters such as right to appeal/subsequent review and enforceability of decisions should be considered as part of any future revisions. Notably, the right to judicial review should be provided for with respect to procurement complaints, which would help promote transparency and accountability in public procurement, and for consistency with the Constitution. The same is true with regard to enforcement provisions.

Sub-indicator 10(b) – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed. Assessment Score: 2

²⁹⁶ Act Section 64(3); Regulation 160(2).

²⁹⁷ Act Section 65(1)(c).

²⁹⁸ Act Section 64(5).

²⁹⁹ Act Section 65(3); Regulation 161(4).

³⁰⁰ Act Section 63(3).

Sections 64 and 65 of the Act and Regulations 160 and 161, establish terms and timelines for the efficient submission, review and resolution of complaints. However, the legislative framework does not provide for any means of enforcement with respect to decisions. Thus, there are terms and timeframes established for the submission, review and resolution of complaints, but the capacity to handle complaints, and the mechanisms and authority for enforcement of decisions are unclear.

In practice, the complaints review system is not very effective, because bidders and the general public largely are not aware of the IPRP'S existence. The IPRP currently seems to be lacking experience in the procurement field so their handling of cases related to procurement-specific matters is not very efficient. When the matter under review concerns legal matters then, the IPRP is more efficient.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The complaint review system has precise and reasonable conditions and timeframes for decision by the complaint review system and clear enforcement authority and mechanisms.	3
There are terms and timeframes established for resolution of complaints but mechanisms and authority for enforcement are unclear or cumbersome.	2
Terms and timeframes for resolution of complaints or enforcement mechanisms and responsibilities are vague.	1
There are no stipulated terms and timeframes for resolution of complaints and responsibility for enforcement is not clear.	0

Score: 2. There are terms and timeframes established for resolution of complaints but mechanisms and authority for enforcement are unclear or cumbersome.

Recommendations: Although terms and timeframes are established for the submission, review and resolution of complaints, the capacity to handle complaints, and the mechanisms and authority for enforcement of decisions, are unclear. Such matters should be addressed in future revisions to the Act and Regulations accordingly. Mechanisms and authority for enforcement should be more clearly established, and efficiency in the administration of the system should be encouraged. IPRP members should be trained in procurement, and efforts should be made to increase public awareness of the IPRP's functions.

Sub-indicator 10 (c) – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information. Assessment Score: 2

A review of a small sampling of published IPRP decisions indicates that decisions of the IPRP are fair and unbiased, and are rendered based on relevant information presented and in accordance with the applicable requirements in the legislative framework. In the sample decisions reviewed, the remedies imposed by the IPRP are consistent with the findings of the case and, generally, with the available remedies provided for in the legislative framework. In the latter respect, however, Section 65(5) of the Act could benefit from clarification as to what is meant by its language to the effect that the remedies that may be ordered by the IPRP in certain areas do not extend to “any act or decision bringing the contract into force.” The meaning of such

exclusion is not clear, as noted specifically in connection with a recent IPRP decision where the IPRP upheld the complaint, ordered (among other things) the annulment of a contract award decision, and directed the procuring entity to instead award the contract to the complainant who the IPRP determined to be the bidder who submitted the lowest responsive bid.³⁰¹ It appears (but is not entirely clear) that such substitution of the procuring entity's decision by the IPRP is not inconsistent with the quoted text of Section 65(5), but such text should be clarified to avoid potential ambiguity in understanding its meaning.

As noted above, the legislative framework does not provide for appeal or judicial review of an IPRP decision. Nor does the legislative framework include any enforcement provisions

Over the past five (5) years the IPRP has reviewed quite a number of cases. The problem, however, is the enforcement of the decisions, which results from the lack of any enforcement powers in the IPRP's mandate. From June 2010 to date, the IPRP has made rulings on four (4) cases. One case is currently being reviewed by the IPRP.

No cases or publications are available to review decisions made at the procuring entity level (before it gets to the IPRP level). It should be considered whether publication of decisions should be instituted at the agency level.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Procedures governing the decision making process of the review body provide that decisions are: <ul style="list-style-type: none"> a) based on information relevant to the case. b) balanced and unbiased in consideration of the relevant information. c) can be subject to higher level review. d) result in remedies that are relevant to correcting the implementation of the process or procedures. 	3
Procedures comply with (a) plus two of the remaining conditions above.	2
Procedures comply with (a) above.	1
The system does not comply with any of the above.	0

Score: 2. 'a', 'b', and 'd' satisfied above.

Recommendations: The authority of IPRP should be made more robust, and enforcement of appropriate remedies should be established. The right to higher-level and judicial review also should be established in the legislative framework. Section 65(5) of the Act could benefit from clarification with respect to the remedies available to the IPRP. It should be considered whether publication of decisions should be instituted at the agency level.

³⁰¹ IPRP decision dated March 22, 2010, *In the Matter between Zenith Enterprise and Ministry of Education, Youth and Sports*.

Sub-indicator 10(d) – Decisions are published and made available to all interested parties and to the public. Assessment Score: 1

Decisions are public by law and posted in easily accessible places (preferably posted at a dedicated government procurement website on the Internet). Publication of decisions enables interested parties to be better informed as to the consistency and fairness of the process.

The decision of a head of the procuring entity is to be sent to: (i) the complaining bidder; (ii) all other bidders; (iii) the relevant procurement unit and procurement committee; and (iv) the NPPA.³⁰² Neither the Act nor the Regulations specify to whom a decision of the Review Panel must be provided. The Act and Regulations also are silent with regard to the publication of decisions on complaints. The legislative framework should provide for the publication of such decisions in a manner that is easily accessible, and free of charge, in order to promote transparency, accountability and consistency, such as via posting on the NPPA website. Although some recent decisions of the Review Panel are posted on the NPPA website, it is unclear whether this is a consistent practice. Some such decisions also published in local newspapers. Decisions by heads of procuring entities on complaints are not so available. The legislative framework also should make provision for the protection of confidential information in connection with such publication.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
All decisions are publicly posted in a government web site or another easily accessible place	3
All decisions are posted in a somewhat restricted access media (<i>e.g.</i> the official gazette of limited circulation).	2
Publication is not mandatory and publication is left to the discretion of the review bodies making access difficult.	1
Decisions are not published and access is restricted.	0

Score: 1. Decisions of the IPRP, but not heads of procuring entities, are posted to the NPPA website, but publication is not mandatory and publication is left to the discretion of the review bodies which makes access difficult.

Recommendations: The legislative framework should provide for the publication of decisions on complaints, at all levels, in a manner that is easily accessible, and free of charge, in order to promote transparency, accountability and consistency, such as via posting on the NPPA website. The legislative framework also should make provision for the protection of confidential information in connection with such publication.

Sub-indicator 10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints. Assessment Score: 0

³⁰² Regulation 160.

Although the legislative framework provides the Review Panel with the authority to resolve complaints, as per the above discussion, it is unclear whether the Review Panel is truly independent. To briefly summarize the foregoing discussion in this regard, although the Act establishes the Review Panel for the purpose of conducting *independent* administrative review of complaints and challenges to award decisions,³⁰³ there is some question as to whether the Review Panel truly is independent from NPPA influence. For example, there is the potential for conflicts of interest given that the NPPA’s Secretariat provides administrative, secretarial and other support to both the NPPA and the Review Panel,³⁰⁴ and that the Chief Executive is responsible for the day-day-to-day management of the affairs of both the NPPA and the Review Panel.³⁰⁵ It also is unclear to whom the Review Panel ultimately reports.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The complaint review body is independent and autonomous with regard to resolving complaints.	3
The complaint review body is not independent and autonomous with regard to resolving complaints.	0

Score: 0. The independence of the IPRP is called into question. For this reason the score of ‘0’ is our only option.

Recommendations: Future revisions enhancing the Review Panel’s independence and more clearly segregating functions so as to avoid potential conflicts of interest should be considered.

Indicator 11. Degree of access to information

Sub-indicator 11(a) – Information is published and distributed through available media with support from information technology when feasible. Assessment Score: 2

Public access to procurement information is essential to transparency and creates a basis for social audit by interested stakeholders. Public information should be easy to find, comprehensive and user friendly providing information of relevance. The assessor should be able to verify easy access and the content of information made available to the public. The system should also include provisions to protect the disclosure of proprietary, commercial, personal or financial information of a confidential or sensitive nature. Information should be consolidated into a single place and when the technology is available in the country, a dedicated website should be created for this purpose. Commitment, backed by requirements in the legal/regulatory framework should ensure that agencies duly post the information required on a timely basis.

Publication and distribution have improved slightly with a lot of procurement information on the website, radio and TV and newspapers. The challenges that remain, however, include: (i) the limited distribution of some of the tabloids limits access to information through this media to the few residents in the cities; (ii) in a country with high illiteracy rate, the information in the papers benefits only the few literate; (iii) the electronic media is not generally recognised as a source of

³⁰³ Act Section 20.

³⁰⁴ Act Section 12(1).

³⁰⁵ Act Section 12(4)(a).

invitation for bids; (iv) the cost of reaching the notice boards and their location make them difficult to use by potential beneficiaries; and (v) the low level of internet literacy and difficulty of accessing the Internet makes its use ineffective.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
Information on procurement is easily accessible in media of wide circulation and availability. The information provided is centralized at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	3
Information is posted in media not readily and widely accessible or not user friendly for the public at large OR is difficult to understand to the average user OR essential information is lacking.	2
Information is difficult to get and very limited in content and availability.	1
There is no public information system as such and it is generally up the procuring entity to publish information.	0

Score: 2. Information is posted on the NPPA website, but the reliability of the site is not always guaranteed (dead links), and the consistency with which information is posted is irregular. Many people do not have access to the World Wide Web (Internet) in Sierra Leone and the information is not always user friendly.

Recommendations: Measures need to be taken to improve the NPPA website and its management. There also needs to be an improvement in the gathering of data and a regular publishing of standard reports that may be of interest to the general public, so as to engage/mobilize civil society's interest in monitoring procurement reforms and outcomes.

Indicator 12. The country has ethics and anti-corruption measures in place

Sub-indicator 12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behaviour and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behaviour. Assessment Score: 2

As further set forth herein, the Act and Regulations, as well as the ethics-related provisions of the Procurement Manual, contain provisions addressing corruption, fraud, conflicts of interest, and unethical behavior. These documents also set out actions that may be taken with regard to such behavior, including potential sanctions. Such matters are addressed directly in the referenced documents, and also through cross-references to the Anti-Corruption Act, 2000 and the revised Civil Service Code. As further elaborated on below, the Anti-Corruption Act, 2008 lists conduct constituting an offence that may subject a public official to administrative, civil and/or criminal penalties, sets out the process of dealing with such matters, and addresses integrity issues generally.

