

OECD Public Governance Reviews

Public Procurement in Kazakhstan

REFORMING FOR EFFICIENCY



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Foreword

Public procurement can have a significant impact on a country's development. As highlighted in the *2015 OECD Recommendation of the Council on Public Procurement*, ensuring broad access to the public procurement market is essential for achieving value for money, as it promotes competition and creates a level playing field.

Kazakhstan has been undertaking a significant transformation of its economy, society and public administration, steered by a long-term vision and national development strategies. Among these broad reforms, public procurement was identified as a priority, given its increasingly strategic function for public service delivery and its impact in citizens' life and well-being.

The OECD supports countries in developing more strategic and effective public procurement. OECD members have been exploring and testing approaches to more sustainable and strategic procurement, seeking to improve efficiency and provide better outcomes for society. As part of a broad co-operation programme on public governance in place since 2015, Kazakhstan asked the OECD to undertake a review of its public procurement system and provide recommendations for further reforms.

This review looks at Kazakhstan's system against the twelve principles of the *OECD Recommendation*. These principles – covering aspects ranging from efficiency to access and integrity – set out the main elements of a modern, state-of-the-art public procurement system.

Kazakhstan has made substantial progress, notably thanks to its most recent public procurement legal reform. The legal and regulatory framework and public procurement institutions are now much more robust and better adapted to modern needs. The comprehensive, mandatory use of e-procurement has transformed public procurement and accelerated its delivery. Centralisation initiatives promise efficiency gains, and automation has improved the integrity of Kazakhstan's public procurement system.

At the same time, challenges remain. Kazakhstan could strive to increase competition and access for foreign companies. The country should also put further emphasis on efficiency gains. Greater procurement capacity is needed to implement the new legal and regulatory framework. Finally, the potential to use public procurement for achieving sustainability remains untapped.

Building on the progress so far, and drawing on international good practices, this review provides concrete recommendations to help shape Kazakhstan's public procurement reform agenda for the coming years.

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This review is part of a series of peer reviews on public procurement in OECD, G20 and non-member economies. It benefited from input from the Bureau members and senior public procurement officials who participated in the OECD Meeting of the Working Party of Leading Practitioners on Public Procurement held in Paris on 29-31 October 2018, chaired by Dag Stromsnes, Chief Procurement Officer, Agency for Public Management and e Government (Difi) in Norway. Arita Ūdre, at the time Head of Administrative Penalties Department at Latvia's Procurement Monitoring Bureau, participated as an OECD peer in the review.

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Executive summary

Public procurement is crucial for delivering public services, whether in health, education, infrastructure or public safety. In Kazakhstan, public procurement accounts for 6.6% of GDP in Kazakhstan, which is relatively low compared to the OECD average, but it also represents 43% of government expenditures, which is above the OECD average. Kazakhstan is committed to improving its system to maximise its potential, and made significant changes to the public procurement law in recent years.

This review focuses on six topics, which all contribute to the functioning of a public procurement system: 1) the legal and institutional framework, 2) the contract-awarding process, reviewing procedures and increasing administrative efficiency, 3) the e-procurement system, looking at ways to enlarge the scope and improve its functioning, 4) risk management and accountability, analysing internal control procedures and integrity standards in the procurement profession, 5) strategic procurement and capacity, exploring ways to go beyond procurement as an administrative function, and 6) state-owned enterprises (SOEs), comparing their challenges with those of state public procurement.

While the review focuses on the central level, a chapter is dedicated to SOEs (the “quasi-state sector”), which accounts for about 30-40% of Kazakhstan’s GDP. While there are some differences in the legal rules, SOEs overall face challenges similar to those of the central public procurement of the government of Kazakhstan.

Key findings

There have been numerous legal reforms of the public procurement system in Kazakhstan. While this reflects the commitment and eagerness of the government to modernise its system, it also creates difficulties for public procurers who have to adapt to the new laws. Streamlining the system would allow Kazakhstan to fully exploit the potential of procurement and achieve greater value for money.

The awarding system is based on compliance. Recent reforms have reinforced rather than eased this approach. An excessive use of direct procurement from a one single supplier, a high number of failed bids, as well as a lack of integration of the market conditions are among the obstacles to a more efficient system.

The national e-procurement system has been expanded, and now almost all procedures are conducted electronically. This coverage of 6.1 million contracts is exemplary as it represents a large share of the procurement system. Aside from the laudable improvements in terms of process management, more could be done to better collect data and aggregate statistics. The collected data could also be used to a greater extent to strengthen evaluation and performance management.

While integrity measures exist, Kazakhstan has not yet developed a procurement-specific strategy. The country has made efforts to broaden its complaints management system, but it could increase the opportunities for direct involvement of relevant external stakeholders and address the issue of “professional complainers” who slow down the mechanism.

Public procurement in Kazakhstan is still predominantly perceived as an administrative rather than a strategic function. Changing this perception could allow for further development of strategic considerations, which requires an adequately skilled public procurement workforce. However, public procurement is currently not recognised as a profession, and training for procurers is mainly focused on law and compliance.

Many issues that are prevalent in the public procurement system of Kazakhstan also apply to the procurement of state-owned enterprises (SOEs). These include extensive use of single source procurement and low level of competition in procurement procedures. Previously, there were important differences in the legal and regulatory frameworks of SOEs and the government procurement sector. The most recent reform eliminated some discrepancies, but potential for further alignment remains.

