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# SCOPING STUDY REPORT

Fiscal Accountability and Sustainable Trade (FAST)

Effective Public Procurement for Kyrgyzstani Taxpayers



Co-Creation Work Planning Session, Ministry of Finance, Kyrgyz Republic Photo By: Olivia Gruzdova, USAID FAST

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## Fiscal Accountability and Sustainable Trade (FAST)

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## ACRONYMS

ADB	Asian Development Bank
API	Application Programming Interface
CQS	Consultants Qualification Selection
CSOs	Civil Society Organizations
DPP	Department of Public Procurement
E-portal	Electronic Portal
FAST	Fiscal Accountability and Sustainable Trade
FMIS	Financial Management Information System
GPC	Global Product Classification
GPPCS	General Public Procurement Classification System
HS	Harmonized System
ICS	Individual Consultants Selection
IICC	Independent Inter-agency Complaints Committee
MAPS	Methodology for Assessment of Procurement Systems
MoF	Ministry of Finance
OCDS	Open Contracting Data Standards
PFM	Public Financial Management
PPL	Public Procurement Law
TI	Transparency International
TPPR	Transparent Public Procurement Rating
UNSPSC	United Nations Standard Produce Service Code

## EXECUTIVE SUMMARY

The Kyrgyz Republic has made gains towards self-reliance but requires stronger non-traditional trade linkages and infrastructure to spur economic development. Stronger public financial management (PFM), including public procurement, would contribute to this. The capacity to properly conduct and disseminate information on the procurement process needs to be further developed and transparency is required to facilitate media and civil society oversight. The purpose of this project is to identify and support implementation of reforms to:

- I. increase efficiency and transparency of public procurement; and
- II. enable civic engagement and oversight.

An effective public procurement system requires a robust legal and institutional framework; standardized procurement processes, procedures and practices; a strong internal control environment; efficient transaction processes linked to financial management information systems and using e-procurement solutions; and a focus on accountability, transparency, integrity and fairness. Since 2012 the Kyrgyz Republic has already implemented significant procurement reforms, an extensive legal and institutional reform, and the development of an electronic procurement system (the e-Portal).

The legal framework for public procurement in Kyrgyz Republic consists of the Public Procurement Law (PPL) of 2015 and about 25 supplements and amendments. Procurement authority is decentralized to over 4000 procuring entities and the Department of Public Procurement (DPP) under the Ministry of Finance performs the normative and regulatory procurement function. The PPL established an Independent Inter-agency Complaints Committee (IICC) to review complaints, protests, and appeals. Procurement processes are facilitated by an e-portal and much of the information on the portal is accessible by the public. There are Civil Society Organizations (CSOs) and at least one media outlet active in monitoring public procurement. However, several challenges remain.

The procurement law, the amendments, supplements and regulations are not consolidated or organized in a coherent or comprehensive structure which can make them difficult to navigate. Moreover, there are inconsistencies (For details and examples see paragraph 4.1.1 below). There is no comprehensive procurement manual or guidelines detailing all procedures and good practices for implementation of the law and regulations (See 4.1.2 below). The DPP has insufficient human resources to manage its responsibilities. The level of procurement capacity in some procuring entities is inadequate. Public procurement is a new profession and the opportunities for training and education are limited. Collaborative procurement among procuring entities is not commonly practiced (See 4.1.3. below).

There is a lack of proper budgetary planning resulting in rushed procurement, leading to bypassing the established, legal procedures. The quality of specifications is generally low and leads to poor outcomes and a high number of complaints (See 4.2.3). There are problems with the procurement methods and their application. Moreover, there are issues relating both to the level and the application of financial thresholds (See 4.2.4). The evaluation process is also the source of many complaints (See 4.2.5). Post contract award aspects are not covered by the Public Procurement Law and not included in the portal, resulting in a lack of transparency and opportunity for monitoring by civil society and the media. Suppliers are often not paid in time and allegedly this results in bribery, in order to receive payment for goods and services (See 4.2.6).

The internal control system is generally weak. The DPP does not have adequate staffing levels to conduct sufficient compliance monitoring and oversight, let alone implementing comprehensive procurement management information and performance management beyond the issuance of basic statistical reports. During the scoping, the team did not identify any external audit findings relating to procurement activities. The complaints management system is overwhelmed by a massive amount of complaints (See 4.3).

The procurement e-portal was developed and implemented in 2015 and covers core functionality. However, there are some gaps and more advanced functionality would make the Portal more effective, such as a contracts module and robust catalog and ordering system (See 4.4).

There are several ongoing initiatives relating to transparency and accountability. Transparency International (TI) is developing a tender monitoring site and Kloop, an independent media organization, have developed an application that facilitates investigation into corruption in procurement. The Open Government Partnership Forum, including representatives of Government, suppliers, civil society and academia have an Action Plan 2018-2020, although implementation has been weak. Despite these activities it is reported that the grass roots capacity to monitor public procurement is weak (See 4.5).

In recent years, donor supported PFM reform programs have covered a wide range of initiatives including strengthening the public procurement systems and procedures in support of increased transparency, improved budget execution, reduced corruption and improved public service delivery in the Kyrgyz Republic (See 4.6).

Based on these findings, several international standards and assessments, including the UNCITRAL Model Law for Public Procurement and the OECD-DAC Methodology for Assessment of Procurement Systems (MAPS), will be applied to identify the substantive gaps relating to public procurement and to develop recommendations. A Co-creation workshop will be held with the Department of Public Procurement and other relevant stakeholders to prioritize the initiatives to be included in the project workplan. Based on this, the Project Workplan for 2021-22 including a detailed results framework will be developed in close coordination with the DPP and the project's other stakeholders.

# I. INTRODUCTION AND BACKGROUND

## I.1. INTRODUCTION

This report provides an overview of the activities and key findings of the Scoping Study under FAST Task 6 Effective Public Procurement for Kyrgyzstani Taxpayers. It is based on interviews with key stakeholders and a review of documents and is not intended to provide an exhaustive assessment, but rather to identify key issues for tailoring the detailed assessment process and framing the project workplan.

It includes an overview of the approach taken and details of key findings from the study. It outlines the project workplan for the remainder of 2020 which will guide the development of the full life-of-task workplan for 2021-2022. The workplan for 2021-2022 will be co-created with DPP in 2020.