The Act requires that bidding documents provide bidders with notice of conflict of interest restrictions and anti-fraud and corruption rules.³⁰⁶ However, only some bidding documents and GCC include such provisions, and even these are not included in a consistent manner.³⁰⁷

With regard to consultant services, requests for proposals are to include notice of conflict-of-interest restrictions and anti-fraud and corruption rules, including the grounds for potential debarment from future participation in procurement of goods, services or works that may result from the assignment under consideration.³⁰⁸ Again, however, only some bidding documents and GCC include such provisions, and even these are not included in a consistent manner.³⁰⁹

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The procurement law or the Regulations specify this mandatory requirement and give precise instructions on how to incorporate the matter in tendering documents. Tender documents include adequate provisions on fraud and corruption.	3
The procurement law or the Regulations specify this mandatory requirement but leaves no precise instruction on how to incorporate the matter in tendering documents leaving this up to the procuring agencies. Tender documents generally cover this but without consistency.	2
The legal/regulatory framework does not establish a clear requirement to include language in documents but makes fraud and corruption punishable acts under the law. Few tendering documents include appropriate language dealing with fraud and corruption.	1
The legal framework does not directly address fraud, corruption or unethical behaviour and its consequences. Tender documents generally do not cover the matter.	0

Score: 2. SBDs and contract documents do not fully or consistently address matters relating to fraud and corruption, conflicts of interest and unethical behavior.

Recommendations: The standard bidding documents and contract documents could benefit from revision to consistently include more complete provisions addressing matters relating to fraud and corruption, conflicts of interest and unethical behavior and set out actions that can be taken with regard to such behavior.

³⁰⁶ Act Section 49(3)(n).

³⁰⁷ See, e.g., SBD for Goods, ITB Clauses 2.3 and 36 (fraud/corruption), GCC Clause 24.1 (termination for fraud/corruption); SBD for Simple Goods, ITB Clauses 2.2 and 32 (fraud/corruption), GCC Clause 24.1 (termination for fraud/corruption); SBD for Works ICB, ITB Clauses 3.3 and 37 (fraud/corruption), GCC Clauses 23.2 (right to audit), 59.2 (termination for fraud/corruption); SBD for Small Works (absence of conflict of interest as eligibility criterion); Local Purchase Order GCC Clause 23.1 (termination for fraud/corruption).

³⁰⁸ Act Section 59(4)(g).

³⁰⁹ See, e.g., SBD for RFP, Information to Consultants Clauses 1.7 (conflict of interest), 1.8-1.11 (fraud/corruption); Form of Contract for Consultant Services CTB Assignments, GCC Clauses 2.9 (termination for fraud/corruption), 3.2 (conflict of interest), 3.6 (right to audit); Form of Contract for Consultant Services LS Remuneration, GCC Clauses 2.6.1 (termination for fraud/corruption), 3.2 (conflict of interest and fraud/corruption); Form of Contract for Consultant Services Small Assignments TB Payments Clause 4(c) (right to audit).

Sub-indicator 12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices. Assessment Score: 3

Conduct of public officials. Section 33 of the Act and Regulation 154 prescribe the conduct of public officials. The ethics-related provisions of the Procurement Manual, include a “Code of Ethics” governing the conduct of all officials involved in public procurement for the Government of Sierra Leone, and also oblige public procurement officers to follow the Public Service Code and Regulations governing public procurement.

With regard to their conduct, public officers involved in requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of contracts are required to: (i) discharge their duties impartially; (ii) act in the public interest, and in accordance with the object and procedures set out in the Act and the Regulations, and in accordance with the Public Service codes of ethics, if any, and where applicable, the Local Government Act, 2004³¹⁰; (iii) avoid conflicts of interest and the appearance of conflicts of interest and immediately disclose any conflict of interest and excuse themselves from any involvement in the matter; (iv) not commit or abet corrupt or fraudulent practices, coercion or collusion; (v) keep confidential information relating to procurement proceedings and bids; and (vi) refrain from accepting a position of authority in any private concern with which they undertook procurement activities for a period of three (3) years after departure from the procuring entity.³¹¹ However, what is meant by “accepting a position of authority” is unclear.

There seems to be some contradiction in the Act and Regulations with respect to the participation in public procurement of public officers of a procuring entity, or their close relatives. Whereas Section 33(2) and Regulation 155(1) prohibit public officers of a procuring entity, or their close relatives, from participating as bidders in the procurement proceedings of the procuring entity, Section 33(3) and Regulation 155(2) require recusal by a public officer from any participation in a procurement proceeding where a bid has been submitted by a bidder who is a close relative of the public officer, or by a bidder by whom the public officer or the close relative is employed in a management capacity, or as an agent or in which he (it is unclear whether “he” refers to the public officer or to the close relative) is a member of the board of directors, or has a financial interest. Such recusal extends to the administration and management of any procurement contract awarded to such a bidder,³¹² but more properly should apply to any contract awarded pursuant to the subject procurement proceeding as there could be bias/perceived bias against other contractor. The ethics-related provisions of the Procurement Manual require disclosure and preclude a public servant from participating in a bidding process where he/she has any personal interest that may affect or might reasonably be deemed by others to affect impartiality in any matter relevant to his/her duties. It is unclear based on the above-referenced provisions, whether recusal alone is adequate or whether a full prohibition on participation is imposed on public officers of a procuring entity, or their close relatives.

³¹⁰ A brief review of the Local Government Act indicates that it includes provisions addressing matters such as conflicts of interest, corruption, misconduct, declarations of assets, due process in investigations, penalties for wrongdoing, etc.

³¹¹ Act Section 33(1); Regulation 154(1).

³¹² Act Section 33(4); Regulation 155(3).

Members of the NPPA Board having any interest, direct or indirect, in any matter to be considered by the Board, are required to disclose the nature of such interest to the Board. Such Board member shall not take part in any deliberation or decision of the Board relating to that matter. Any Board member that contravenes these requirements shall be guilty of misconduct and subject to removal from the Board.³¹³

All public officers and other persons involved in public procurement are required to provide full cooperation and disclosure to the NPPA and other relevant government authorities, as well as to make a declaration of their assets and liabilities no later than thirty (30) days from assuming responsibility and thirty (30) days after leaving office, to be updated annually and whenever there is a substantial change in assets and liabilities.³¹⁴ The Act and Regulations imply that such declaration is to be made to the Anti-Corruption Commission, but could benefit from clarification in this area, especially in light of the statement in the ethics-related provisions of the Procurement Manual that such declarations shall be submitted to both the NPPA and Anti-Corruption Commission. Clarification also could help to reconcile or distinguish, as appropriate, this requirement and the declaration requirement in Section 119 of the Anti-Corruption Act of 2008, which states different time periods for the submission of declarations. The ethics-related provisions of the Procurement Manual specify additional particular declarations to be signed by public procurement officials and bid evaluation committee members that arguably go beyond what is required by the legislative framework, which is a matter for future consideration in terms of the mandatory nature of such declarations.

Public officers who contravene the Act and Regulations are subject to administrative and civil sanctions, as well as to prosecution pursuant to applicable criminal laws, including the Anti-Corruption Act.³¹⁵ The reference only to “public officials” in this context leaves open the question as to what penalties might apply to “other persons involved in public procurement” who fail to act in accordance with the Act. The Act could benefit from clarification in this area. With respect to possible sanctions, it also should be noted that the ethics-related provisions of the Procurement Manual provide that other offences involving non-adherence to the rules and Regulations, including negligence and irresponsibility, will result in sanctions as specified in the revised Civil Service Code.

Conduct of public officials also is governed by the Anti-Corruption Act, 2008. Part IV of the Anti-Corruption Act, 2008 enumerates conduct constituting an offence that may subject a public official to administrative, civil and/or criminal penalties. Subsequent Parts of the Anti-Corruption Act, 2008 address matters pertaining to investigation of offences, due process accorded the accused, prosecution of offences, etc. Part VIII of the Anti-Corruption Act, 2008 governs “integrity in public life,” focusing on declarations of income, assets and liabilities to be submitted by public officials as previously mentioned.

With regard to prohibited conduct, restrictions on disclosure, declarations, etc., it should be considered whether the terms “public officer” and “public officials” properly may be used interchangeably. It also should be considered whether the use of these terms fully covers all persons acting on behalf of the government (such as advisers) who should be subject to the provisions governing disclosure and conduct set forth in the legal framework.

³¹³ Act Section 10.

³¹⁴ Act Section 33(5); Regulation 155(4).

³¹⁵ Act Section 33(6); Regulation 155(5); *see also* the ethics-related provisions of the Procurement Manual.

Conduct of bidders and suppliers. In prescribing the conduct of bidders and suppliers, PPA Section 34(1) and Regulation 156: (i) require bidders and suppliers to abide by their obligations under the Act, Regulations, contracts, and other instruments applicable to their conduct and activities related to procurement: (ii) prohibit bidders and suppliers from engaging in or abetting corrupt or fraudulent practices; and (iii) prohibit bidders from engaging in any activity, prior to or after bid submission, designed to deprive the procuring entity of the benefits of free and open competition. The ethics-related provisions of the Procurement Manual include a provision that would require bidders to sign a formal declaration certifying compliance with ethical standards before participating in any procurement process, and provides that a breach of the commitments made therein would result in sanctions. Such bidder declarations of ethical conduct arguably go beyond what is required of bidders in the legislative framework, which is a matter for future consideration in terms of the mandatory nature of such declarations.

Bidders and suppliers who engage in fraudulent, corrupt or coercive practices in connection with public procurement are subject to prosecution pursuant to the applicable criminal laws, including the Anti-Corruption Act.³¹⁶ In addition, a bidder or supplier may be debarred on the grounds set forth in Section 35(2) of the Act, as discussed above.³¹⁷

Conduct of persons, which should include bidders and suppliers, also is governed by the Anti-Corruption Act, 2008. Part IV of the Anti-Corruption Act, 2008 enumerates conduct constituting an offence that may subject a person to administrative, civil and/or criminal penalties. While several sections of the Anti-Corruption Act, 2008 have general applicability to bidders and suppliers as “persons,” certain sections identify offences that are specifically related to public procurement, such as the offences of improper influence on contracts and “bid rigging.”³¹⁸

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The legal/regulatory framework explicitly deals with the matter. It defines fraud and corruption in procurement and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice of other provisions in the criminal law.	3
The legal/regulatory framework includes reference to other laws that specifically deal with the matter (<i>e.g.</i> anti-corruption legislation in general). The same treatment is given to the consequences.	2
The legal/regulatory framework has general anti-corruption and fraud provisions but does not detail the individual responsibilities and consequences which are left to the general relevant legislation of the country.	1
The legal/regulatory framework does not deal with the matter.	0

Score: 3.