Key recommendations

- Setting a strategy with an action plan for the development of the public procurement system can be a way to ensure overall progress and coherence of reforms.
- Procurement planning should not be based on the budget of the previous year, but on a needs analysis and market considerations, including availability. An increased emphasis on strategic planning is crucial to achieve more value for money.
- To allow for better implementation of the ongoing and envisaged public procurement reforms, Kazakhstan should consider increasing the number of people fully dedicated to public procurement activities, especially at the level of the policy makers in the Ministry of Finance, but also at the level of central purchasing units and relevant contracting authorities. Current resources are too limited to allow for an adequate implementation and monitoring of the reforms.
- Reviewing the criteria for single source procurement and cutting down the current list of exceptions can lead to more efficient procedures and more competitive prices. Conducting market analysis and improving technical specifications could help to reduce the number of failed bids and ensure more competition.
- Kazakhstan could enhance the availability of e-procurement data to improve transparency and performance monitoring, enabling efficiency gains. Integrating the e-procurement system Goszakup with other government IT information systems could improve inter-operability and increase the efficiency of procedures. Establishing evaluation and performance management systems can help identify opportunities to improve performance.
- A common procurement-specific integrity strategy across ministries, agencies and quasi-state bodies could be developed. Expanding the current control process to integrate corruption risk assessments across the procurement cycle could further strengthen internal control mechanisms. Tailored standards and training for the public procurement workforce would also contribute to strengthening a culture of integrity. Kazakhstan could also build on existing projects in which members of society have a watchdog function over public governance.
- To go beyond an administrative approach and use public procurement as a strategic tool, a highly skilled and adequately trained public procurement workforce is required. To enable this transition, Kazakhstan could ease the workload of public procurers and provide them with training that goes beyond legal aspects and compliance.
- Kazakhstan could take measures to increase competition in public procurement of all SOEs, by reducing the share of single source procurement. In addition, training procurers can help them to fulfil their tasks to the highest professional standards. The largest SOEs could further consolidate their procurement, for example by centralising purchases in their organisation or using centralised purchasing services of the Government.

1 Legal and institutional framework of the public procurement function in Kazakhstan

This chapter describes and analyses the normative framework of Kazakhstan's public procurement system, which is currently undergoing a process of centralisation, and the role and relevance of the institutions managing it. It assesses the impact of the public procurement Law (PPL) adopted in 2015 and the impact of the December 2018 amendments to revise the 2015 PPL. The chapter also analyses the potential benefits and risks of more centralised purchasing, as Kazakhstan is to allow the aggregation of purchases from different contracting authorities, and identifies necessary steps on the path to centralisation. Lastly, it introduces the benefits of framework agreements, a tool commonly used by OECD countries in public procurement.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

According to the Ministry of Finance, public procurement in Kazakhstan accounted for a total of approximately KZT 4.15 trillion in 2018 (EUR 10.2 billion). This was about 7.1% of GDP in 2018, up from 5.4% in 2017. Public procurement spending as a proportion of general government expenditures was 35.6% in 2018, up from 22% in 2017. While the share of public procurement spending in GDP is lower than the OECD average (11.8% of GDP in 2017), its share of general government expenditures is higher than the OECD average (29.1% of in 2017) (OECD, 2019^[1]). Therefore, public procurement represents a large market in Kazakhstan. Several public services are conducted by state-owned enterprises that are not accounted for in the above-quoted figures. This further underlines the fact that the government has a substantial economic footprint within Kazakhstan.

The framework for public procurement in Kazakhstan has undergone significant and frequent changes in recent years, taking account of the growing importance this function has for effective public service delivery and adapting it to increasingly complex demands of public institutions and Kazakhstan's citizens. Frequent changes to the law are likely to increase the number of mistakes made by procurement practitioners as they might not be aware of the changes or do not know how to apply the new rules being introduced.

The legal framework for public procurement is based on the Public Procurement Law (PPL) adopted in 2015. Amendments adopted in December 2018 (hereafter: December 2018 amendments) introduced substantial modifications to the PPL in an effort to increase the efficiency and effectiveness of public procurement.

This chapter introduces the legal and regulatory basis for conducting public procurement in Kazakhstan and presents the governance of the public procurement function (first and second sections). A third section summarises overarching strategies in the area of public procurement and the related public procurement reforms adopted in December 2018. A general trend in Kazakhstan's public procurement system has been to concentrate increasingly on the management of public procurement procedures. Therefore, the final section of the chapter analyses the benefits of centralising public procurement for greater efficiency and effectiveness in the context of Kazakhstan.

1.1. The normative framework for Public Procurement in Kazakhstan

Public procurement in the Republic of Kazakhstan is regulated by several laws and regulations that will be discussed in this section. In addition, Kazakhstan is party to several international agreements that have a bearing on public procurement as well. In general, the public procurement normative framework consists of the provisions in the following laws and regulations:

- The “Law on government procurement” dated 4 December 2015, No. 434-V 3PK, as updated (hereafter: the Public Procurement Law, PPL).
- The “Rules for the Implementation of Government Procurement”, as approved by the Decree of the Minister of Finance of Kazakhstan No. 648, dated 11 December 2015, as updated (hereafter: the Public Procurement Rules).
- “The list of goods works and services whose procurement is conducted through Single Organiser”, as approved by Decree of the Minister of Finance of Kazakhstan No. 1127 dated 29 December 2018 (as updated).
- Other decrees of the Minister of Finance of Kazakhstan related to public procurement.

This public procurement framework is in line with the procurement-related agreements in the Treaty on the Eurasian Economic Union (EAEU, current version adopted on 29 May 2014), as well as with the Civil Code (adopted on 27 December 1994, N° 268-XIII) and the Budget Code of the Republic of Kazakhstan (adopted on 4 December 2008, N° 95-IV), of which the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation are full right members as of 14 May, 2019. Kazakhstan joined the World Trade organisation (WTO) on 30 November 2015 and became an observer

in the WTO Committee on Government Procurement (GPA) in October 2016. As part of its WTO accession protocol, Kazakhstan undertook commitment to initiate accession to the GPA. The GPA is a WTO multilateral agreement covering the procurement of goods, services and capital infrastructure by Governments and other public authorities.

The public procurement legal and regulatory framework applies to government organisations (ministries, government agencies, local administrations, etc.; see definition below) and to enterprises in which the government owns more than 50%. Dedicated rules apply for state-owned enterprises (national holdings), including Joint Stock Company (JSC) Baiterek, JSC KazAgro and JSC Samruk-Kazyna. The Sovereign Wealth Fund Samruk-Kazyna accounts for the vast majority of public procurement spending in Kazakhstan (see chapter 6.) Similarly, the central bank (National Bank of the Republic of Kazakhstan) has its own procurement rules and is out of the scope of the public procurement framework.

The PPL covers public procurement of any goods, works and services, irrespective of the amount of the respective public procurement contract, except for those that are expressly excluded. The list of exclusions is exhaustive and provided in article 1 of the PPL. The law presumes equal treatment of suppliers, including local and foreign ones. However, hurdles to the participation of foreign suppliers exist in practice, for example due to the structure of the e-procurement system. These hurdles are due to the national interest of Kazakhstan, according to stakeholders, and in fact, there appears to be a general push to support local suppliers.