## I.2. PROBLEM STATEMENT

The Kyrgyz Republic is a country that has made gains toward self-reliance, but today is held back by several stubborn factors. As the region's only democracy, consistent and stable political transitions are hampered by corruption<sup>1</sup> and foreign influence. A land-locked and mountainous country, the Kyrgyz Republic requires stronger non-traditional trade linkages and infrastructure to spur economic development. Stronger public financial management (PFM) is necessary to achieve self-reliance for the country.

Public tenders in the Kyrgyz Republic must be more transparent for citizens to understand the quality of proposals. The capacity of government to properly conduct and communicate the procurement process needs further development and additional transparency is required for media and the average citizens to gain oversight over tenders and contracts.

## I.3. BACKGROUND

An effective public procurement system requires a robust legal and institutional framework; standardized procurement processes, procedures and practices; a strong internal control environment; efficient transaction processes linked to financial management information systems and using e-procurement solutions; and a focus on accountability, transparency integrity and fairness.

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<sup>1</sup> On the latest TI Corruption Perception Index, the Kyrgyz Republic scored 30 out of 100 on a scale where 0 is highly corrupt and 100 is very clean. It was ranked 126 out of 198 countries.





*Figure 1. An effective Public Procurement System*

Since 2012 the Kyrgyz Republic has already implemented significant procurement reforms, in particular an extensive legal and institutional reform and the development of an electronic procurement system (the e-Portal). This is an impressive start, and the system has the potential to be strong, transparent, and accessible to the public and private sectors, as well as to civil society. However, much work, as well as investment in human and material resources, is pending in order to achieve an online, transparent, easily used system for all interested parties

#### **1.4. LEGAL AND INSTITUTIONAL FRAMEWORK**

The Public Procurement Law, issued on April 3, 2015, provides the legal basis for public procurement throughout the country. This Procurement Law has been amended several times and a series of regulations provide additional information on implementation of some of the clauses. To date, approximately 25 supplements to the procurement law have been issued and are listed in Annex 2. The normative and regulatory procurement function is performed by the Department of Public Procurement (DPP) under the Ministry of Finance as the authorized state body on public procurement (SBPP). The main functions of the SBPP are defined in the Public Procurement law.

The procurement function is fully decentralized and the law states that each Procuring Entity shall designate responsibility to a procurement department, the responsibilities of which are also specified. All members of the procurement department must have a procurement certificate which is achieved on the basis of a 5-day course. Ad hoc tender committees are appointed for each tender.

The Law established an Independent Inter-agency Complaints Committee (IICC) to review complaints, protests, inquiries and appeals and make decisions within the framework of the public procurement legislation and regulatory norms on public procurement. The functioning of the Committee was further elaborated in a Regulation approved by the order of the Ministry of Finance of the Kyrgyz Republic of 11 October 2017 #140-p. A decision of the Committee is considered final unless it is appealed to the Third-party Court (Commercial Arbitration) or to the Court of general jurisdiction. The Committee is

composed of up to 15 members of which one third are legal professionals, one third are civil servants (including certified procurement professionals), and one third are members of the public. The members, who work pro-bono, are approved for a period of two years. The Department of Public Procurement acts as the secretariat to the IICC. Complaints can be filed at any stage of the procurement procedure through the Procurement web-Portal and are public. On receipt of a complaint, the procurement process is suspended by the IICC for 10 days. The Committee reviews complaints electronically within the portal and must reach a decision within 7 days. The decision is published on the web-portal including the justification and any redress measures.

#### **I.5. INTERNAL CONTROL AND AUDIT**

Monitoring of procurement is not specifically mentioned in the Procurement Law as being a responsibility of the authorized state body of public procurement. However, according to the Regulation on the Department, approved by the Government of the Kyrgyz Republic on February 3, 2014 No. 68, the Department should carry out selective monitoring of compliance with the provisions of the Law and other regulatory legal acts of the Kyrgyz Republic regulating the procedure of public procurement. The Law specifies sanctions that the Department can apply when violations are identified. Procurement is subject to both internal audit within procuring entities and external audit by the Chamber of Accounts.

#### **I.6. THE ELECTRONIC PROCUREMENT PORTAL**

The Kyrgyz government procurement e-portal, [zakupki.gov.kg](http://zakupki.gov.kg), was developed and implemented in 2015. Since then it has been updated in a number of areas. The portal covers core functionality and improves the efficiency and effectiveness of public procurement. Reportedly the server capacity is insufficient. The procurement e-portal needs to be assessed with a view to enhancing its capabilities and performance.

#### **I.7. TRANSPARENCY AND ACCOUNTABILITY**

According to the Procurement Law, transparency is one of the principles on which public procurement shall be based. In practice, the Procurement Portal is the main vehicle to ensure transparency. Much of the information in the portal is accessible by the public. There is both a Conflict of Interest law and an Access to Information law.

The Anti-Corruption Council under the Government of Kyrgyz Republic, headed by the Prime Minister, is a permanent consultative and advisory body that ensures joint activities of state bodies, local self-government bodies with civil society and the business community to develop and implement agreed anti-corruption measures.

The country is a member of the Open Government Partnership and the Open Government Forum including representatives of government, civil society and academia has an action plan which includes commitments relating to public procurement.

There are Civil Society Organizations active in monitoring public procurement, at least at the national level, and at least one media outlet reports on procurement issues.

## 2. PROJECT PURPOSE AND OBJECTIVES

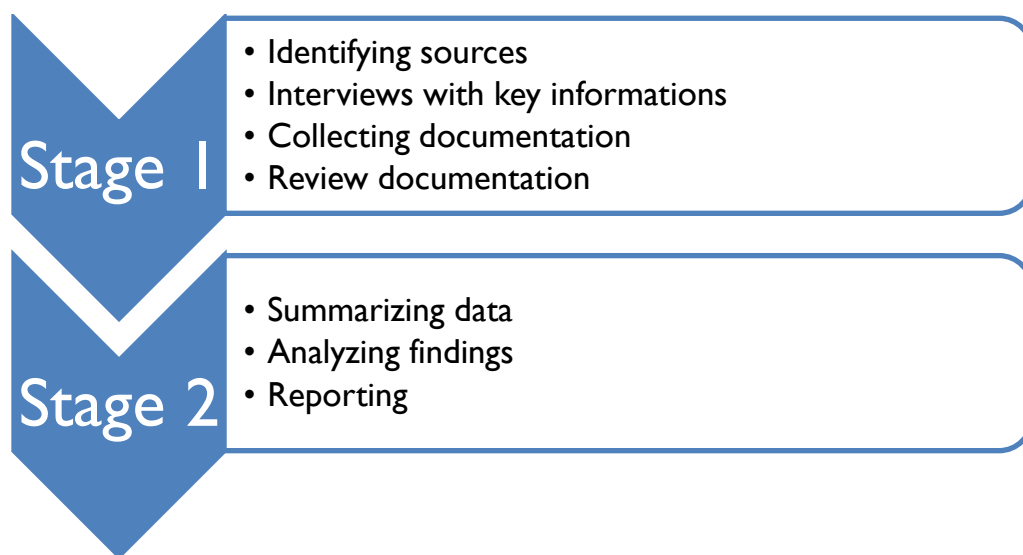
The purpose of the project is to identify and support implementation of reforms in Kyrgyzstan’s public procurement systems and processes where needed in order to improve efficiency and transparency and reduce corruption.