Recommendations: With regard to prohibited conduct, restrictions on disclosure, declarations, etc., it should be considered whether the terms “public officer” and “public officials” properly

³¹⁶ Act Section 34(6) Regulation 156(6).

³¹⁷ See also Regulation 157(1).

³¹⁸ Anti-Corruption Act, 2008, Sections 29 and 32, respectively.

may be used interchangeably. It also should be considered whether the use of these terms fully covers all persons acting on behalf of the government (such as advisers) who should be subject to the provisions governing disclosure and conduct set forth in the legal framework. The legislative framework also could benefit from revisions that clarify prohibited activities and required compliance, such as with respect to declarations of assets and other required declarations. The same is true with respect to the mandatory (or non-mandatory) nature of bidder declarations.

Sub-indicator 12(c) – Evidence of enforcement of rulings and penalties exists. Assessment Score: 2

Evidences of enforcement of law on procurement related corruption. There have been serious steps taken to curb corruption in procurement. Examples of cases taken to court by the Anti-corruption Commission are listed below:

1. Commissioner General of the National Revenue Authority is currently facing court on offences failing to comply with procurement procedures and processes;
2. The Minister of Health was convicted on the 11th of March 2010 for failing to comply with procurement procedures;
3. A senior procurement officer of the Ministry of Defence was convicted on the 18th of March 2010 for failing to comply with procurement procedures; and,
4. An Executive Director of the Road Transport Authority has recently (2011) been convicted for failing to comply with procurement procedures.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There is ample evidence that the laws on corrupt practices are being enforced in the country by application of stated penalties.	3
There is evidence available on a few cases where laws on corrupt practices have been enforced.	2
Laws exist, but evidence of enforcement is weak.	1
There is no evidence of enforcement.	0

Score: 2. There is evidence that court actions have and are being taken on matters of fraud and corruption related to public procurement. A score of ‘2’ is attributed.

Recommendations: The ACC should keep up its good work and further assistance should be given to them so that they can expand their efforts. If a special court needs to be established for dealing with fraud and corruption cases in procurement, then that possibility should be considered if it will speed up the conviction process.

An additional recommendation is that the ACC stays with its mandate of fighting corruption (prevention, investigation, and ruling) and not expand its work into fields that are the mandate of other bodies; such as the monitoring of procurement which is the job of the NPPA. Duplication of efforts and mandates should be avoided.

Sub-indicator 12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement. Assessment score: 2

As previously discussed, the Act and Regulations include provisions relating to fraud and corruption in the public procurement context, and also refer to the primary legislation governing matters pertaining to fraud and corruption, the Anti-Corruption Act. However, references in the Act and Regulations are to the 2000 rather than 2008 Anti-Corruption Act, as noted above, which a matter for correction in future revisions.

Part II of the Anti-Corruption Act, 2008 acknowledges the establishment of the Anti-Corruption Commission, and sets forth its structure and governing provisions. The Anti-Corruption Commission is assigned numerous functions generally aimed at preventing, detecting, investigating, prosecuting, penalizing, and eradicating/suppressing corrupt practices pertaining to governmental activities, including public procurement. To that end, the Anti-Corruption Commission also is assigned advisory, drafting and educational functions. Specific to public procurement, the Anti-Corruption Commission has authority to monitor the implementation of contracts awarded by public bodies, with a view to ensuring that no irregularity or impropriety is involved.³¹⁹ The Anti-Corruption Commission is to act independently, impartially, fairly and in the public interest, and shall not in the performance of its functions be subject to the direction or control of any person or authority. The Commissioner and Deputy Commissioner of the Anti-Corruption Commission are appointed by the President subject to the approval of Parliament, and its directors are appointed by the Commissioner subject to approval of the Advisory Board on Corruption. Part III of the Anti-Corruption Act, 2008 governs matters pertaining to the Advisory Board on Corruption, whose members are appointed by the President subject to the approval of Parliament. Among other functions, the Advisory Board on Corruption is to advise and assess the work of the Anti-Corruption Commission.

Given the broad authority granted to both the NPPA and Anti-Corruption Commission, it should be ensured that there is coordination among these entities and that there is no duplication of responsibilities, for example in the debarment context. It further should be ensured that both entities function independently and free of conflicts of interest. Applicable reporting structures also should be clearly prescribed. Such matters should be addressed in the overall legal framework and governance structure for Sierra Leone, as appropriate.

Civil society also has been involved in stopping corruption in procurement over the past five years (2006 – 2010). The NPPA in 2007 invited a number of civil society organizations to a sensitization workshop on the need to collaborate to stop corruption in procurement. Since then, a number of civil society organizations have played active roles in the monitoring of public procurement and its outcomes; to the extent that there is now a coalition of civil society organizations with trained membership to conduct independent procurement monitoring. A number of independent reports are produced on their findings, which have helped to raise awareness among stakeholders. Currently, the Ministry of Finance and Economic Development is giving support to civil society organizations as Non-state Actors. This is to train and facilitate the organizations to effectively monitor government expenditure, the bulk of which is procurement-related. Also, the Anti-Corruption Commission has a working relationship with civil society organizations on a range of corruption-related issues, including procurement matters.

³¹⁹ Anti-Corruption Act, 2008, Section 7(2)(j).

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
The government has in place a comprehensive anti-corruption program to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. Special measures are in place for detection and prevention of corruption associated with procurement.	3
The government has in place an anti-corruption program but it requires better coordination or authority at a higher level to be effective. No special measures exist for public procurement.	2
The government has isolated anti-corruption activities not properly coordinated to be an effective integrated program.	1
The government does not have an anti-corruption program.	0

Score: 2. The government has in place an anti-corruption program but it requires better coordination or authority at a higher level to be effective. Although it includes some directly relevant provisions, the Government's anti-corruption program is not really specific to public procurement.

Recommendations: Given the broad authority granted to both the NPPA and Anti-Corruption Commission, it should be ensured that there is coordination among, and no duplication of responsibilities by, these entities, and reporting structures should be clearly prescribed. It also should be ensured that both entities function independently and free of conflicts of interest. In addition, the Government's anti-corruption program requires better coordination or authority at a higher level to be effective. Although it includes some directly relevant provisions, the Government's anti-corruption program is not really specific to public procurement. More provisions specific to public procurement could be included in any future revisions to the Government's anti-corruption program. Such matters should be addressed in the overall legal framework and governance structure for Sierra Leone, as appropriate. The 2008 Anti-Corruption Act should be properly referenced in future revisions.

Sub-indicator 12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviours. Assessment Score: 1

There are civil society organizations working to promote integrity and ethical behaviour on procurement. However, dialogue on procurement issues with the government is not too frequent. Also the impact of civil society's efforts is limited due to weak capacity of civil society concerning procurement matters. Access to procurement information is also very limited for them to perform social audits.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
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(a) There are strong and credible civil society organizations that exercise social audit and control. (b) Organizations have government guarantees to function and cooperation for their operation and are generally promoted and respected by the public. (c) There is evidence that civil society contributes to shape and improve integrity of public procurement.	3
There are several civil society organizations working on the matter and the dialogue with the government is frequent but it has limited impact on improving the system.	2
There are only a few organizations involved in the matter, the dialogue with the government is difficult and the contributions from the public to promote improvements are taken in an insignificant way.	1
There is no evidence of public involvement in the system OR the government does not want to engage the public organizations in the matter.	0

Score: 1. There are only a few organizations involved in the matter, the dialogue with the government is sporadic, and contributions from the public to promote improvements are taken in an insignificant way.

Recommendations: There needs to be a closer network created between all the stakeholders in public procurement which includes CSOs that are looking out for the nation's best interest. As these networks and partnerships are built up, the CSOs will then be able to get more deeply involved (granted that there is good access to information and that they also have received training in such a complex area as procurement).

Sub-criteria 12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behaviour. Assessment Score: 3

The country provides a system for reporting fraudulent, corrupt or unethical behaviour that provides for confidentiality. The system must be seen to react to reports as verified by subsequent actions taken to address the issues reported.

Such behaviour can be reported to the Anti-corruption Commission. The ACC has dedicated telephone lines, which allows people to call in anonymously to report fraudulent and corrupt or unethical behaviour.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
There is a secure, accessible and confidential system for the public reporting of cases of fraud, unethical behaviour and corruption.	3
There is a mechanism in place but accessibility and reliability of the system undermine and limit its use by the public.	2
There is a mechanism in place but security or confidentiality cannot be guaranteed	1
There is no secure mechanism for reporting fraud, unethical behaviour and corruption cases	0

Score: 3. There is a secure, accessible and confidential system for the public reporting of cases of fraud, unethical behaviour and corruption.

Recommendations: None.

Sub-criteria 12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions. Assessment Score: 3

There are 3 detailed assessment questions and 4 scoring criteria under this sub-indicator as listed below:

(a) There is a code of conduct or ethics for government officials with particular provisions for those involved in public financial management, including procurement.

Section 33 of the Act and Regulation 154 set forth principles governing the conduct of public officers involved in requisitioning, planning, preparing and conducting procurement proceedings, and in administering the implementation of contracts. Among other things, such public officials are to act in the public interest, and in accordance with the object and procedures set out in the Act and Regulations, and in accordance with the Public Service codes of ethics, if any, and where applicable, the Local Government Act, 2004.³²⁰ The ethics-related provisions of the Procurement Manual also include a section entitled “Code of Ethics,” which sets forth principles of a code of ethics and obligations of public officials. These provisions also state procurement-specific requirements mandate certain disclosures, and provide for the imposition of sanctions for non-compliance with ethical standards.³²¹

As previously noted, the Anti-Corruption Act, 2008 also includes provisions governing the conduct of public officials. In addition to including broad provisions relating to ethics and behavior, the Anti-Corruption Act, 2008 also contains provisions directly related to public actors involved in public procurement.³²²

(b) The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements.

In accordance with the Act, Regulations and the ethics-related provisions of the Procurement Manual, and as noted above, all public officers and other persons involved in public procurement shall, among other things and in accordance with the Act and other applicable legislation, make a declaration of their assets and liabilities in such form as the Anti-Corruption Commission may determine no later than thirty (30) days from assuming responsibility and thirty (30) days after leaving office. Such declaration shall be updated annually as well as whenever there is a substantial change in assets and liabilities.³²³ The foregoing also discusses the Anti-Corruption

³²⁰ Act Section 33(1)(b); Regulation 154(1)(b); *see also* Regulation 155.