Kazakhstan's Industry and Expert Center is the main instrument of its efforts to support local content, including through the implementation of industrial development programs. The Institute distributes various grants and subsidies to support business investments to increase productivity in priority sectors, or to support exporters. For instance, resident businesses can claim reimbursement of their expenditures to obtain the certification of their products against International Standards, including quality management certificates.

As a party to the EAEU Treaty, Kazakhstan also follows a “national treatment provision” in the sphere of public procurement for the EAEU member countries. This allows suppliers from EAEU member countries to participate in public procurement tenders on equal terms with domestic suppliers in most cases (Eurasian Economic Union, 2015^[2]).

Before a contracting authority proceeds with a selection of a supplier, it shall determine who will be the so-called “organiser” responsible for organising and performing all public procurement processes. A contracting authority itself can undertake the role of the organiser (i.e. purchaser and organiser would be the same entity), or it can appoint one of its departments or a subordinated government organisations as an organiser. State-owned enterprises can appoint an affiliate or a parent company as procurement organiser.

The public procurement framework also contains the notion of *single* organiser, a concept that is similar to a specialised procurement unit. Contracting authorities have to procure certain goods, works and services through a single organiser, as defined by decree. The Government Procurement Committee (GPC) of the Ministry of Finance is the single organiser for the central government. The “list of goods, works and services whose procurement is conducted through the single organiser” is defined by decree of the Ministry of Finance. At the local level, single organisers are usually Public Procurement Offices or Departments under the Akimats (local administrations).¹ See section 1.2.3 for a detailed analysis of single organisers.

Public procurement in Kazakhstan can be performed through one of the following five methods:

1. competitive tender (open tender, two-stage tender),²
2. auction,
3. requests for quotations,
4. direct award,
5. purchases at commodity exchanges.

The law does not provide for a default method. Organisers and single organiser are free to choose the method that they deem most appropriate, except if a decree of the Minister of Finance mandates a specific procurement method. For all methods, rules and thresholds define the circumstances under which they can be applied. However, many other countries in the OECD or the EU emphasise the expectation that by default, all procurements should be open and competitive procedures.

As a matter of principle, under the PPL, public procurement in Kazakhstan shall be conducted electronically and disclosed through the government e-procurement system (web portal: <https://www.goszakup.gov.kz/>). There are few exceptions, such as “special orders” (Rus. Особый порядок) procurements involving confidential information and state secrets and purchases at commodity exchanges.

The legislation prohibits procurement of goods, works and services that are absent from annual public procurement plans. Public procurement contracts are standard civil law contracts. The government e-procurement system contains different contract templates of mandatory use by contracting authorities, even though they can complement these templates with new clauses upon agreement with suppliers. Chapter 2 provides for a detailed description of the procurement cycle in Kazakhstan, from procurement planning to the contract execution phase.

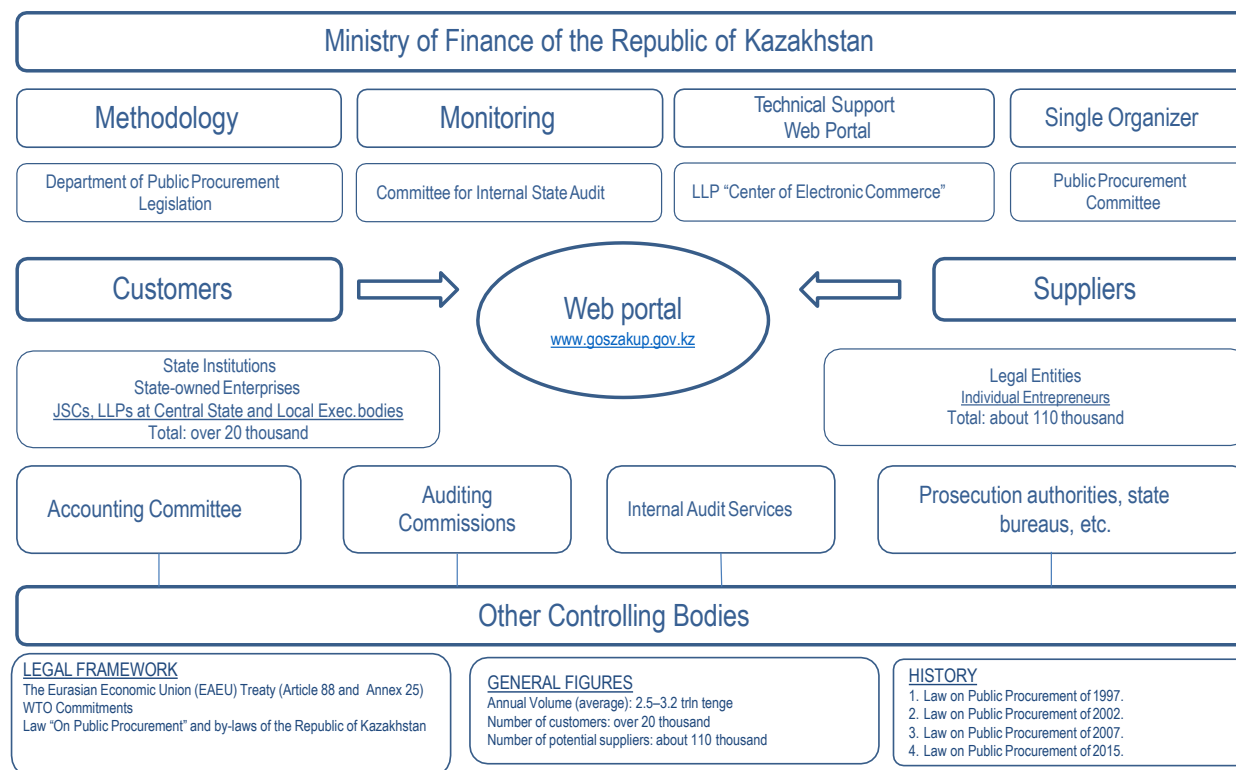
The PPL along with the introduction of a new version of the government e-procurement system significantly changed several key aspects of the process and the procedures which contracting authorities need to abide by. It introduced the mandatory use of the government e-procurement system and the electronic signature of public procurement contracts through the national digital signature system (Rus. Электронная цифровая подпись). The PPL provided a legal ground for several new functionalities such as the electronic submission of complaints (available since January 2018) or remote “desk control” of procurement transactions by state auditors. Chapter 4 elaborates on complaints, audits and risk management processes while Chapter 3 provides further details on the functionalities of the government e-procurement system and the transparency it brought to public procurement transactions.