The overall objective of the project is to increase the effectiveness of Kyrgyz Republic public procurement. To this end there are two sub objectives:

- I. To increase efficiency and transparency of public procurement i.e. improvement of current systems of procurement and increasing capacity of the public sector to carry out procurement effectively, and
- II. To enable civic engagement and oversight over public procurement which envisions strengthening civic oversight and transparency in procurement to reduce corruption incidences and monitor effective use of the taxpayers’ money.

## 3. SCOPING STUDY APPROACH AND METHODOLOGY

The scoping study was conducted in 2 stages: Stage 1, Identifying sources and collecting information and Stage 2, Summarizing, analyzing and reporting.



*Figure 2: Stages of the Scoping Study*

Stage 2 is covered in detail in Section 6: Analysis and Key Findings. Stage 1 included the following activities:

### 3.1. INTERVIEWS WITH KEY STAKEHOLDERS

The Ministry of Finance’s Department of Public Procurement (DPP) provided invaluable assistance in identifying Key Stakeholders and arranging meetings. The project team held meetings with staff from the Department of Public Procurement, representatives from Civil Society Organizations and external public procurement experts. Due to COVID-19 conditions, these meetings were conducted remotely. The focus

of these meetings was on gaining an overview of the procurement system and in identifying weaknesses and challenges. A list of these Key Informants is attached as Annex 1.

### **3.2. COLLECTION AND REVIEW OF DOCUMENTATION, TOOLS AND STUDIES**

The following categories of documentation, tools and studies were collected and reviewed. The complete list is attached in Annex 2.

- Procurement law and regulations.
- Procurement reports, templates, charts, and other similar documents
- Demonstration on and review of the procurement portal
- Articles, research papers and assessment reports pertaining to procurement in Kyrgyz Republic
- Documentation relating to other ongoing procurement related initiatives; and
- International public procurement standards and assessment methodologies.

### **3.3. REVIEW OF EXTRA TASKS REQUESTED BY THE DEPARTMENT OF PUBLIC PROCUREMENT**

A list of additional tasks was received by the project team from the Department of Public Procurement on 23 July 2020. These tasks were reviewed against the already developed work plan and an effort was made on how best the suggested tasks can be incorporated into the project's work plan

## **4. ANALYSIS AND KEY FINDINGS**

### **4.1. LEGAL, REGULATORY, AND INSTITUTIONAL FRAMEWORK**

#### **4.1.1. LEGAL AND REGULATORY FRAMEWORK**

The legal and regulatory framework for public procurement should be clearly recorded and hierarchically organized (laws, decrees, regulations, and procedures) with precedence clearly established to minimize inconsistencies. The higher in the hierarchy, the less detailed and more stable an instrument should be since modification requires higher levels of authority. Therefore, lower level instruments should be chosen to regulate more detailed procedures.

The legal framework for public procurement in Kyrgyz Republic consists of the procurement law and about 25 amendments and supplements. Each amendment or supplement to the procurement law must be adopted by the Parliament and signed by the President of the Republic, which is a long process. Currently there are some amendments in process. They have been approved by Parliament, but the draft was returned by the President for revision. It is anticipated that this process will be further delayed due to parliamentary elections in October 2020. The amendments, supplements and regulations are not consolidated or organized in a coherent or comprehensive structure which can make them difficult to navigate. Moreover, there are inconsistencies.

To provide a specific example, Regulation of 31.12.19 #4. Procedure of Evaluation part 17 states:

*“all proposals must be checked for compliance with the basic technical requirements of the bidding documents. Examples of non-compliance with technical requirements that are grounds for rejection of a tender: non-compliance with important technical requirements (i.e. offering completely different types of equipment or materials instead of the required ones, production capacity is lower than required, equipment that is not capable of performing the main functions for which it is intended, and etc.). This evaluation should be in the form of an assessment, according to which only two conclusions are possible: "Fully meets the conditions of the bidding" and "Does not meet the conditions of bidding".”*

Article 29, parts 5 and parts 8 of the law however state:

*5. The procuring entity may consider the bid as compliant if it contains minor inconsistencies **that do not materially alter or do not materially** deviate from the characteristics, conditions and other requirements set out in the bidding documentation.*

*8. The bid evaluation committee determines the winning bid that **substantially** meets the requirements of the bidding documents:*

*1) with the lowest price, if the only criterion is price;*

*2) with the lowest evaluated cost, taking into account the established criteria, if the bidding documentation provides, along with the price, other evaluation criteria.*

**“Fully meets the conditions of the bidding”** and **“substantially”/ “materially”** are mutually exclusive.

While other examples were identified, the detailed assessment will provide a full overview.

#### 4.1.2. PROCUREMENT MANUAL

A procurement manual is an important tool in public procurement. It provides staff with detailed procedures for the correct implementation of the procurement law and regulations. The existence of a procurement manual is more important in decentralized procurement systems, such as in Kyrgyz Republic. The creation and maintenance of the procurement manual is usually the function of the procurement regulatory authority in order to create consistency of application across procuring entities. However, there is no comprehensive procurement manual in Kyrgyz Republic. The lack of defined detailed guidelines results in widespread personal discretion throughout the procurement process which leaves the procurement system highly vulnerable to wrongdoing, whether due to lack of experience or the absence of clear, written guidelines.

#### 4.1.3. INSTITUTIONAL ARRANGEMENTS

The Department of Public Procurement has a staff of 22 and during interviews, it was clearly communicated that this staffing level is insufficient to manage the workload. In particular, the staffing level to undertake monitoring and evaluation of public procurement is inadequate. In addition, the DPP also reported that the low salary levels lead to a high staff turnover rate.