³²¹ Procurement Manual Sections 2.3, 2.4, 2.5.

³²² Examples of such provisions include the following sections of the Anti-Corruption Act, 2008: (i) Section 29 on using influence; (ii) Section 31 on peddling influence; (iii) Section 32 on bid rigging, etc.; and (iv) Section 34 on bribery.

³²³ Act Section 33(5)(b); Regulation 155(4)(b); Procurement Manual Section 2.4.1

Act, 2008, which defines accountability, imposes penalties for ethical violations, and requires financial disclosure for certain government actors.

(c) The code is of obligatory compliance and consequences are administrative or criminal.

As discussed above, public officers who contravene the Act and Regulations are liable to applicable administrative and civil sanctions as well as to prosecution pursuant to applicable criminal laws, including the Anti-Corruption Act.³²⁴ The ethics-related provisions of the Procurement Manual also specify that sanctions may be imposed for non-compliance with ethical standards, stating that: “Adherence to the provisions of the Act and Regulations by Public Officials is obligatory and failure to do so will be considered an offence subject to sanctions.” The foregoing discussion also addresses compliance and consequences set forth in the Anti-Corruption Act, 2008.

OECD/DAC Methodology Scoring Criteria for Sub-indicator	Score
(a) There is a code of conduct or ethics for government officials with particular provisions for those involved in public financial management, including procurement. (b) The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements. (c) The code is of obligatory compliance and consequences are administrative or criminal.	3
The system meets requirements (a) and (b) but is only a recommended good practice code with no consequences for violations unless covered by criminal codes.	2
There is a code of conduct but determination of accountabilities is unclear.	1
There is no code of conduct.	0

Score: 3.

Recommendations: None.

³²⁴ Act Section 33(6); Regulation 155(5); Procurement Manual Section 2.5.

Annex 2: Detailed Recommended Action Plan for Sierra Leone

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
Pillar I: Legislative and Regulatory Framework.					
1(a)(a)	<p>With respect to the legislative framework governing public procurement, various inconsistencies have been observed among the key governing documents, <i>i.e.</i>, the Act and Regulations, as well as the Procurement Manual.</p> <p>There were also instances where the Regulations contain provisions for the procurement process which were not included in the Act.</p> <p>There have been inconsistencies and contradictions between the procurement Act and other Acts.</p>	<p>Inconsistencies within the procurement legislative framework, and areas where clarity is lacking, should be addressed in any future revisions. Some specific examples in this regard are noted in the Annex 1 discussion of sub-indicators, and in some instances also are referenced in this action plan.</p> <p>Key matters should be stated in the Act, which is the primary legislation, and not only in the Regulations.</p> <p>A general review of the legislative framework should be undertaken to ensure that the public procurement system functions independently and is not subject to manipulation through authorizations granted to various government entities under separate</p>	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
		legislative acts. There needs to be a harmonization exercise between all Acts.			
1(a)(b)	<p>Although public procurement legislation and certain procurement-related information are posted on the NPPA website, some of the posted information is not current or complete and/or links are dead.</p> <p>Also internet connectivity in the country is moderate.</p>	<p>The NPPA website should be kept up to date at all times through the strengthening of the website management at NPPA and clear information flow policies.</p> <p>NPPA should cater to unequal internet connectivity to the public by making available copies of the law and Regulations, when requested to do so. Due to low internet connectivity levels, it also is recommended that some budget is set aside for the printing of the procurement documents.</p>	Upgrade NPPA website and information management.	NPPA	Dec 2012(*)
1(a)(c)	<p>There is internal inconsistency in the Act regarding the Act's scope of coverage.</p> <p>The GBAA (2005) does clearly state</p>	<p>The entities covered under the Act should be consistently described, and the Act's application to entities that are less than majority owned by the State and to public utilities should be clarified. Also, defined terms should be used consistently in the Act and Regulations.</p> <p>During the revisions of the</p>	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	that funds cannot be committed unless covered by appropriations duly approved by Parliament. But the procurement Regulations allows for procurement proceedings to start up to the contract award stage.	procurement Act and Regulations, clarifications should be made with regards to the commencement of procurement proceedings, commitment of funds, and Parliamentary appropriations.			
1(b)(a)	<p>Certain procurement methods are imprecisely or not fully set forth, and their conditions for use are not clearly and consistently stated, in the legislative framework.</p> <p>The Regulations suggest that a two-envelope system may be used in the bidding context.</p>	<p>All available procurement methods and their conditions for use, including without limitation any required justification and approval procedures, should be narrowly tailored and should be provided for in the Act and Regulations. Clarification also is recommended with respect to the intended purpose of the phrase “variation of the procurement method” as used in Regulation 41(2). Thresholds should be consistent within the legislative framework. More generally, there is room for improvement in the Act in terms of organization, especially with regard to basic procedural matters and their applicability/inapplicability to the various procurement methods.</p> <p>The use of two-envelopes in the bidding for works and goods should be discouraged. Or if it is meant</p>	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	Although there is no express prohibition, the Act does not expressly provide that foreign bidders may participate in NCB procurements.	solely for use in connection with the procurement of consultancy services, then this needs to be clarified. The Act should expressly provide that foreign bidders may participate in procurements conducted using NCB procedures.			
1(b)(c)	Under the Regulations, the procurement method is to be determined based on the estimated value of individual contract lots (when a contract is split into lots).	The Act and Regulations should provide that the procurement method should be selected based on the estimated total value of a procurement, not on a lot-by-lot basis.	Revise legal framework.	NPPA	Dec 2013(*)
1(b)(d) and 1(c)	Publication requirements are not consistently set forth in the legislative framework. There are even contradictions between the Act and the Regulations.	Publication requirements, and required minimum contents, should be clearly and consistently stated in the Act and Regulations. The same is true with respect to the development of shortlists. Publication of procurement opportunities on a website of free access should be mandatory.	Revise legal framework.	NPPA	Dec 2013(*)
1(d)(a)	Although the Act provides that all eligible and qualified bidders, without discrimination, shall have equal access to participate in public procurement (subject only to the exceptions provided for in the Act), a	The legislative framework should clearly set forth the principle that procurement shall be conducted on the basis of nondiscriminatory conditions and not give room through the Regulations for individual	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>procuring entity nonetheless may limit participation in accordance with the Regulations, which raises concern that other laws or Regulations may create legal barriers and discriminatory conditions that could limit participation.</p>	<p>determination/interpretation as to when nationality may be used as a discriminating factor in participation.</p>			
1(d)(b)	<p>There is confusion as to supplier/contractor registration under the legal framework.</p> <p>Although the Act does not require mandatory association with other firms for participation in public procurement, it is important that the provision permitting the application of a margin of preference to bids based on a bidder's association with local partners not be used in practice to impose a de facto mandatory local partner association requirement on foreign firms.</p>	<p>The legislative framework should clarify that registration is not a condition for participation in public procurement.</p> <p>In future legal revisions it should be made clear that discriminatory practices, such as mandatory association with a local firm, shall not be used in connection with the participation of foreign firms in public procurement, and any preference applied for domestic participation shall be limited.</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>
1(d)(c)	<p>The Act and Regulations do not refer to the current Anti-Corruption Act.</p> <p>While some detail is provided in the</p>	<p>Proper references to current laws and Regulations shall be included in the Act and Regulations.</p> <p>To the extent that suspension is</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>Regulations, important information as to the debarment process, including the due process accorded the accused, is left unexplained in the primary legislation. Also, a bidder may be precluded from meaningful participation in a procurement process while an investigation is pending and thus without having had the full benefit of due process. The legislative framework does not provide for any right to appeal a debarment decision.</p> <p>The definitive debarment period stated in the Procurement Manual is inconsistent with the debarment-period range provided for in the Act and Regulations.</p> <p>Matters relating to conflicts of interest are addressed in the section of the Act that deals with conduct generally.</p>	<p>intended, then it should be provided for in the legislative framework. The legislative framework could benefit from revision with respect to matters pertaining to the debarment process, such as conditions for debarment, adequacy of due process, suspension, and right to appeal.</p> <p>Inconsistencies within the procurement legislative framework, such as with respect to the definitive debarment period, should be addressed in any future revisions to the Act and its Regulations, and not left only in the Manual .</p> <p>It should be considered whether matters relating to conflicts of interest instead should be addressed in a separate provision of the Act.</p>			
1(d)(d)	The legislative framework is silent regarding the participation of government-owned enterprises in	Rules for the participation of government-owned enterprises should be established in the Act and	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	public procurement.	Regulations.			
1(e)(b)	The Act could be read broadly as permitting procuring entities to include restrictive provisions in the bidding documents.	The Act and Regulations should clarify that procuring entities shall not include restrictive provisions in the bidding documents. The legislative framework should more clearly require the use of neutral specifications, citing international standards when possible.	Revise legal framework.	NPPA	Dec 2013(*)
1(f)(a)	<p>While negotiations with bidders regarding contracts for goods, works or non-consulting services are generally prohibited, certain permissible negotiations could lead to material changes that may impact upon the procurement.</p> <p>Negotiation provisions in the sole-source procurement context are not entirely clear.</p> <p>In the RFQ and RFP contexts, the legislative framework does not expressly require evaluation based</p>	<p>It should be clarified that any substantial reduction in the contract scope or modification to the contract documents may require rebidding.</p> <p>The Act and Regulations also could benefit from revision to more clearly reflect the exception to the prohibition on negotiations in the case of sole-source procurement. This is an example of where substantive matters should be stated in the Act and not only in the Regulations.</p> <p>It should be provided in all cases that submissions are to be evaluated solely in accordance with the stated</p>	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	solely on the criteria and methodology stated in the tender documents.	evaluation criteria and methodology. In this regard (as with the use of both terms “responsive bid” and “substantially responsive bid”), the language of the Act and Regulations should be aligned.			
1(f)(b)	<p>There is some confusion regarding the manner in which technical evaluation is to be done.</p> <p>The use of two-envelope systems should be explicitly recognized as only for consultant services, and the one-envelope should be explicitly recognized for works, goods and non-consultant services. It is currently left open and ambiguous in the legal framework and its application is not clear.</p>	<p>Revisions should clarify the prohibition on the use of point system evaluation (except in the case of consulting services), and should specify that criteria not evaluated in monetary terms should be evaluated on a pass/fail basis to the extent possible.</p> <p>The Act should clarify that the two-envelope system is for consultant services only, while the one-envelope system is for works, goods and non-consultant services.</p>	Revise legal framework.	NPPA	Dec 2013(*)
1(g)(a)	In the RFQ context, the legislative framework does not expressly provide that late submissions are to be returned unopened.	It should be provided in all cases that late submissions are to be returned unopened.	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	There are also some inconsistencies between the Act and the Regulations when it comes to procedures at bid opening.	The inconsistencies between the Act and Regulations need to be ironed out.			
1(g)(d)	<p>Although alluded to in the Act, the manner for submission and receipt of proposals are left for explanation in the Regulations.</p> <p>The Act permits cancellation of procurement proceedings if insufficient or no responsive bids are received.</p>	<p>The Act should include provisions governing the manner for submission and receipt of proposals. Matters relating to bid, quotation, proposal submission and receipt are to be stated in the applicable bidding documents.</p> <p>It should be clarified that a lack of competition should not be determined solely on the basis of the number of bidders where the bid was satisfactorily advertised and prices are reasonable in comparison to market values.</p>	Revise legal framework.	NPPA	Dec 2013(*)
1(h)(b)	<p>The Act states deadlines, but also allows that other deadlines for the submission of complaints may be established in Regulations.</p> <p>A fee of 2% of the bid price (up to maximum 2 million Leones) is charged for access to the complaints process.</p>	<p>The Act should be revised to set firm deadlines that shall not be altered by Regulations.</p> <p>Consideration should be given to eliminating the complaints fee, or to charging only a <i>de minimis</i> administrative cost.</p>	Revise legal framework.	NPPA/IPRP	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>The legislative framework is lacking any enforcement provisions vis-à-vis complaints decisions.</p> <p>The legislative framework does not provide for any form of judicial review concerning procurement complaints.</p> <p>Although the Act establishes the Review Panel for the purpose of conducting independent administrative review of complaints, there is some question as to whether the Review Panel truly is independent from NPPA influence.</p> <p>The Regulations refer to the submission of an application for review to the NPPA.</p>	<p>A mechanism for enforcement of decisions should be included in the Act and Regulations.</p> <p>The right to judicial review should be provided for with respect to procurement complaint.</p> <p>The Review Panel should be clearly established as an independent review entity in future revisions.</p> <p>References in the Regulations to the submission of an application for review to the NPPA must be clarified in any revisions.</p>			
1(h)(c)	<p>The Act and Regulations include among the grounds for which a complaint may be dismissed, “challenges to an affirmative determination of a competing bidder’s qualifications”.</p>	<p>The meaning of “challenges to an affirmative determination of a competing bidder’s qualifications” needs to be clarified as there are differing interpretations that lead to different conclusions about its validity in the Act. Complaints should be permitted with respect to any</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
		decision of the procuring entity during the procurement procedure in which a violation of the public procurement law or its principles may have occurred.			
2(a)(a)	There are inconsistencies between the Act and Regulations in some areas.	Inconsistencies within the legislative framework must be reconciled.	Revise legal framework.	NPPA	Dec 2013(*)
2(a)(b)	The updating of the Regulations is pending the outcome of the CPAR.	The Regulations should be updated on a regular basis even after the CPAR is done – through means of circulars if needed.	Revise legal framework.	NPPA	Dec 2013(*)
2(b)(a)	The available SBDs and contract forms do not fully accord with the standard documentation requirements set forth in the Act.	Inconsistencies within the legislative framework must be reconciled, and the set of required SBDs should be completed (<i>e.g.</i> Health goods and Information Technology goods are missing).	Revise legal framework.	NPPA	Dec 2013(*)
2(b)(b)	Variations to the SBDs are allowed, which raises the possibility that procedures inconsistent with the Act and Regulations could be applied.	Variations to the SBDs shall not be used to materially alter the procurement processes and requirements established in the Act and Regulations.	Revise legal framework.	NPPA	Dec 2013(*)
2(b)(c)	Responsibility for maintaining SBDs and contract forms is not clearly assigned in the Act.	The Act should state more clearly the responsibility of NPPA to keep the documents current (which presently is mentioned only in the Regulations).	Revise legal framework.	NPPA	Dec 2013(*)
2(c)(c)	Although the legislative framework includes procedures that define and provide parameters for the use of pre-	The language of the legislative framework should be aligned. All stakeholders should be trained on the	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>qualification, there is some concern that the use of different language in the Act and Regulations to describe the conditions for use of pre-qualification could lead to confusion.</p> <p>The Regulations provide that prequalification may be used to pre-qualify bidders for a group of similar contracts or to register suppliers to facilitate the preparation of shortlists under restricted bidding or request for quotations procedures.</p>	<p>use of the documents.</p> <p>Pre-qualification should not be used for the purpose of shortlists in restricted bidding and registry systems, and so the legal framework should be revised accordingly.</p>			
2(d)(b)	<p>The Regulations provide general guidance, but do not state clear procedures and methodologies for the assessment of technical capacity and for combining price and technical capacity under different circumstances.</p>	<p>Revisions to the Regulations should set forth clear procedures and methodologies for the assessment of technical capacity and for combining price and technical capacity.</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>
2(e)(a)	<p>The Procurement Manual provides that, in the event that a public entity has its own NPPA-approved specialist procurement regulations and procedures manual, the provisions of the Procurement Manual apply only when there is no conflict with procedures or standard documentation</p>	<p>The manual is not the appropriate venue for allowing any forms of deviations – this should be at the act level.</p> <p>We should not encourage any deviations from the procurement legislation (Regulations and manual)</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>as detailed in the specialist manual. The Procurement Manual devotes an entire section to the deviations policy, noting that NPPA approval is required for any deviation.</p> <p>To the extent that a public entity may be permitted to use procurement procedures or standard documentation that deviate from, or are in conflict with, the procedures or standard documentation prescribed in the Procurement Manual, there is a real concern that procuring entities may be permitted to use public procurement procedures and practices that are not aligned with what is required under the Act and Regulations.</p>	<p>with exception of the already mentioned cases of national emergency and military procurement, etc.</p> <p>In the Bank’s opinion, the NPPA should not be in a position to authorize any such deviations of the Regulations and procurement manual.</p>			
2(e)(b)	The Procurement Manual has not been updated.	The Procurement Manual should be updated on a regular basis.	Revise legal framework.	NPPA	Dec 2013(*)
2(f)(a)	The available SBDs and contract forms do not fully accord with the standard documentation requirements set forth in the Act.	The set of required SBDs should be completed.	Revise legal framework.	NPPA	Dec 2013(*)
2(f)(b)	The Regulations, but not the Act, permit a procuring entity to renegotiate the contract in order to stay within the budget or otherwise	The Regulations should not allow renegotiation when price deviation causes an increase in excess of the pre-agreed percentage.	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	minimize costs for the procuring entity in such circumstances. As a general matter, it is not appropriate to include in Regulations conditions, such as this one, that alter what is permitted under the law. In addition, this particular alteration gives a procuring entity a potentially wide opening to renegotiate contracts in circumstances that would require termination of the contract under the Act and under good international practice generally.	The Act and Regulations also need to be aligned.			
<u>Pillar II: Institutional Framework and Management Capacity</u>					
3(a)	There is weakness in making multi-year procurement plans. Most plans are limited to annual plans that are linked to budget submissions of the MDAs.	Procurement plans prepared at the time of budget submission from the MDAs to MoFED should be revised consistent with the revised monetary values finally allocated to MDAs against their approved appropriations. Particularly for multi-year procurement contracts, the NPPA will support the MDAs to include their related multi-year costs in the forward estimates under the framework of the MTEF of the GoSL.	Revise FM legal framework.	MOFED	Dec 2013.
3(b)	There are no published standards but rather tacit ones, implying that when	The MoFED, in consultation with the NPPA, would need to develop service	Revise FM legal framework.	MOFED	Dec 2013.