1.2. Governance of the Public Procurement Function

The procurement system in Kazakhstan can be considered decentralized with different government organisations and state-owned enterprises managing specific procurement projects. Over 24 201 distinct contracting authorities are registered on the government e-procurement system. There is no centralised procurement body that is conducting procurement on behalf of contracting authorities, whether that is by aggregation or through framework agreements. Hence, procurement is still the responsibility of each contracting authority.

Beyond the GPC, the key management bodies regarding public procurement matters are the departments of public procurement legislation, and the Internal Audit Committee within the Ministry of Finance, the Centre of Electronic Commerce and the other single organisers at the local level (see Figure 1.1). This section focusses on three important institutions in the public procurement framework in Kazakhstan: 1) the Ministry of Finance, 2) single organisers, and 3) government organisations and state-owned enterprises.

Figure 1.1. The institutional structure of the public procurement system in Kazakhstan



Source: Ministry of Finance (2017), *System of State Procurement in Kazakhstan*, <http://pubdocs.worldbank.org/en/415551495971642148/Kazakhstan-13th-PRIMO-Forum.pdf>.

1.2.1. Role of the Ministry of Finance

The Ministry of Finance sets the policy in the field of public procurement. The Ministry of Finance is the body that carries out methodological functions for central government organisations and subnational governments, and acts as the body responsible for the functioning of the public procurement web portal. At the same time, the Internal Audit Committee of the Ministry of Finance acts as a supervisory authority, and the GPC of the Ministry of Finance acts as a single organiser for central government entities and organisations. These Committees are departments of the Ministry of Finance. Any activities related to budget planning, as well as the development of planning rules, are implemented by the Ministry of National Economy.

Leaving aside state auditors (Internal Audit Committee), around 60 people work in the sphere of public procurement in the Ministry of Finance. Most of them are specialists who directly conduct public procurement in the GPC. A separate department, the Department of Public Procurement Law, carries out the ministry's methodological functions, including developing and drafting amendments to the public procurement legislation and rules and providing clarification on the legal provisions in this field. It employs around 15 people. The entire legislative base is published open to general access on the web portal for public procurement and official websites of the Government and Parliament. In addition, the Ministry of Finance regularly provides briefings, round tables and seminars for potential suppliers, the media and the public.

1.2.2. Defining government organisations and state-owned enterprises

As mentioned above, public procurement can be conducted by all “government organisations” (Rus. Государственные органы) in Kazakhstan. Government organisations at the central level are typically ministries and their subordinated committees.

In accordance with paragraph 2 of Article 1 of the Law "On Administrative Procedures", government organisations are state institutions authorized by the Constitution, laws, other regulatory legal acts for the performance on behalf of the state of functions for:

1. Issuance of acts that determine the generally binding rules of conduct;
2. Management and regulation of socially significant public relations;
3. Monitoring compliance with the generally enforceable rules of conduct established by the state.

On the other hand, a state-owned enterprise (Rus. Государственные предприятия) is a commercial organisation that is endowed with state property. It is a legal entity, with 50% and more of shares (participatory interests) belonging to the state or to another state-owned legal entity. The activities of state-owned enterprises are strictly delineated by the Law on State Property (Articles 133 and 134) (Republic of Kazakhstan, 2011^[3])

The main differences between government organisations and state-owned enterprises and other commercial legal entities are the specific powers and type of activity of government organisations. State-owned enterprises have a variety of legal status, and they all conduct procurement within the framework of the PPL, if they do not have the status of “national company”, as defined by the Government of Kazakhstan. Many state-owned enterprises in Kazakhstan have central level government organisations as their sole shareholder and would have the status of state agency or state administration in OECD countries.

1.2.3. Role of single organisers

Kazakhstan’s government has been establishing single organisers within ministries across the government since 2014, including the GPC at the central level. The overall purpose of this institutional change has been to increase efficiency and effectiveness of public procurement through greater centralisation and concentration of procurement. In addition, the government hopes to reduce corruption and increase transparency. Single organisers manage part of the procurement process on behalf of contracting authorities concerning certain purchases. Kazakhstan has registered more than 40 single organisers of public procurement at the central, regional (oblast) and district levels. At the regional level, 14 regional (oblast) Akimats as well as Astana, Almaty and Shymkent cities have created single organisers. Some districts and larger cities established single organisers within their local administration or are encouraged to do so. In general, this figure will grow as the Government is currently setting up “central procurement bodies” (on the basis of existing single organisers) in all districts and cities of the country.

The rationale for establishing single organizers was to professionalize public procurement, to ensure the proper implementation of the public procurement rules and regulations and at the same time ensure greater transparency and efficiency. Indeed, the decentralized nature of Kazakhstan’s procurement framework means that purchases outside of single organisers are often not conducted by public procurement experts, particularly in local public administrations. In small or medium-size government organisations, such as public hospitals, medical doctors or accountants often conduct purchases in addition to their regular work. The government also sees single organisers as a way to prevent corruption in public procurement. The reason is that when a single organiser is involved, tender commissions consist of both professional procurers from the single organiser and representatives of the contracting authority, which provides for “mutual control” and decreases the risk of undue influence on the procurement process.

Since its creation in 2013, the GPC has been functioning as the single organiser of public procurement for central government organisations and agencies, but with a rather limited scope. The employees of the

Government Procurement Committee number approximately 40 people and their duties include assisting contracting authorities with the drafting of tender documents and technical specifications, the conduct of public procurement procedures and the selection of suppliers on the government e-procurement system. The service provided by the GPC is free of charge for contracting authorities; GPC operations are entirely funded from the Central State Budget.