There are more than 4,000 procuring entities at all levels of government. Stakeholders reported that while some procuring entities have well qualified procurement staff (mainly national level entities), in most cases the level of capacity is low, with the procurement responsibilities often allocated to finance or administration staff. The opinion was expressed that, in general, procurement is considered a low status

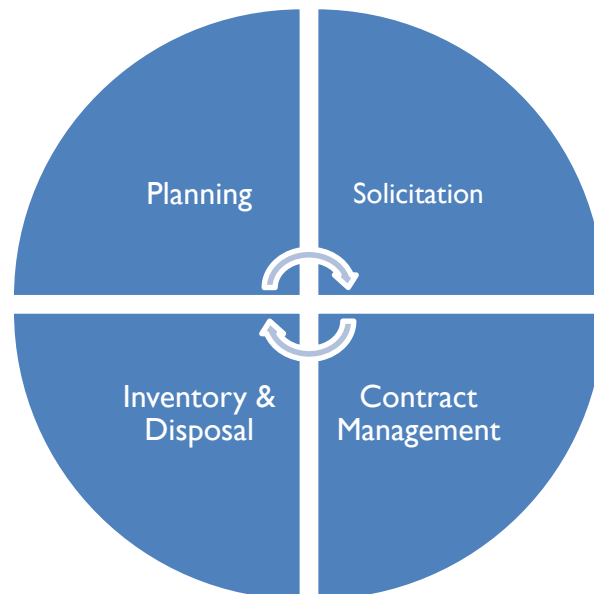
position and that procurement is not considered as a profession in the public sector. Procurement specialists in entities must attend an introductory 5-day procurement training course for procurement practitioners. This course is focused mainly on the legal framework and the procurement portal. More advanced courses are also available, but are not compulsory.

The Procurement law makes provision both for collaborative procurement, where several entities have the same requirement, and for centralized procurement where one entity conducts a bidding process for its subordinate organizations and territorial administrations. However, it is rare for this to happen in practice. It was reported that one reason is because of difficulty in combining different budgets. It may also be due to lack of detailed guidelines, procedures and training, as these types of collaborative and centralized arrangements are complex and require a certain level of professional procurement competence.

## 4.2. PROCUREMENT PROCESSES, PRACTICES AND PROCEDURES

### 4.2.1. PROCUREMENT PROCESS

According to international good practice the public procurement process starts as soon as a need is identified and finishes with inspection for compliance with the terms of the contract, incorporation into the inventory and eventual disposal actions.



*Figure 3: Public Procurement Process*

Currently according to the Procurement law, the procurement process concludes with award of contract and neither contract management, inventory and disposal are covered. An amendment to the law is currently in process to include contract management.

### 4.2.2. INTEGRATION WITH THE BUDGETARY PROCESS

Problems are reported with the budgetary and procurement planning processes. According to the PPL, procuring entities must post their procurement plan on the portal within one month of the national budget. However, stakeholders reported that it is common that these time limits in the law are not adhered to and procurement plans are posted late. The DPP informed the team that this has been resolved through a modification to the planning module of the portal so that entities cannot post tenders unless the procurement plan is published.

**4.2.3. PROCUREMENT SPECIFICATIONS**

Several sources reported that the quality of procurement specifications is low, and this is often a reason for complaints. It is common for them to be incomplete and/or restrictive, which can either be due to a lack of capacity or a deliberate act to favor a particular supplier or brand of product.

**4.2.4. PROCUREMENT METHODS**

The PPL defines 5 procurement methods for goods, works and non-consulting services and 5 methods for consulting services as follows:

GOODS, WORKS AND NON-CONSULTING SERVICES	CONSULTING SERVICES
Single-stage bidding	Quality-and cost-based selection (QCBS)
Two-stage bidding	Quality-based selection (QBS)
Simplified acquisition	Selection under a fixed budget
Method on lowering of price <sup>2</sup>	Least cost selection
Direct contracting	Direct contracting selection

Several issues were identified relating to procurement methods. Overall, the large number of different methods, the differences between them, and how and when each method is applicable, is confusing and unclear. Not surprisingly one of the key issues identified by the DPP during monitoring is that incorrect procurement methods are applied.

- The Simplified acquisition method is a competitive method, which is used for procurements valued below the maximum and above the minimal threshold. Though it is a competitive method, it does not require evaluation against qualification requirements. Under the Direct Contracting method, a contract is awarded to a supplier (contractor) after the monitoring of prices, but without a competitive process. It is difficult to understand the rationale and practicability of selecting the Direct Contracting Method in cases of “low value/low risk” procurements since it requires all the

<sup>2</sup> This method is similar to what is commonly known as Reverse Auction

full-fledged requirements (Article 21, ) (Bid Security, Qualification requirements, full package of the Bidding documents).

- Moreover, the direct contracting method is applied excessively and the simplified acquisition method, which is to be used for standard products of low value, is in practice overly complex and more complicated than single stage bidding.
- Analysis of the data in DPP reports show limited usage of Consulting Services. There might be different reasons for that, but one of the reasons may be that among the rather complicated methods of selection (QCBS, QBS) the shortest and simplest (one stage) method of Consultants qualification selection (CQS) was somehow removed from the PPL on January 11, 2019. Also, the rather important method of Individual Consultant Selection (ICS) is included in the PPL (misleadingly named “Direct contracting selection” (Article 47-4)), but cannot be implemented due to the fact that there is no corresponding provision on selection of individual consultants in the newly developed (March 6, 2020) Standard Bidding Documents (Standard RFP) for consulting services.
- Method of lowering the price is rarely, if ever, used.
- Financial thresholds are not complied with in selecting procurement methods.
- The minimum threshold of KGS 3 million for certain procuring entities<sup>3</sup> is overly high (KGS 3 million equal to USD 38,486) and is not based on national economic development parameters. Nor is there a provision for adjustment in accordance with annual inflation rates.

#### 4.2.5. EVALUATION:

The evaluation process is apparently one of the procurement aspects subject to a large number of complaints, in particular due to the practice of not indicating in the published results of bidding the lowest evaluated cost (Article 29, part 8, point 2) alongside the lowest price of the winner, which naturally causes confusion since the lowest evaluated cost is often higher than the lowest price. Other reasons for complaints could be due to inappropriate application of evaluation methods, a lack of understanding by suppliers about evaluation and/or the lack of transparency about the evaluation process.