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	goods are delivered or progress certificates are issued for payments to be made against contracts, payments generally are made unless there are other compliance issues under the contract. Nevertheless, publishing delivery standards in necessary to reduce corruption potential.	standards for procurement of goods, works and services, and ensure that the Accountant General monitors compliance with the standards across MDAs.			
3(c)	The PPA clearly specifies that commitments and their related expenditures should only be entered into when an approved appropriation exists and such appropriation or part of it has been released for spending.	Consistent use of the IFMIS module that confirms through a purchase order the availability of expendable funds—before procurement actions can be initiated. There is need to sensitize stakeholders on the provisions of the PPA.	There is need to sensitize stakeholders on the provisions of the PPA.	MOFED	Dec 2013.
3(d)	The Integrated Financial Management Information System (IFMIS) in use has procurement/purchasing module that is implemented and ensures that progress or completion certificates are provided and fed into the system for budget execution. However, there is poor reconciliation of delivery with the budget programming as major civil works contracts regularly fall in the category of expenditure arrears, particularly in FY 2010.	In the review of the GBAA and FAR, stronger conditions need to be introduced to ensure that information on contracts is available in a regular and timely manner. To this end, since the IFMIS provides for commitment control sub-module as a key budget control tool and is being applied by at least 8 IFMIS-productive MDAs for their respective transactions and the Accountant General for the rest of the non-IFMIS productive MDAs, the potential exists for the strict and unfettered implementation of the	Revise FM legal framework. Strengthen IFMIS procurement module implementation.	MOFED	Dec 2013.