Compared to central purchasing bodies in other countries, the GPC has a limited role, focusing mostly on reviewing tender documents. No real aggregation was carried until now. However, the number of purchases it carries out is increasing every year. It carried out approximately 211 procedures in 2015, 2011 procedures in 2016 and 2099 procedures in 2017, i.e. less than 1% of all public procurement procedures during that year. According to the Ministry of Finance, procedures processed through the GPC accounted for 11.6% of overall central-level procurement value in 2017. Purchases with the highest monetary value relate to construction works. On the other hand, motor vehicles are the most frequent item procured through the GPC. As mentioned before, the GPC carries out procurement on behalf of central Ministries and agencies, as well as of local Akimats for goods, works and services strictly defined by a decree of the Minister of Finance (currently Decree N° 1127 from 29 December 2018).

According to this decree, the GPC automatically carries out procurement for three items purchased by any public body, agency and state-owned enterprises covered by the public procurement framework:

- Motor vehicles
- Civilian helicopters.
- Construction works regarding buildings procured by central-level government organisations and agencies.

Otherwise, for instances concerning furniture, software, computers, repair works or engineering services (technical supervision and project management services) or the preparation of construction submittals, any procurement must be processed through the GPC as soon as the planned procurement value exceeds a certain threshold. The decree provides for a different threshold for each one of the 13 items for which there is such a threshold. For instance, the GPC is the single organiser for any purchase of furniture exceeding 5 000 monthly calculated indices (i.e. around EUR 31 000). Regarding computers, notebooks, scanners and printers, the GPC is the single organiser for any purchase exceeding 20 000 Monthly calculated indices (i.e. around EUR 124 000). Using a similar system of value thresholds, the decree defines goods, services and works to be procured through regional and local single organisers by local administrations (Akimats) and government organisations in the regions. Beyond items to be procured through the GPC according to the decree, a contracting authority can define the GPC as procurement organizer for any given procurement process upon prior approval by the GPC itself (Clause 26 of the Rules of the Conduct of Public Procurement).

Thus, for each single request from a contracting authority, single organisers currently set up a distinct tender commission and conduct procurement processes in the government e-procurement system separately. According to the Ministry of Finance, the GPC has been consolidating purchases only regarding budget investment projects (Rus. Бюджетные инвестиционные проекты), which account for a very small share of public procurement processes in Kazakhstan. Budget investment projects are public capital expenditures, for instance on transport infrastructure (roads, railway network) or in special economic zones. The central administrations, i.e. the ministries, still have to carry out the market analysis and develop the technical specifications prior to sending it to the GPC for review. OECD fact-finding missions revealed that the creation of the GPC has sometimes delayed procurement processes for up to two months, while the GPC is being perceived as an additional intermediary with little value added by some contracting authorities.

Partly because of this lack of aggregation, single organisers have had a limited impact on the conduct of public procurement in Kazakhstan. Their role is currently limited to the ex-ante supervision of tender

documents (ensuring that technical specifications drafted by contracting authorities comply with public procurement rules and regulations) and to the bid submission and award stages of the procurement cycle, up to the signature of the procurement contract. However, the December 2018 amendments reforming the public procurement framework allow the GPC and other single organisers to consolidate purchases from different contracting authorities.

1.2.4. Strategic vision for public procurement

The strategic vision for public procurement in Kazakhstan is laid out in eight principles in the PPL (article 4):

1. Supporting domestic suppliers (Rus. оказания поддержки отечественным производителям товаров).
2. Openness and transparency (Rus. открытости и прозрачности процесса государственных закупок).
3. Fair competition (Rus. добросовестной конкуренции среди потенциальных поставщиков).
4. Equal opportunities to suppliers (Rus. предоставления потенциальным поставщикам равных возможностей для участия в процедуре проведения государственных закупок).
5. Spending money efficiently (Rus. оптимального и эффективного расходования денег, используемых для государственных закупок).
6. Prevention of corruption (Rus. недопущения коррупционных проявлений).
7. Procurement of technologically advanced products (Rus. приобретения инновационных и высокотехнологичных товаров, работ, услуг).
8. Responsible participants (Rus. соблюдения прав на объекты интеллектуальной собственности, содержащиеся в закупаемых товарах).

Indeed, the OECD Recommendation for Public Procurement also emphasise most of these principles. Other aspects, such as the dedicated support for domestic suppliers might harbour potential to limiting competition if such a support is structured in a way that it would limit access for foreign suppliers, for example. Figure 1.2 below summarises all principles of the OECD Recommendation.

Figure 1.2. The 12 Principles of the OECD Recommendation



Source: OECD.

Through the principles outlined in the PPL, the foundations for modernising the procurement system in Kazakhstan are in place. The challenge for the Government of Kazakhstan, especially the Ministry of Finance, will be to identify ways to ensure that these principles are not only detailed in the law, but being adhered to in practice. This is a long-term project, and to date there are plenty of opportunities in place for authorities to introduce new methods that will improve the spending of money used for public procurement in the most optimal and efficient manner. In the following chapters, these principles will be discussed and analysed in depth, such as provision of equal opportunities to potential suppliers to participate in the public procurement procedure (chapter 2), openness and transparency of the public procurement process (chapter 3) and prevention of corruption (chapter 4).

In Kazakhstan, there is no single document summarising the government's strategic vision for the public procurement framework over the long term. However, government organisations adopt a new strategic plan every five years, which summarises their core missions and its strategic goals, and details their key performance indicators. Since the Ministry of Finance is in charge of the public procurement framework (central methodological functions), its strategic plan includes public procurement among many other policy areas (Ministry of Finance, 2018^[4]). Moreover, Vice-Minister Beketaev gave a speech to the Parliament of Kazakhstan in early 2018 about the public procurement reform (Beketaev, 2018^[5]). Based on these two documents, it is possible to define four overarching objectives of the government of the Republic of Kazakhstan regarding the public procurement framework:

- Increasing competition, by reducing the share of public procurement processes conducted through direct award, i.e. without competitive tendering.
- Increasing centralisation of public procurement, by expanding the list of goods, works and services purchased through single organisers.

- Improving the functioning of the government e-procurement system, which should materialise through an increase of the share of satisfied users.
- Simplifying public procurement processes and enhance their efficiency.