#### 4.2.6. CONTRACT MANAGEMENT

Post-contract aspects i.e. contract monitoring, management, administration, completion and closure are not considered part of the procurement process and therefore are not included in the e-portal. According to international experience, this is also one of the stages in the procurement process most susceptible to

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<sup>3</sup> (As amended by the Resolution of the Government of the Kyrgyz Republic of April 19, 2017 No. 225)

2. To approve for state (municipal) enterprises and joint-stock companies in which the state owns 50 and more percent of shares, where the authorized Charter capital is over 100.0 million soms, the following threshold amounts allocated for the purchase of goods, works and services:

- the minimum threshold amount is 3,000,000 soms;
- the maximum threshold amount is 15,000,000 soms.



problems and to corruption and it was one of the key areas mentioned by KI from civil society, particularly the lack of transparency relating to contracts and their implementation.

Although there are provisions on the Third-Party Court in the Law (Article 50), the arrangements for its practice are not working, though this institution is the main extra-judiciary body for the consideration of **contractual** disputes. There are no supporting regulations or procedures relating to contractual disputes, perhaps because there are no provisions for contract management in the PPL, even though the Arbitration clause of the Third-Party Court may be included in the contract.

Another significant issue is that suppliers are often not paid on time. It was reported to the Consultants that one reason was because that, while funds are reserved during procurement planning, they are not disbursed to the Procuring Entity by Treasury in a timely way, often not before year-end. This means that the procuring entity does not have funds available to pay suppliers. Allegedly this leads to a situation where suppliers pay bribes only to be paid. The PPL tries to resolve this by stating that the supplier that delivered first must be paid first, but this is not working properly. However, this was not verified and will be further investigated during the detailed assessment.

### **4.3. INTERNAL CONTROL FRAMEWORK**

Most internal control frameworks for public procurement comprise the following 3 pillars:

- Compliance monitoring and oversight both by the procurement oversight authority and the audit function.
- Management information and performance management; and
- Supplier management including complaints management and supplier suspension and debarment.

#### **4.3.1. COMPLIANCE MONITORING AND OVERSIGHT**

The DPP currently has insufficient human resource capacity to monitor compliance at the desired level. At the same time, the DPP does not have a function to oversee public procurement. However, in practice, the DPP does spot checks monitoring announcements in the portal during the tender period. There is no automated system in place to identify red flags, although the DPP reported that work is ongoing to develop this functionality. When lack of compliance is identified the DPP requests the entity to correct the situation, or in some cases, they cancel the procurement. During the scoping, the team did not identify any external audit findings relating to procurement activities. This will be followed up on in the detailed assessment.

#### **4.3.2. MANAGEMENT INFORMATION AND PERFORMANCE MANAGEMENT**

The DPP has reported that due to capacity issues they have so far not been able to develop an adequate management information and performance management system for public procurement. However, they do regularly compile and publish reports with an overview of national statistics on the number and type of procurements.

#### **4.3.3. SUPPLIER MANAGEMENT - COMPLAINTS**

It is difficult to overestimate the value of confidence and trust of bidders in the public procurement system. The establishment of the IICC in 2017 along with public access to complaints through the portal has introduced transparency into the complaints process, and presumably it was anticipated that the use of the portal would enhance efficiency. However, in practice, there are considerable challenges.

- A huge number of complaints are received (2877 in 2019 or on average more than eleven complaints per work day). This demonstrates confidence on the part of the suppliers that their complaints are considered. However, since a percentage of these complaints result in suspension of the procurement process for 10 days, there is certainly a cost in terms of the efficiency and effectiveness of procurement. The reason for the high number of complaints needs to be further investigated, however there seem to be a number of underlying factors including problems with specification development and evaluation processes; speculative complaints from suppliers in order to disrupt the process;
- Probably because of the high workload, IICC decisions are often not posted on the portal within the required 7 working days.
- High turnover in membership of the IICC and difficulty in recruiting members. The reasons for this are likely related to the very high workload combined with the position being unpaid. However, several stakeholders alleged to the Consultants that IICC members have been subject to harassment and investigation by the security authorities. The DPP have clarified that this was an isolated case, but even the perception of this risk is likely to inhibit potential candidates from taking on this voluntary role.

#### 4.3.4. SUPPLIER SUSPENSION AND DEBARMENT

Procuring entities can refer suppliers to the IICC for inclusion in the database of unreliable (unscrupulous) suppliers for failure to fulfill obligations under the contract and for violation of the rules of participation in public procurement procedures. Suppliers are included in the database for a period of 2 years during which time they are not permitted to participate in public procurement.

#### 4.4. THE E-PORTAL

The basic functionality that is expected for e-procurement has been developed. However, there are some gaps that were highlighted during consultations with officials from the DPP. Basic functionality includes:

- Registration of procurement entities and suppliers,
- Legislation and process documentation,
- Announcement of procurement opportunities,
- Standard documentation and templates,
- Proposal and quote submission,
- Bid evaluation,
- Submission of complaints, and
- Procurement reports.

##### 4.4.1. SPECIFIC OBSERVATIONS ABOUT THE PORTAL:

- Complaints can be submitted any time during the procurement process, which may inflate the number of complaints.

- Reports on the Portal are static. Dynamic reports could be added for more robust data analytics.
- The catalog features are very limited in their capabilities.
- The system sends notifications to suppliers' e-mails on procurements of interest.

While the basic functionality of the Portal provides a foundation for managing government procurements, more advanced functionality would make the Portal more effective. Main functions are described below that highlight areas in which the project will provide guidance.

**Catalog** – In September 2019, the Catalog, [tandoo.zakupki.gov.kg](http://tandoo.zakupki.gov.kg), was launched and work on content commenced. However, the catalog is not yet fully populated or functional. Having a catalog of approved products to purchase with vendor guaranteed pricing would simplify common, repetitive procurements and help promote standard procurement procedures. As the catalog is a work in progress, the project should provide advice on how to design, implement and rollout the catalog functionality.

**Product Classifications** – Procured products need to be classified to improve functionality of the e-portal, particularly for a catalog, and for analytical purposes. The e-portal has limited classifications that do not meet international standards, such as the United Nations Standard Products and Services Code® (UNSPSC®), Global Product Classification (GPC) created by GSI, and Harmonized System (HS) Codes used in international trade. The e-portal should support multiple classification systems to support analysis and facilitate comparisons with other countries. The e-portal should also support custom classifications that fit the needs of the Kyrgyz government. While the portal does not incorporate international standards, there are plans to incorporate standards based on HS codes that are being used by Customs.