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
		<p>module to ensure that all commitments engendered through contracts are fed into the system, monitored systematically, and paid for against approved budget appropriations. As long as government policies ensuring that IFMIS business processes mirroring the GBAA (2005) and FAR (2007) are enforced and respected, the condition can be met.</p>			
4(a)	<p>There is some question as to the NPPA’s independence from the MOFED.</p>	<p>The NPPA’s separation and independence from the MOFED could benefit from clarification.</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>
4(b) & (d)	<p>Text included in the legislative framework suggests that the NPPA may be in a position to intervene in procurement operations.</p>	<p>Like the Act, the Regulations should make clear that nothing in the functions assigned to the NPPA shall be construed to include the power to participate in the award of any specific procurement contract, or to otherwise intervene in procurement operations. The Regulations should not be used to assign additional functions to the NPPA. The NPPA must be provided the necessary resources to effectively carry out its many functions. The delegation of primary procurement monitoring responsibility also could benefit from</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>Also, although the Act appears to seek to establish the NPPA’s responsibilities in such a way as to avoid conflicts of interest and direct involvement in the execution of procurement transactions, it is not clear that such avoidance actually is achieved.</p>	<p>clarification.</p> <p>The legislative framework should put measure in place to avoid internal conflicts of interest among the NPPA’s functions (<i>e.g.</i>, setting up glass walls between functions).</p>			
4(c)	<p>Although the NPPA and Review Panel are supposed to function as independent entities, the organizational structure is such that these entities may not be truly independent and that conflicts of interest may be presented.</p>	<p>The NPPA and Review Panel should have clear lines of established independence. For example, revisions should be made regarding (i) Board member appointment, remuneration and resignation; (ii) responsibilities of the Secretariat and Chief Executive; (iii) NPPA funding; and (iv) areas of potential NPPA involvement in procurement operations. Also, a general review of the broader legislative framework should be undertaken to ensure that the NPPA’s independence and regulatory authority is not undercut through authorizations granted to other government entities under separate legislative acts.</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>There are potentially conflicting clauses between the procurement Act and the Government Budgeting and Accountability Act.</p> <p>The NPPA has a shortage of staff and funding.</p>	<p>There is a need for a harmonization exercise between the procurement Act and other Acts in Sierra Leone to ensure there are no conflicts with regard to public procurement legislation.</p> <p>The NPPA needs extra technical and financial support to aid in its expansion plans.</p>			
5(a) & (b)	<p>The system for collecting and disseminating procurement information is weak in Sierra Leone. Also record keeping and reporting systems are weak.</p>	<p>The NPPA will be required to create and implement a system for collecting and disseminating procurement information to the public. Proper record keeping and reporting systems are required as part of the system so information is available (supported by the Act). Adequate staffing, funding, and technical support also should be secured in order to facilitate the full and proper functioning of the NPPA.</p>	Enforcement of M&E system	NPPA	Dec 2012(*)
5(c)	<p>There is a weak capacity building strategy for procurement.</p>	<p>The NPPA needs to design a procurement capacity building strategy that looks into (i) supporting the civil service's efforts in creating a professional procurement cadre in</p>	Design capacity building/civil service reform strategy.	NPPA/ HRMO/ IPAM/	June 2013

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
		Sierra Leone, (ii) support domestic training institutes and tertiary education institutes through building the capacity in-house to deliver certified procurement training; (iii) delivering the training to as many stakeholders as possible in Sierra Leone; and (iv) building evaluation and feedback mechanisms into the programs.			
5(d)	<p>The monitoring system is weak in Sierra Leone and needs strengthening.</p> <p>The system for annual evaluations of staff performance in the field of procurement is nascent and requires much more work.</p> <p>There are no regular procurement audits.</p>	<p>The NPPA needs to build up its monitoring system. Efforts should be made by relevant government entities to strategize among themselves to monitor compliance.</p> <p>An annual evaluation process needs to be created together with the civil service to ensure people are measured against their performance/outputs.</p> <p>The supreme audit institution needs significant technical support to enable them to carry out annual procurement audits effectively.</p>	<p>Enforcement of M&E system</p> <p>Roll out of performance evaluations</p> <p>Capacity building/ Training</p>	<p>NPPA</p> <p>NPPA/Civil Service</p> <p>SAI</p>	<p>Dec 2012(*)</p> <p>Dec 2012(*)</p> <p>Dec 2013</p>
Pillar III: Procurement Operations and Market Practices					

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
6(a)	The procurement cadre concept is only now being implemented in Sierra Leone and will need significant strengthening.	The NPPA will need to continue to work closely with the civil service commission/HRMO/MOFED and outside experts (consultants) to create separate job descriptions, national qualifications and career paths for the procurement profession in Sierra Leone. In addition to this, they will need to align this work with the capacity building work that is supposed to provide the necessary training to address the qualifications required for those cadre posts (in country).	Develop cadre for procurement.	NPPA/Civil Service	June 2012(*)
6(b)	As short term training programs are not offered regularly, waiting times to get into a course (for public or private sector participants) are not reasonable. The longer term program at IPAM also has been given a comprehensive review since initiated.	The existing training modules delivered at IPAM and by NPPA need to be assessed and revised in accordance with the capacity building strategy that needs to be designed.	Revise training modules.	IPAM / NPPA	Dec 2013(*)
6(c)	The list of materials to be included in the procurement files (although not an exhaustive list) does not refer to documentation relating to contract claims and dispute resolution, and disbursement data.	The Act and Regulations need to be updated to include security protocols for the protection of records. It also is unclear whether the retention period is compatible with any applicable statute of limitations for investigating and prosecuting cases of fraud and corruption and/or with the	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
		<p>audit cycles.</p> <p>Documentation relating to contract claims and dispute resolution, and disbursement data should be listed among the materials to be included in the procurement file.</p>			
6(d)	The thresholds for approval of contract awards set in the First Schedule of the Act require procurement committee-level approval for award of all but relatively low value contracts, delegation thresholds are not precisely defined, delegation authorities not stated in the Act appear in the Regulations, and accountability is only generally provided for in the Act.	Matters relating to delegation and accountability could benefit from further elucidation in the Act and Regulations.	Revise legal framework.	NPPA	Dec 2013(*)
7(a)	There are not effective mechanisms for partnerships between the public and private sector.	A mechanism to develop PPPs is required. To that end, the PPP Bill should be passed, and programs should be established to help build capacity among private companies.	Create partnership mechanism	NPPA	Dec 2013.
7(b)	Private sector institutions generally are unable to facilitate access to the market for larger contracts.	Mechanisms for competitive public procurement across the larger competitors should be developed, and private sector development should be promoted by the government and	Develop capacity of local industry.	MOFED	Dec 2013.

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
		supported by donors with technical expertise and investment.			
7(c)	There is a willing private sector that wants to participate in public procurement to service the market but there are constraints such as access to credit, late payments, and access to modern technology.	Building the financial capacity of the private sector is crucial, as is access to financial services from the financial markets and banking systems.	Build financial services & access to credit	MOFED	Dec 2013.
8(a)	Certain key elements of contract administration (<i>e.g.</i> , amendments, quality control, inspection, acceptance, supervision, arbitration) are not fully or consistently addressed in the legislative framework. Payments are subject to multi-layer approvals and are not processed promptly.	Future revisions to the Act, Regulations and SBDs should more fully and consistently address key elements of contract administration. Measures should be put in place to streamline and make the payment process more efficient. Along the same lines, a general review of the broader legislative framework should be undertaken to ensure that the public procurement system functions independently and is not subject to manipulation through authorizations granted to other government entities under separate legislative acts.	Revise legal framework. Strengthen IFMIS procurement module implementation	NPPA MOFED	Dec 2013(*) Dec 2013
8(b)	There is no arbitration law in Sierra Leone and hence these mechanisms are not adequately included in the	Enactment of an arbitration law, as well as revisions to the GCCs, should be considered.	Draft & submit an arbitration bill.	Law Reform Commission	June 2013

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	legal framework and contracts.		Revise legal framework.		
8(c)	<p>Sierra Leone is not a signatory to the New York Convention on enforcement of international arbitration awards.</p> <p>It is not apparent from the procurement legislative framework that procedures are in place to enable the winner in a dispute to seek enforcement of the outcome in court.</p> <p>Although the PPA and Regulations broadly outline matters of contract administration, and the Procurement Manual addresses contract management, there is no process in place to monitor the dispute resolution process or to address performance issues.</p>	<p>It should consider becoming a signatory to this convention.</p> <p>Procedures should be put in place to enable the winner in a dispute to seek enforcement of the outcome by going to court.</p> <p>Procedures to monitor the dispute resolution process and to address performance issues also should be put in place.</p>	<p>Signing onto convention.</p> <p>Revise legal framework.</p>	Development Secretary - MOFED/ Parliament	Dec 2013
Pillar IV: Transparency and Integrity of the Procurement System					
9(a)	While there is an independent oversight structure and mechanism in place, these do not respond effectively to identify risks, mitigate risks through a coherent risk	Strengthening the internal audit function across MDAs and focusing the function on systemic risk control measures would need to be established through intensive training	Audit strengthening to focus on risk based approach	Audit Sierra Leone/ Internal audit department – MOFED.	Dec 2013

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>management process. Moreover, internal audit departments in MDAs remain not adequately strengthened to reinforce the control processes in MDAs.</p> <p>The focus of audits tends, however, to be directed mainly to fiduciary aspects of underlying expenditures – i.e. compliance with rules and procedures, and transaction related matters. There is a lack of proper use of risk-based internal control mechanisms, which should focus on the quality and substance of procurement transactions.</p>	<p>and enhancements in staffing strength. Equally, the external audit function would need to conduct specialist training on procurement audits beyond the focus on compliance and regularity.</p>	<p>Capacity building/ training for auditors on procurement procedures</p>		
9(b)	<p>Internal audits are conducted on a majority of MDAs quarterly, but the recommendations of these reports are selectively and/or not generally implemented. External audit audits are conducted annually within 9 months of receipt of draft accounts from the audited entities; however, while about 79% recommendations (as reported by the Sierra Leone Audit Service) are responded to within the allowed statutory</p>	<p>The government has to come up with a mechanism that ensures that all recommendations are adopted of audit reports. This may need to include some form of penalties for failing to respond to audit recommendations.</p>	<p>Improve enforcement of audit recommendations</p>	<p>Audit Sierra Leone/ Internal audit department – MOFED.</p>	<p>June 2013</p>

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	requirement of thirty (30) days, a significant number of recommendations, in value terms, remains unaddressed. .				
9(c)	Standards for internal control are established through relevant legislations – GBAA, FAR, Audit Act, and in internal audit and external audit manuals – but compliance with established reporting requirements is weak. Also a risk based approach and focus on the quality of procurement transaction is lacking.	Periodic reporting and compliance with report action points require enforcement. Capacity development programs for internal auditors and external auditors on procurement procedures. Strengthen and enforce sanctions for non-compliance with recommendations to implement internal control measures. Adopt a risk based approach, with evaluation of quality of procurement transactions.	Audit strengthening to focus on risk based approach Capacity building/ training for auditors on procurement procedures	Audit Sierra Leone/ Internal audit department – MOFED.	Dec 2013
9(d)	Manuals for control procedures are available for both the internal and external audit functions, but the practice in the application of the procedures is weak across audit institutions.	Recommended action measures include: (i) Enhancing capacity of auditors through training; and (ii) aligning career progression with performance criteria linked to improvements in application; and (iii) definition of improved internal control measures.	Audit strengthening	Audit Sierra Leone/ Internal audit department – MOFED.	Dec 2013
9(e)	The requirement exists for auditors to be proficient in all aspects of auditing, including on procurement audits. However, there is no existing	A focused and specialised procurement capacity building program catering to the requirements of auditors (internal and external)	Capacity building/ training	NPPA/ Internal audit department – MOFED/	Dec 2013