1.3. Revising the Public Procurement Law

On 26 December 2018, the Parliament of Kazakhstan adopted legislative amendments that constitute a substantial reform of the public procurement system ([Law from 26 December 2018 № 202-VI 3PK, the December 2018 amendments](#)). Accordingly, it is important to consider the ramification of these changes to the public procurement framework. The Ministry of Finance organised public debates with the participation of civil society to discuss the main policy measures of these amendments. Meetings to engage stakeholders have taken place in the cities of Almaty, Astana and Uralsk with the active participation of the business community and local authorities (Beketaev, 2018^[5]).

These legislative changes are part of the implementation of measures announced in a Presidential Address to the People of Kazakhstan dated 31st January 2017 (Ministry of Finance, 2018^[4]). The need to improve public procurement was one of the main issues mentioned in the address. For that purpose, the government set out a plan to address two challenges:

- Further centralising public procurement through the introduction of “central procurement bodies”.
- Reshuffling the procurement function and procedures in the quasi-state sector (i.e., national holdings and other SOEs).

Beyond these two priorities, the December 2018 amendments contain many other revisions to the public procurement framework and of the framework for procurement by national holdings and national companies (“quasi state sector”). This section introduces some of the most important ones.

1.3.1. Centralisation of public procurement

The December 2018 amendments provide for the strengthening and expansion of single organisers, including the GPC of the Ministry of Finance and procurement departments of regional Akimats (local administrations) and those of the cities of Astana, Almaty and Shymkent. At the level of district and other cities, they provide for the creation of procurement units of local district Akimats, if they do not already exist. These reforms provide the basis for a pilot exercise in centralisation that the Ministry of Finance will undertake with the other levels of government in 2020. This exercise is expected to provide further insight into beset avenues for implementing increased centralisation of public procurement in Kazakhstan.

The December 2018 amendments allow single organisers to consolidate procurement of homogeneous goods, works and services from different contracting authorities under their auspices. This is the case even if there are several different places of delivery (or of execution of construction or engineering works). As mentioned earlier, the Ministry of Finance defines the list of homogeneous goods, works and services to be procured by single organisers. The consolidation of purchases from different contracting authorities by single organisers was very limited in Kazakhstan. Therefore, if adequately implemented this reform has the potential to improve value for money and efficiency; it can also be considered a fundamental pillar of the ongoing centralisation of public procurement.

The December 2018 amendments also empower the Ministry of Finance to determine which procurement methods to apply for specific goods, services or works. Previously, contracting authorities chose the procurement method freely within the limits provided for in the public procurement legal framework. There is no default method like in other countries. According to the Ministry of Finance, this additional prerogative will help rationalise public procurement, accompanying the centralisation of purchases while bringing in increased efficiency. In February 2019, the Ministry of Finance defined a list of works and goods (including

furniture, construction and installation works, preparation of construction submittals and design documents, software and electronic products.) for which public tender with prequalification is the mandatory procurement method (Ministry of Finance of the Republic of Kazakhstan, 2019^[6]).

Last but not least, as part of the centralisation of public procurement, the Ministry of Finance expects to expand the list of goods, services and works to be procured by single organisers at the different territorial levels on the basis of an analysis of past procurements. Consequently, the authority of the territorial and national central procurement entities will be clearly delineated to avoid overlap. (Beketaev, 2018^[5]) Furthermore, according to stakeholders, the EAEU is currently in the process of updating its provisions regarding framework agreements. Once accepted, these changes would introduce the possibility to conduct public procurement via framework agreements. This promises progress towards greater value for money.

1.3.2. Procurement of national holdings and national companies (“quasi state sector”)

The issue of regulating procurements of the national holdings and national companies (part of the so-called “quasi-state sector”) and introducing administrative liability for violations of procurement rules and regulations by procurement officers in the quasi-state sector has been raised several times by MPs. To implement instructions from the President, the December 2018 amendments comprised the following measures:

- Introduced administrative liability of quasi-state (or parastatal) sector employees³ for violations of procurement rules and regulations.
- Transferred all procurement of the quasi-state sector to an e-procurement electronic format.
- Approved unified rules of procurement for the national holdings and national companies, excluding the Samruk-Kazyna Fund, whose rules will be approved by a decision of the board of directors with the formal agreement of the Ministry of Finance. This exception is related to the fact that some of the Fund’s companies are preparing for initial public offerings (IPO) to attract investors.

According to the Ministry of Finance, unified procurement rules applicable to national holdings and national companies, along with the new procurement rules of the Samruk-Kazyna Fund, will harmonise to the maximal extent possible procurement regulations and practices of national holdings and companies. Chapter 6 elaborates on the procurement of these national holdings and companies.

1.3.3. Exceptions to competitive tendering

The December 2018 amendments modified the scope of direct awards. There are two types of exceptions to competitive tendering:

- a. direct award based on a list of exceptions (PPL, Article 39 point 3).
- b. direct award after failed bidding.

Previously, the PPL included 54 exceptions providing for direct award based on exceptions, i.e. direct purchasing without advertising. After the December 2018 amendments, it now includes 50. Aside from abolishing some, the amendments added a new exception and expanded the scope of at least two exceptions. In terms of procurement value, the most significant exception now abolished concerned procurements based on proposal by the President.

The new exception introduced in 2018 concerns “*goods, works and services earmarked for specialised law enforcement units (riot police), Special Forces, antiterrorist units and bomb disposal units*”. According to the Ministry of Finance, the rationale for the addition resides in the specificity of the purchased goods for special units; lack of suppliers in the domestic market; the goods for special units are manufactured

abroad using special technologies and the purchase of goods for special units takes a long time (export, licensing and customs procedures).

OECD standards on exceptions from competitive tendering call for a more thorough analysis by the Ministry of Finance before expanding the list exceptions allowed in Kazakhstan. Indeed, it appears that the new exception aims at circumventing obstacles created by the e-procurement system regarding the access of foreign suppliers from accessing public procurement opportunities. The exception provides a way to procure items from foreign suppliers through direct award based on exceptions, rather than through public tenders that frequently fail due to a lack of responsive bids from the domestic supply market. Easing the access of foreign suppliers to the government e-procurement system would be a more efficient way to solve the problem while preserving an adequate level of competition and bringing Kazakhstan in line with the OECD Recommendation on access to public procurement opportunities (see Chapter 2).