**Centralized Procurement** – The e-procurement portal includes a centralized procurement module. However, this module needs further development to address the needs of the Kyrgyz government. The centralized procurement module will support oversight and standardization by central bodies in the procurement process. The project will advise on enhancing the requirements of the centralized procurement module.

**Procurement Plans** – The e-procurement portal provides functionality for creating procurement plans for budgetary buyers. These plans are used for financial planning and budgeting. While there is value in including the functionality to prepare procurement plans in the e-portal, integrating the e-portal with Ministries of Finance's budgeting system would add value and improve the reliability of budgeting, especially over multiple years. It is worth noting that budgetary resources should be checked before starting procurement processes, which indicates the lack of systems integration.

**Contracts Module** – The e-procurement portal does not support contracts, and stakeholders expressed that regulation of contracts needs improvement. One issue that complicates including contracts is the lack of an official electronic signature mechanism, which needs to be resolved. The project will advise on the functional and technical requirements for implementing a robust contracts module.

**Integration with the Financial Management Information System (FMIS)** – The Kyrgyz government is planning to upgrade its FMIS. The current system is not integrated with the e-procurement portal, which means that the Kyrgyz government cannot easily reconcile finances with procurement obligations, especially when it comes to large multiyear procurements or projects. Integrating the e-procurement

portal and FMIS will help the Ministry of Finance (MOF) with medium-term expenditures and cash management. The project will advise the DPP and MOF on integration requirements.

**Application Programming Interface** – An application programming interface (API) has been developed for the e-procurement portal to exchange procurement data with appropriate stakeholders. However, the usage is minimal, and this was highlighted during numerous discussions with stakeholders. Therefore, the project will evaluate the design of the API, provide guidance on its enhancement, and advise on the implementation of the and coordination with key stakeholders. With a functional API, civil society organizations (CSOs) will be able to analyze public procurements and advocate on behalf of taxpayers and citizens.

**Open Contracting Data Standard (OCDS)** – The open contracting standard has been used for the e-procurement system to define variables and their formats and exchange data. Compliance with the open contracting standard should be evaluated by the project.

**Other Related Donor Activities: Support for a revision of the General Public Procurement Classification System (GPPCS)** – This activity is being implemented by the USAID Enterprise Competitiveness Project. The purpose of this assignment is a revision of the General Public Procurement Classification System (GPPCS), which would be built on existing three systems of classifications: a) Public Procurement Classification; b) Public Budget Classification; and c) Commodity Nomenclature of Foreign Economic Activity (CNFEA). The new General Public Procurement Classification System is expected to include coding system to enable linking procurement requests to the approved budget classifications, cross walking the system's nomenclature to the system, and allowing the Department of Public Procurement under the Ministry of Finance of the Kyrgyz Republic to unify the existing classifications into one General Public Procurement Classification System.

While this assignment helps prepare the DPP for integrating the e-portal with the Ministry of Finance's FMIS. The data integration and tracking of commitments and obligations will still need to be done, and advice for this can be provided by the project.

#### **4.5. TRANSPARENCY AND ACCOUNTABILITY**

An assessment of the transparency of public procurement in Kyrgyzstan in 2018<sup>4</sup> revealed significant weakness related to the lack of public access to machine-readable procurement data and that the post-tendering phase is not covered by the procurement legislation.

##### **4.5.1. INITIATIVES RELATING TO TRANSPARENCY AND ACCOUNTABILITY**

During the scoping study, a number of initiatives related to transparency and accountability were identified:

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<sup>4</sup> Transparent Public Procurement Rating (TPPR) 2018

- Transparency International (TI) is developing a tender monitoring website which will use data from the Procurement Portal to identify procurements that have a high corruption risk.
- The Open Government Partnership Action Plan for 2018-2020 included a number of initiatives designed to improve transparency in public procurement. However, according to the implementation plan, most of these have not been implemented (<http://www.ogp.el.kg/en/node/489>).
- Kloop, an independent media organization, has developed an application (Montecristo) that facilitates the investigation of affiliations between companies and the related corruption in procurement. Through the application they have already found and reported on a significant number of cases of corruption. They also provide training on use of the application.

#### 4.5.2. CIVIL SOCIETY INVOLVEMENT

The following Civil Society organizations operating in the procurement arena were identified:

- The Open Government Partnership Forum includes representatives of Government, suppliers, civil society, academia. The goal of the Forum is to secure concrete commitments from government to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. However, implementation of the Forum's Action Plan for 2018-2020 has been very weak.
- Transparency International are active in conducting research and issuing reports, as well as developing a monitoring website. They have trained about 20 civil society organizations to monitor procurement.
- Several sources reported that, while these organizations are active in anti-corruption efforts at the national level, the grass roots capacity to monitor public procurement is weak and should be developed. However, there has been a lack of resources to promote this activity.

#### 4.5.3. THE PERSPECTIVE OF INFORMATION USERS

While in theory the procurement portal is accessible to the public, in practice the following limitations relating to transparency have been identified:

- Some documents including evaluation reports, procurement contracts, amendments and compliance reports are not published which means that procurement cannot be monitored from cradle to grave.
- The search functionality on the portal is limited and does not allow for custom-made reports.
- Issues with the API hamper structured monitoring of procurement activities.
- There have been complaints about lack of public consultation when new procurement legislation is being drafted.

- The portal is not 100% trilingual, thus limiting access to non-Russian, non-Kyrgyz speaking users. A fully-trilingual portal will attract new suppliers from a wider geographic area.

#### **4.6. DEVELOPMENT PARTNERS SUPPORT TO PUBLIC PROCUREMENT REFORMS**

In recent years, donor supported PFM reform programs have covered a wide range of initiatives including strengthening the public procurement systems and procedures in support of increased transparency, improved budget execution, reduced corruption and improved public service delivery in the Republic of Kyrgyzstan.

The Asian Development Bank (ADB), the World Bank, European Bank for Development and Reconstruction, and the United States Agency for International Development have all been active in supporting public procurement reform and capacity building in the Kyrgyz Republic. Over time, these donor organizations have provided technical assistance to a number of areas including drafting and amending public procurement law, developing procurement guidelines, developing and rolling out the e-procurement system, enhancing technical skills and improving capacity of staff at the Department of Public Procurement (DPP) at the Ministry of Finance, and improving awareness and capacity of end-users of the e-procurement systems.