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>mechanism to support the auditors to acquire and use specialist knowledge on procurement audits although some support could henceforth be obtained from the NPPA.</p>	<p>should be introduced.</p> <p>Periodic reporting and compliance with report action points require enforcement. Capacity development programs for internal auditors and external auditors should be strengthened and sanctions should be established and enforced for non-compliance with recommendations to implement internal control measures.</p>		<p>Audit Sierra Leone</p>	
10(a)(b)	<p>The legislative framework is lacking any enforcement provisions vis-à-vis complaints decisions.</p> <p>The legislative framework does not provide for any form of appeal or judicial review concerning procurement complaints.</p>	<p>A mechanism for enforcement of decisions should be included in the Act and Regulations.</p> <p>The right to appeal and judicial review should be provided for with respect to procurement complaints.</p>	<p>Revise legal framework.</p>	<p>NPPA</p>	<p>Dec 2013(*)</p>
10(b)	<p>The capacity to handle complaints is low and the mechanisms and authority for enforcement of decisions are unclear.</p>	<p>Revisions to the Act and Regulations should address matters pertaining to capacity and enforcement. Also, mechanisms and authority for enforcement should be more clearly established, and efficiency in the administration of the system should be encouraged.</p> <p>IPRP members should be trained in</p>	<p>Revise legal framework.</p> <p>Capacity building/ training</p>	<p>NPPA/IPRP</p>	<p>Dec 2013(*)</p> <p>Jun 2013</p>

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
		procurement, and efforts should be made to increase public awareness of the IPRP's functions.			
10(c)	<p>The IPRP lacks enforcement authority and there is no procedure for higher-level or judicial review of IPRP decisions.</p> <p>Although it appears that remedies imposed by the IPRP are consistent with the legislative framework, this is not entirely clear.</p> <p>No cases or publications are available to review decisions made at the procuring entity level.</p>	<p>The authority of the IPRP should be made more robust, and enforcement of appropriate remedies should be established. The right to higher-level and judicial review also should be established in the legislative framework.</p> <p>Section 65(5) of the Act could benefit from clarification with respect to the remedies available to the IPRP.</p> <p>It should be considered whether publication of decisions should be instituted at the procuring entity level.</p>	Revise legal framework.	NPPA	Dec 2013(*)
10(d)	The Act and Regulations do not specify to whom a decision of the Review Panel must be provided, and are silent regarding the publication of decisions on complaints at the procuring entity level.	The legislative framework should provide for the publication of decisions on complaints, at all levels, in a manner that is easily accessible and free of charge, and also should make provision for the protection of confidential information in connection with such publication.	Revise legal framework.	NPPA	Dec 2013 (*)
10(e)	Although the Act establishes the Review Panel for the purpose of	The NPPA and Review Panel should have clear lines of established	Revise legal framework.	NPPA	Dec 2013(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	conducting independent administrative review of complaints, there is some question as to whether the Review Panel truly is independent from NPPA influence.	independence.			
11	<p>Publication and distribution have improved slightly but the challenges that remain include: (i) the limited distribution of some of the tabloids; (ii) in a country with high illiteracy rate, the information in the papers benefits only the few literate; (iii) the electronic media is not generally recognised as a source of invitation for bids; (iv) the cost of reaching the notice boards and their location make them difficult to use by potential beneficiaries; and (v) the low level of internet literacy and difficulty of accessing the Internet makes its use ineffective.</p> <p>Information is posted on the NPPA procurement website, but the reliability of the site is not always guaranteed (dead links), the consistency with which information is posted is irregular. Many people do not have access to the world wide</p>	<p>Measures need to be taken to improve the NPPA website and its management. There also needs to be an improvement in the gathering of data and a regular publishing of standard reports that may be of interest to the general public, so as to engage/mobilize civil society's interest in monitoring procurement reforms and outcomes.</p>	<p>Upgrade NPPA website and information management.</p> <p>Continue in parallel the existing means of publication and distribution.</p>	NPPA	Dec 2012(*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	web in Sierra Leone and the information is not always user friendly.				
12(a)	SBDs and contract documents do not fully or consistently address matters relating to fraud and corruption, conflicts of interest and unethical behaviour.	SBDs and contract documents should be revised to appropriately address matters relating to fraud and corruption, conflicts of interest and unethical behaviour, and set out actions that can be taken with regard to such behaviour.	Revise legal framework.	NPPA	Dec 2013 (*)
12(b)	There is some lack of clarity, as well as inconsistency between the Act and Regulations, with respect to the meaning and conduct of, and the restrictions imposed upon, public officials in public procurement. The same is true with respect to the mandatory (or non-mandatory) nature of bidder declarations.	The Act and Regulations should be revised to clarify matters such as covered persons, prohibited activities, required compliance measures, etc.	Revise legal framework.	NPPA	Dec 2013 (*)
12(d)	The respective scopes of responsibility of the NPPA and Anti-Corruption Commission are not always clearly delineated.	Given the broad authority granted to both the NPPA and Anti-Corruption Commission, it should be ensured that there is coordination among, and no duplication of responsibilities by, these entities, and reporting structures should be clearly prescribed. It also should be ensured that both entities function independently and free of conflicts of interest. In addition, the	Revise legal framework. (Proc & ACC)	NPPA/ACC	Dec 2013 (*)

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
	<p>Although it includes some directly relevant provisions, the Government's anti-corruption program is not really specific to public procurement.</p>	<p>Government's anti-corruption program requires better coordination or authority at a higher level to be effective.</p> <p>More provisions specific to public procurement could be included in any future revisions to the Government's anti-corruption program.</p> <p>Such matters should be addressed in the overall legal framework and governance structure, as appropriate. The 2008 Anti-Corruption Act should be properly referenced in future revisions.</p>			
12(e)	<p>There is a weak network or relationship that currently exists between the CSO and the NPPA/ACC. The CSOs are not well prepared and do not have much capacity in the field of procurement. Access to procurement information is also very limited for them to perform social audits.</p>	<p>There needs to be a closer network created between all the stakeholders in public procurement which includes CSOs that are looking out for the nation's best interest. As these networks and partnerships are built up, the CSOs will then be able to get more deeply involved (granted that there is good access to information and that they also have received training in such a complex area as procurement). The above actions are to have a greater partnership between</p>	<p>Development of stakeholder networks</p> <p>Capacity building/ training</p>	NPPA/CSO/ Media	Dec 2013

Indicator	Indicator Issue	Recommended Actions	Specific Action(s)	Agency Responsible	Delivery Timeline
		CSOs, private sector and Government.			

NB: ‘*’ refers to the fact that this proposed action is already part – and financed – through other projects.

Annex 3: World Bank Exceptions to National Competitive Bidding (NCB) Procedures

The procedures to be followed for National Competitive Bidding shall be those set forth in The Public Procurement Act, 2004, of Sierra Leone, subject to the following provisions:

- a. Procuring entities shall use appropriate standard bidding documents acceptable to the Association.
- b. The eligibility of bidders shall be as defined under Section I of the Guidelines Procurement under IBRD Loans and IDA Credits (the “Procurement Guidelines”); accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Association for reasons other than those provided in Section I of the Procurement Guidelines.
- c. No restrictions in respect of eligibility to participate in bidding for contracts shall be placed on the basis of nationality of the bidder and/or the origin of goods other than those imposed by primary boycotts.
- d. Foreign bidders shall be allowed to participate in National Competitive Bidding procedures.
- e. No domestic preference shall be given for domestic bidders and/or for domestically manufactured goods.
- f. Bidding shall not be restricted to pre-registered firms, and foreign bidders shall not be required to be registered with local authorities as a prerequisite for submitting bids.
- g. Foreign firms shall not be required to associate with a local partner in order to bid as a joint venture, and joint venture or consortium partners shall be jointly and severally liable for their obligations.
- h. Government-owned enterprises shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law and are not dependent agencies of the Borrower or Sub-Borrower. Such enterprises shall be subject to the same bid and performance security requirements as other bidders.
- i. Subject to these provisions, procurement shall be carried out in accordance with the “Open Competitive Bidding” procedures set forth in the Act.
- j. Bidders shall be given at least thirty (30) days from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, to prepare and submit bids.
- k. Bids shall be submitted in a single envelope.
- l. An extension of bid validity, if justified by exceptional circumstances, may be requested in writing from all bidders before the expiration date and for a minimum period required to complete the evaluation or award a contract, but not to exceed thirty (30) days. No further extensions shall be requested without the prior concurrence of the Association.

- m. 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 concurrence.
- n. Qualification criteria shall be applied on a pass or fail basis.
- o. Bidders shall be given at least twenty-eight (28) days from the receipt of notification of award to submit performance securities.
- p. Each bidding document and contract financed out of the proceeds of the Financing shall include provisions on matters pertaining to fraud and corruption as defined in paragraph 1.16(a) of the Procurement Guidelines. The Association will sanction a firm or an individual, at any time, in accordance with prevailing Association sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded an Association-financed contract; and (ii) to be a nominated sub-contractor, consultant, supplier or service provider of an otherwise eligible firm being awarded an Association-financed contract.
- q. In accordance with paragraph 1.16(e) of 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 paragraph 1.16(e) of the Procurement Guidelines constitute an obstructive practice as defined in paragraph 1.16(a)(v)(bb) of the Procurement Guidelines.
- r. The Association may recognize, if requested by the Borrower, exclusion from participation as a result of debarment under the national system, provided that the debarment is for offenses involving fraud, corruption or similar misconduct, and further provided that the Association confirms that the particular debarment procedure afforded due process and the debarment decision is final.

Annex 4: World Bank Country Program Portfolio Review (CPPR) – Procurement Inputs

Many of the projects in the WB's portfolio are decentralized projects with smaller procurement packages for the local councils and for other goods, works and services in the counties. For these types of procurements at smaller values, that are typically below the prior review thresholds for no objections from the Bank (*e.g.* shopping and national competitive bidding-NCB), the overall procurement capacity is adequate and the projects are performing well. For the projects that have larger procurement packages, notably the larger international competitive bidding (ICB) procurements that are complex, of high value and that also require prior review no objections, the procurement processes are slow due to several reasons. These reasons include poor communications within implementing agencies, lack of sufficient numbers of experienced procurement specialists and much iteration on documents to arrive at acceptable quality for the international markets. Currently there are very few procurement specialists in Sierra Leone who have sufficient experience and are qualified on the large value contracts for goods, works, and services to meet procedures under national procurement rules and those of the International Financial Institutions (IFIs) (*e.g.* World Bank, African Development Bank and other international organizations).