The December 2018 amendments also exonerate any procurement of works, services and goods as part of projects funded by international organisations (whose membership includes Kazakhstan) from complying with the PPL. However, the exemption extends to investment projects funded entirely or partly by “other international banks”, if they fund at least 50% of the investment project and have a credit rating at least equal or equivalent to A- (as defined by Standard & Poor’s). The exemption also requires the project to be executed by State owned companies or their affiliates, and the project should not involve a sovereign (state) guarantee on behalf of the Republic of Kazakhstan. Under these conditions, procurement regulations from these “foreign banks” would apply to all acquisitions in the framework of the aforementioned investment projects.

1.3.4. Trademarks, brands and company names in technical documentation

The December 2018 amendments allow contracting authorities to include trademarks and brand names of goods that are widely available in the market in technical specifications. However, they establish a maximal threshold for the use of trademarks and brand names: their use is authorised only for requests for quotation with a procurement value under 1 000 monthly calculated indices (KZT 2.5 million or around EUR 6 209). Above 1 000 monthly calculated indices, contracting authorities can use requests for quotation, but without mentioning trademarks and brand names of goods in technical specifications.

The rationale of this measure is to support contracting authorities in purchasing goods of higher quality. Previously, according to the Ministry of Finance, goods requested through requests for quotes without reference to trademarks and brand names were frequently counterfeited goods or items of low quality. They formally complied with technical specifications, but their longevity was very short.

Allowing the inclusion of trademarks or brand names is not a common practice in OECD or EU member countries. For instance, in the EU, technical specifications should in principle not refer to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain products ((European Union, 2014^[7]).

However, in Kazakhstan this possibility is limited to purchases below a threshold that corresponds to a purchase value that would be commonly handled as direct award for small purchases (below a defined value threshold) in most OECD countries. This raises the issue of the value threshold for direct awards being possibly too low in Kazakhstan. Regulations set this threshold at 100 monthly calculated indices for goods (KZT 252 500 or around EUR 620). Most OECD countries allow direct awards of procurement contracts (without advertisement) up to a certain threshold. For instance, in the Netherlands direct award is authorised for contracts below EUR 33 000, provided that certain conditions are respected. In Korea contracts below EUR 15 665 (KRW 20 million) can be awarded directly without competition. In Canada, the unified set of rules for Federal public procurement allows a common exception to competition for contracts with a value of less than EUR 16 623 (CAD 25 000) (OECD, 2019^[8]).

Similar challenges relate selection and award criteria: in the current framework, requests for quotations often lead to the acquisition of lower quality goods because price is the predominant or the only award criteria. Therefore, setting up selection and award criteria taking into account quality concerning requests for quotation might be a way to tackle this issue. Chapter 2 elaborates on the issues of selection and award criteria and on direct award below the maximal value threshold.

1.3.5. Bid bonds requirements

The December 2018 amendments strengthen the bid bonds requirements in various ways. Article 25 of the PPL establish bid bond requirements in public tenders and auctions at a rate of 1% of the planned monetary amount allocated for the purchase.

The December 2018 amendments create bid bonds requirements for requests for quotations. The amount of the bid bond is the same as for public tenders and auctions (1%). Moreover, the e-procurement system will automatically exclude bids where the full bond amount has not been paid. Indeed, the bid bond will have to be paid through an electronic wallet on the e-procurement system. Currently, it is up to the tender commission to exclude bids without bid bonds, i.e. this measure would save some time for tender commission members. Both measures will enter into force in January 2020 with 2019 as a transition year.

The December 2018 amendments also restrict the rights of bidders that did not fully pay the bid bonds in various ways: for instance, they will not be entitled to access application documents from other bidders or to correct their bids after receiving remarks from tender commissions (see Chapters 3 and 2 for details on the public tender submission process).

All these measures aim at preventing dubious bidders using fictitious companies from influencing the tendering process. Spurious bidders are an important issue in public tendering in Kazakhstan, as detailed in Chapter 3 of this report.

1.3.6. Increasing the threshold for direct award procurement

As in most OECD countries, in Kazakhstan, contracting authorities can purchase goods, works and services below a defined value threshold through direct award (i.e. direct purchasing). This is one of the 50 exceptions to competitive tendering in the PPL (Article 39 Point subparagraph 42 of the PPL). This value threshold is currently 500 monthly calculated indices or KZT 1 262 500 (roughly equivalent to EUR 3 100 or 7.2 average wages in Kazakhstan) for services and works, and 100 monthly calculated indices for goods or KZT 252 500 (roughly equivalent to EUR 620 or 1.4 average wages in Kazakhstan).

In order to simplify procurement processes for low value purchases, the December 2018 amendments increased fivefold the threshold for services and works: it was previously equivalent to the one for goods (100 monthly calculated indices). For procurement by administrations in villages, districts and small towns, headed by Akims (heads of local administrations) and their offices, the amendments also set a much higher maximal threshold for direct award, i.e. 3 000 monthly indices (KZT 7 575 000, or around EUR 18 627 or 43 average monthly wages). However, this higher threshold would be in force temporarily, up until the end of 2020. Chapter 2 elaborates on the issue of direct award procurement, including direct award under the maximal value threshold (section 2.3.4).

1.4. Towards more concentrated and centralised procurement in Kazakhstan

Increasing concentration and centralisation of procurement in Kazakhstan has been a trend in recent years, and continues to be one of the focus areas of the current reform. For 2020, the Ministry of Finance plans on launching a first pilot exercise in centralisation, in collaboration with the different levels of government. Indeed, Kazakhstan could achieve substantial benefits from further centralising public