During the process of shifting from manual procurement to e-procurement, the ADB, through its capacity development technical assistance (CDTA) assisted in implementing the e-procurement system using a unified end-to-end approach that was implemented through a phased approach. The project provided technical assistance in support of three outputs; (i) a phased development and rollout of the e-procurement system; (ii) enhanced technical skills of the Department of Public Procurement for development and implementation of the e-procurement system, and (iii) improved awareness and capacity of end users of the e-procurement system.

The World Bank has been supportive of procurement reform efforts, including providing grant funding in support of enhancing capability building efforts in Kyrgyz Republic. The Bank provided grant funding in support of “building procurement capacity to achieve development effectiveness” in 2017. This followed a relatively modest technical assistance program to improve capacity of public procurement officials in 2018 under the “Public Procurement Capacity Building” program (<http://documents1.worldbank.org/curated/en/415501514219498971/pdf/ISR-Disclosable-P148998-12-25-2017-1514219492361.pdf>). A similar technical assistance facility known as program for results (P4R) focused on improving the quality of health services through improving procurement of health services, including medicines. The Bank currently has an active project named “Public Finance Management (II)” that partly provides technical assistance to the DPP in the area of developing and implementing advisory service modules, and purchase of a server and related equipment to enhance capacity in the hardware of the electronic public procurement portal.

The European Bank for Development and Reconstruction has been actively supporting public procurement reforms and is currently operating an active project in support of promoting small and medium enterprises (SME) participation in e-procurement. The project provides technical assistance to the DPP to update the helpline facility for suppliers, piloting the product and service catalog and supporting the introduction of open data system advisory services.

The United States Agency for International Development (USAID) under its “Enterprise Development Project” , implemented by Nathan Associates, currently provides technical assistance to the DPP and assisting the department to analyze the existing legal and regulatory framework that governs the database for vendors/suppliers participating the public procurement and supports the development and revision of legal framework to improve vendors database.

## 5. PROJECT WORKPLAN

### 5.1. KEY TASKS THROUGH THE END OF 2020

#### 5.1.1. DETAILED ASSESSMENTS WITH RECOMMENDATIONS

The scoping study has identified key issues relating to the legal and institution framework, the procurement processes, practices and procedures, the internal control framework, the e-portal and transparency. To address these issues requires understanding the relationship between these issues and their root causes. Based on the findings in this scoping study we intend to apply several international procurement standards and assessment tools. These tools will provide detailed information and data to inform the design and prioritization of project activities.

**The Methodology for Assessment of Procurement Systems (MAPS)** is an internationally recognized tool to assess national procurement systems. It has been widely used to assess the quality and effectiveness of public procurement systems and, based on the strengths and weaknesses identified, to develop strategies and implement reforms. It is structured around 4 pillars: Legal, regulatory and policy framework; Institutional framework and management capacity; Public procurement operations and market capacity; and Accountability, integrity and transparency. A MAPS assessment was conducted in Kyrgyz Republic jointly by the World Bank and Asian Development Bank in 2012 resulting in an extensive list of recommendations. An updated MAPS assessment in 2020 will provide comprehensive data to inform the development of strategies and reforms and providing a benchmark for public procurement in Kyrgyz Republic, both under this project, but also in the wider context.

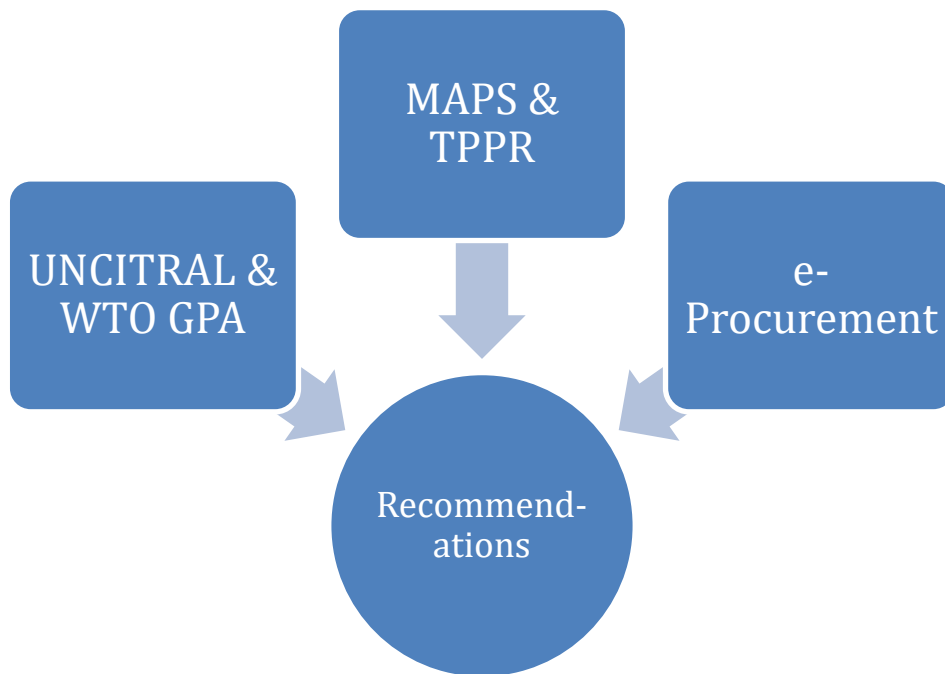
**The Transparent Public Procurement Rating (TPPR)** is an assessment methodology focused on procurement legislation from the perspective of transparency. The latest TPPR assessment for Kyrgyz Republic was conducted in 2018 where a score of 65.96% was achieved. Significant weaknesses identified during the assessment were related to the lack of public access to machine-readable procurement data and that the post-tendering phase is not covered by the procurement legislation. An updated TPPR assessment in 2020 would identify to what extent these gaps have been addressed since 2018. The TPPR methodology complements MAPS by assessing transparency aspects in more detail and conducting both assessments simultaneously would be effective in terms of data collection.

**The UNCITRAL Model Law on Public Procurement** is a tool to evaluate and modernize procurement laws and practices and is aligned with the **WTO Agreement on Government Procurement (GPA)**, which is an instrument to regulate international trade in government procurement markets. Kyrgyz Republic initially applied to accede to the GPA in 1999 and this was reactivated in 2016. Currently accession negotiations are continuing focused on the market offer. A number of issues relating to the legal and regulatory framework have been identified during this scoping

study. Considering this, and the WTO GPA accession process, a detailed comparison of the PPL to the UNCITRAL Model Law will be conducted.