There is a continued need to build procurement capacity of the line ministries (MDAs), MOFED, and other implementing agencies as well as that of the private sector for potential contractors and suppliers. The government has many procurement officers and has also recently created a procurement cadre with the recruitment of approximately thirty (30) university graduates as procurement officers. As the procurement cadre is rolled out and mainstreamed in the public service, clarifications on qualifications, grading and pay scales needs to be harmonized between the newer and older staff. Furthermore to minimize project implementation slowness, and to reduce the red flags related to the governance agenda, the procurement capacity throughout GoSL should now be preserved with an elimination of ad-hoc transfers and/or rotations of procurement staff. Finally a strengthened national level procurement training effort, with strengthened curriculum and delivery, should accompany the introduction of the procurement cadre within the public service.

As a final note, the forthcoming Country Procurement Assessment Report (CPAR) will emphasize the revisions of the legal framework as there are several instances of inconsistencies, contradictions and ambiguities in language between the Public Procurement Act, the Regulations and the Procurement Manual. Also in some cases the Regulations contain provisions for the procurement process which were not included in the Act. At the same time clarifications and harmonization with the legal framework in financial management needs to be done. The CPAR will also recommend strengthening the capacity building strategy, procurement professionalization, and civil society involvement in procurement issues, which are similar to the findings of this CPPR.

Specific Findings: Smaller procurement packages are proceeding adequately, but the larger procurement contracts and some consultant contracts have slow processing:

- *Capacity to prepare TORs and Technical Specifications in MDAs is low.*
- *Internal GoSL/MDA approval of procurement documents and payment of invoices is slow for many reasons.*
- *Procurement capacity is sufficient for low value purchases that follow shopping procedures.*

- *Professionalization of procurement is hampered by the transfer/rotation of trained GoSL procurement staff to non-procurement positions.*
- *Inadequate logistics for Local Council procurement officers to follow up on the implementation and delivery of procured works, goods or services.*
- *There are only a few national procurement specialists capable of processing large bids/contracts.*
- *Local firms are not familiar with WB bidding procedures and as a result they do not bid or submit low quality proposals.*
- *Local firms are unable to manufacture items to international standards so have to follow international bidding procedures.*
- *Few qualified responses to EOI/RFPs.*
- *Complaints from bidders cause delays.*
- *Inaccurate cost estimates have resulted in higher bid prices than expected, and can lead to need to rebid.*
- *Poor quality submission of procurement documents by MDAs creates longer time for Bank's No Objection.*
- *The PROCYS (Procurement Cycle Tracking System) not being used on Bank projects.*
- *GoSL, CSOs and media not aware of WB procurement guidelines and operating procedures.*

Recommendations:

- *Strengthening of MDAs to prepare TORs and technical specifications.*
- *GoSL to continue to recruit and train procurement staff.*
- *Provide logistical support for Local Council procurement officers to follow and verify completion/delivery of goods, works and services.*
- *MDAs should assign national procurement officers to project procurement specialists as counterparts.*
- *Under the leadership of the National Public Procurement Authority (NPPA), with cooperation of the Bank, conduct periodic workshops/clinics on procurement for project/GoSL procurement officers on all aspects of the procurement cycle including preparing RFPs, evaluation reports, procurement plans, etc.*
- *Under the leadership of National Public Procurement Agency, with cooperation of the IFIs, conduct periodic procurement workshops to inform civil society and local firms on national and IFI procurement policies, and how to prepare improved quality of bids so as to be responsive to bidding opportunities.*
- *Mandatory use by MDAs of the PROCYS (Procurement Cycle Tracking System) for prior review-no objections requests from the Bank.*
- *Adopt the good practices of preventing unjustifiable delays to the award of contracts, after receiving a Bank No Objection, and to be aware of the new provisions of the Procurement and Consultant Guidelines of January 2011 that outline willful dilatory conduct or other actions of the Borrower resulting in unjustifiable delays to award of contract could result in misprocurement (see 1.14 of the Procurement Guidelines, January 2011).*

Annex 5: Key Members of the Sierra Leone Self-Assessment Team

NPPA	A. S. Mattruri
Accountant General Department	Abdul S. Coomber
National Accountability Group	Abu Bakarr Kamara
Ministry of Transport and Aviation	Admire Ganda
NPPA	Alfred J. O. Fornah
National Revenue Authority	Barbar Massaquoi
NPPA	Brima Frank Bameh
University of Sierra Leone-FBC	Dante Bendu
Anti-Corruption Commission	Edna Fofana
Society for Democratic Initiative	Emmanuel S. Abdulai
NPPA	Foday Kamara
Foreign Affairs	Franklyn Fawundu
NMJD	John D. H. Momo
AUDIT SERVICE	John Macarthy
MOFED - BB	Lauratu Johnson
NPPA	Lovelyn Samai
Sierra Leone Police	Maxwel M. Sesay
Ministry of Health & Sanitation	Mohamed Kallon
NPPA	Moses Ngebeh
Sierra Leone Ports Authority	N'fah Sillah Dumbuya
NPPA	Patricia French

SDI	Rose Marie Blake
MEYS	Sidiki M. Kamara
SDI	Solomon Rogers
MAFFS	Sahid Ibrahim
ACC	Mohamed Conteh
AUDIT SERVICE	Ibrahim Suma
IPRP	Abraham Bangura
Private Sector/Civil Society	Edwina Smith
Private Sector/Civil Society	Tom Vandy
NPPA	Joseph B. Dauda
Private Sector/Civil Society	Joy Dumbuya
Private Sector/Civil Society	Helen Bangura
Private Sector/Civil Society	Hulda Kamara
Private Sector/Civil Society	Tonny Thomas
Private Sector/Civil Society	Mariama Barrie
Private Sector/Civil Society	Sylvester Jarret
Private Sector/Civil Society	Nimata Wilson
Private Sector/Civil Society	Glona Wilson

Annex 6: Donor Support to Sierra Leone

Table 2.2: Sierra Leone: External Financing Sources and Uses, 2008-13

	2008	Estimate 2009	Projection 2010	2011	2012	2013	Total '10-13
<u>Gross Financing Requirements</u>	<u>309.9</u>	<u>386.9</u>	<u>270.1</u>	<u>263.1</u>	<u>298.4</u>	<u>307.0</u>	<u>1,138.7</u>
A. Current Account Balance <i>/a</i>	305.3	242.6	249.9	248.4	267.8	281.2	1047.3
B. Debt Service Due <i>/b</i>	10.6	17.4	20.2	24.7	20.6	20.8	86.3
C. Debt Stock Reductions	0.0	0.0	0.0	0.0	0.0	0.0	0.0
D. Increase in Reserves	-6.0	126.9	0.0	-9.9	10.0	5.0	5.1
<u>Financing Sources</u>	<u>309.9</u>	<u>386.9</u>	<u>270.1</u>	<u>263.1</u>	<u>298.4</u>	<u>307.0</u>	<u>1,138.7</u>
A. Government Budget	172.8	194.5	182.5	212.2	213.9	216.4	825.1
1. Grants	118.1	137.7	123.1	128.2	122.8	123.7	497.7
a. Program Support	77.7	83.3	64.8	43.6	42.3	41.5	192.2
b. Projects	40.5	54.4	58.2	84.6	80.5	82.1	305.5
2. Loans	54.7	56.8	59.4	84.0	91.1	92.8	327.4
a. Program Support	0.0	10.0	13.0	10.0	10.7	10.7	44.3
b. Projects	54.7	46.7	46.4	74.0	80.5	82.1	283.1
B. Net IMF Credit to Bank of Sierra Leone	18.0	18.8	40.6	8.5	6.5	-0.2	55.4
C. All Other	119.0	173.6	47.0	42.4	78.0	90.8	258.2

/a Net of interest and official grants.

/b Debt service is shown before traditional relief and after MDRI relief.

Source: International Monetary Fund and World Bank staff estimates and projections.

Institution	Lending	Amount (USD millions)
AfDB	Agriculture Sector Rehabilitation Project (ASREP)	19.3
	NERICA Rice Dissemination Project	4.6
	Bumbuna Hydroelectric Project Add Fin [approved 2008]	16.6
	Support to Basic Education	25.8
	Strengthening of District Health Services	27.4
	Social Action Support Project	19.3
	Institutional Support Project (PFM and Energy)	4.5
	Subtotal	117.5

Institution	Lending	Amount (USD millions)
IDA	Institutional Reform and Capacity Building	25
	Plus DfID & EU trust funding	25
	Infrastructure Development Project	55
	Integrated Public Financial Management Reform	4
	Plus DfID & EU trust funding	17
	Rural Private Sector Development Project	30
	Bumbuna Environmental and Social Protection	12.5
	Plus partial risk guaranty restructuring	9.5
	Education for All	15
	National Social Action project	35
	Plus Global Food Price Crisis Response Facility	4
Power and Water Project	35	
Plus DfID Emergency Water Trust Fund	9	
	Subtotal	276
IFC	Credit lines to commercial banks	10
	Total	403.5

Table 8: IDA will cooperate with trust funds and partners to supplement IDA funding

Activity	Financing Source	Co-financing Amount (US\$ Million)
Fisheries Project	Regional IDA/ GEF	15
Mano River Union Agriculture	Regional IDA	10
Infrastructure	DfID/EC/ Others	40
Reproductive Health 2	Africa Catalytic Fund	25
Financial Sector Reform	GTZ/KfW	13
Cash for work program	Global crisis response facility	4
Biodiversity project	GEF	5
Youth employment	Tentative – Possible GTZ lead	5
Institutional Capacity Building for Combating Corruption	IDF	0.5
	Total	118

Partner	Private sector/trade	Financial sector	Infrastructure/transport	Energy	Mining	Agriculture and rural development	Fishing	Health	Education	Environment	Water and sanitation	Social protection	Public Sector	Judicial and Legal Reform	Capacity Building/Decentralization	Security and Stability	Gender
European Commission	X		XX	X	X	X	X	X	X	X			X	X	X		
AfDB			X	X		X	X	X	X		X	X	X		X		X
Islamic DevlpmtBank			X					X	X		X			X			
Irish Aid								X	X								
Japan			X	X		X		X	X		X				X		
United Kingdom/Dfid	X			X	X			XX	X		X		XX	X	X	X	XX
UNDP	X						X	X	X		X				X		
UNICEF								X	X		XX	X		X	X		X
FAO						XX	X										
UN (Other)		X		X		X		X		X		X			X	XX	X
United States			X				X	X		X				X	X		
IFC	X	X															
World Bank	X	XX	X	XX	XX	X	X	X	X	X	X	X	X		X		X
IMF		X											X				
Germany	X	X	X			X		X						X		X	
China				X							X						

XX indicates that this organization takes the lead in that sector and is supported by others

Annex 7: List of References

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