**E-procurement assessment** - An assessment of specific aspects of the e-portal will be conducted to evaluate and provide advice on functionality and technical requirements. This assessment will focus on the Catalog, product classifications, the centralized procurement, planning and contracts modules, integration with the Financial Management Information System (FMIS), the Application Programming Interface (API) and compliance with the Open Contracting Data Standard.

The findings of these assessments will be synthesized focusing on substantive gaps. A list of recommendations with possible interventions designed to address the root causes of these gaps will be prepared.



*Figure 4: Methodologies for Assessing Public Procurement Systems*

#### 5.1.2. CO-CREATION WORKSHOP WITH COUNTERPARTS

It is imperative that the project workplan is focused on those activities that are considered as a priority by our counterparts. After all, it is unrealistic to expect that the project will be able to address all the gaps identified during the assessment process. To this end a Co-creation workshop will be held with counterparts to prioritize the initiatives and co-design the project workplan for 2021-2022. Emphasis will be made on identifying both “quick-wins” and longer-term high impact initiatives.

#### 5.1.3. PREPARATION OF WORKPLAN FOR 2021

Following the workshop, the Project Workplan for 2021- will be developed. The workplan will list mutually agreed specific interventions including technical assistance related to strengthening legal and regulatory framework, institutional framework, and procurement processes and guidelines. The work plan



will also include capacity building measures including trainings both in Bishkek for central government agencies and in Oblasts for provincial staff who are involved in the procurement process. A detailed results framework and an associated monitoring, evaluation and learning plan will be developed to better track and monitor the projects' planned interventions and ensure that higher level results as outlined in the Task Order scope of work (SOW) are achieved in a timely manner.



*Figure 5: Planned Activities through 2020*

**5.1.4. TARGETED TASKS AND ACTIVITIES AGREED WITH DPP**

The project will focus on the key tasks highlighted above until the end of the year. However, targeted tasks will be agreed to advise and assist the DPP with short-term needs, while the team prepares to address longer term issues described in the scoping report. These tasks will be discussed with the DPP when the scoping report is presented.

## ANNEX I: KEY STAKEHOLDERS INTERVIEWED

S.No	Person Interviewed	Position of the Person Interviewed
1	Nurida Baizakova	Director, Department of Public Procurement (DPP)
2	Mirbek Duisheev	Deputy Director, DPP
3	Asel Isakova	Head of Legal Expert Examination subdepartment, DPP
4	Toktor Satybaldiev	Specialist, Complaints and Penalty subdepartment, DPP
5	Sabina Kazakova	Acting Head, Coordination and Regulatory subdepartment, DPP
6	Nursultan Sharsheev	Specialist, Analysis and Innovation Sector, DPP
7	Kanat Moldokulov	Chairman of the Buyers Association
8	Bakyt Satybekov	Independent Expert on Public Finance Management
9	Saina Abdymomunova	Local consultant to the Public Procurement Department
10	Aigul Akmatjanova	Executive Director of Transparency International Kyrgyzstan
11	Nuripa Mukanova	Anti-Corruption Business Council

## **ANNEX 2: DOCUMENTS, TOOLS AND STUDIES CONSULTED**

### **PROCUREMENT LAW, REGULATIONS, AMENDMENTS AND PROCEDURAL INSTRUCTIONS**

Public Procurement Law, amended thru 30 May 2017

Approval of Regulations in Public Procurement, 31 Dec 2019

Approval of Regulations in Public Procurement, 15 Sept 2014

Revisions to Public Procurement Law, thru 20 April 2020

List of Regulations

Decree, 4 July 2017, procurement related to national defense, security, secrecy protection, information security and disaster relief

Decree, 15 April 2019, documents of state importance/forms

Resolution, 29 Aug 2019, Hemodialysis Services

Evaluation of Bids, 31 Dec. 2019

Financial thresholds, 19 April 2017

Order Ministry of Finance, 6 Feb. 2017, amendments to complaints and protests procedures

Rules for electronic procurement, 31 Dec. 2019

Rules for electronic catalog, 30 May 2019

One stage procurement procedures, 31 Dec. 2019

Two stage procurement procedures, 31 Dec. 2019

Simplified method of procurement, 31 Dec. 2019

Consulting Services, 6 March 2020

Method of lowering the price procedures, 22 Aug. 2017

Framework Agreements, 31 Dec. 2019

Benefits for internal suppliers, 31 Dec. 2019

Resolution, Special terms for companies with 50%+ Shares, 13 Sept. 2019

Decree, Ministry of Finance, DPP, 3 Feb. 2014

Order of Ministry of Finance, approval of regs of Public Procurement 31 Dec 2019

Order of Ministry of Finance, approval of regs of Public Procurement October 14 2015 N 175-p

Method Instruction on evaluation of bids, 31 Dec 2019, no. 150-II

Service Note no. 20-2-10/ Complaints

## **PROCUREMENT REPORTS, TEMPLATES, CHARTS AND OTHER SIMILAR DOCUMENTS**

Department of Public Procurement Reports 2011-2020

Organigram Ministry of Finance

Organigram Department of Public Procurement

Complaints flow chart

Curricula of procurement training programs conducted by Ministry of Finance

List of ongoing procurement related initiatives

## **ARTICLES, RESEARCH PAPERS AND ASSESSMENT REPORTS PERTAINING TO PROCUREMENT IN KYRGYZ REPUBLIC**

Guide to Public Procurement: Transparency International Kyrgyzstan 2017

Draft Corruption Risk in Public Procurement: Transparency International Kyrgyzstan 2020

National Integrity in Public Procurement: Transparency International Kyrgyzstan

Kyrgyzstan Procurement Review: World Bank and Asian Development Bank 2012

Kyrgyz Republic Procurement Assessment: Asian Development Bank, 2018

Transparent Public Procurement Rating Kyrgyzstan Public Procurement Legislation Assessment, 2018

How data-savvy journalists in Kyrgyzstan are using open contracting to investigate corruption in public procurement: Open Government Partnership 2019

## **INTERNATIONAL PUBLIC PROCUREMENT STANDARDS AND ASSESSMENT METHODOLOGIES**

Methodology for Assessing Procurement Systems (MAPS)

UNCITRAL Model Law on Public Procurement (2011)

Transparent Public Procurement Rating (TPPR)

WTO Government Procurement Agreement (GPA)

Open Contracting Data Standard (OCDS)