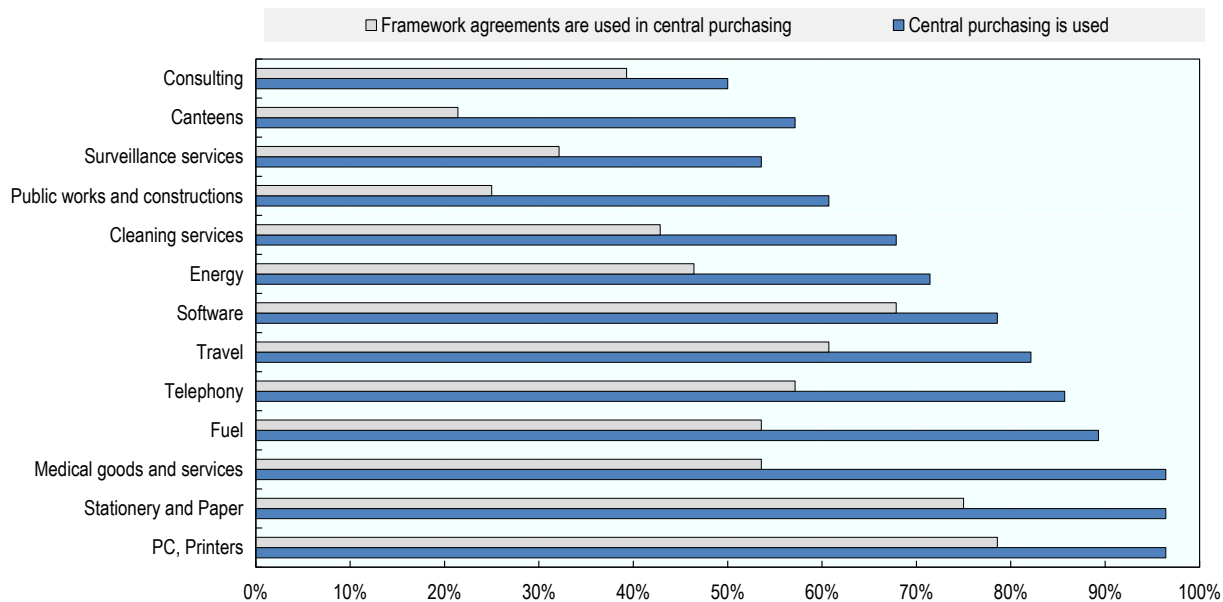
procurement institutionally and at the same time using procurement tools that aggregate demand across institutions or the entire administration. Given the current relevance of these issues, the associated complexities as well as challenges in implementing it, this section takes a closer look at benefits and approaches to concentrating and centralising public procurement in Kazakhstan's context.

1.4.1. Centralised procurement offers numerous benefits to countries

Kazakhstan embarked on some centralisation efforts (mostly institutionally) recently, by establishing the GPC. The initial purpose was to mitigate against corruption. As it stands, the GPC is not fully functioning as a fully-fledged centralised procurement body (CPB) in the way that CPBs operate in most OECD countries. However, the potential of a unit like GPC reaches beyond anti-corruption functions towards increasing the effectiveness and efficiency of public procurement. This is especially the case if GPC should begin consolidating purchasing requests of public entities. On the positive side, data from the Ministry of Finance show that the average value of a procurement process increased from KZT 539 300 in 2016 (around EUR 1 320) to KZT 980 771 (around EUR 2 414) in 2018, which testifies to a higher centralisation of public procurement.

Several tools have proven useful in centralising and aggregating public procurement, as evidenced by OECD country experience. In order to reap the benefits of the consolidation of purchases, the Ministry of Finance could allow for more centralized procurement of commonly procured products in demand in all types of government organisations, such as food, office supplies, IT equipment and fuel (Figure 1.3). This approach is quite common in other OECD countries and likely to lead to more efficient spending of public funds (SIGMA, 2016^[9]).

Figure 1.3. Use of central purchasing in OECD countries (2016)

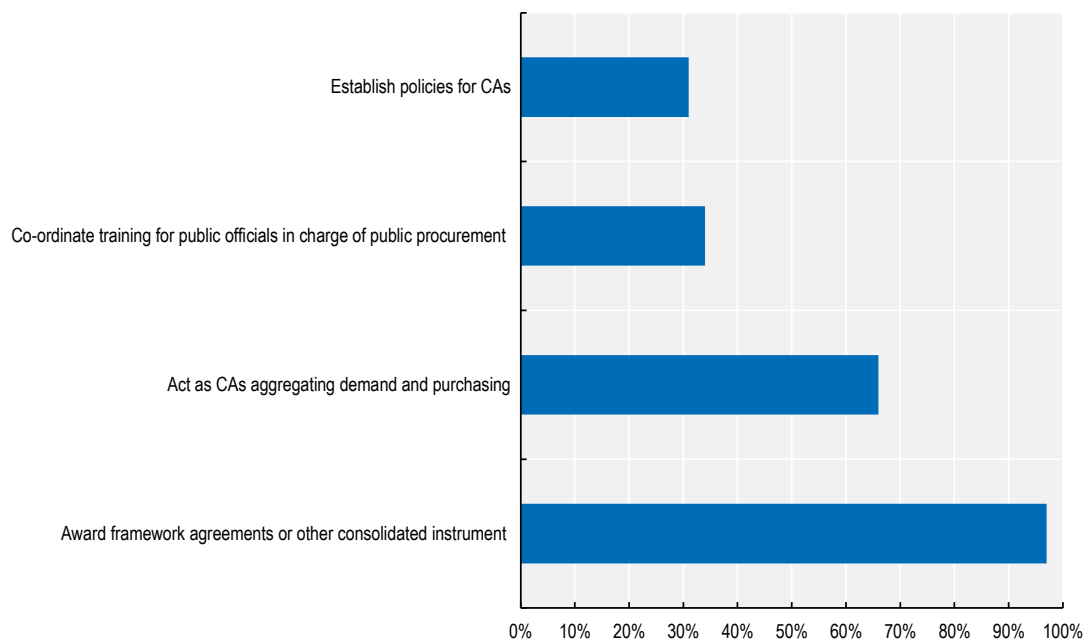


Note: This graph is based on data from 28 OECD Countries (the United States, Switzerland, the Netherlands, Luxembourg, Japan, France, and the Czech Republic are missing).

Source: (OECD, 2016^[10]).

As demonstrated by Figure 1.4, aggregating demand and awarding framework agreements are among the core functions of CPBs in most OECD Countries.

Figure 1.4. Roles of Centralised Purchasing Bodies, 2016



Source: (OECD, 2016^[10])

Centralised procurement bodies are common in OECD countries. Indeed, the vast majority of OECD countries operate have at least one CPB to conduct central purchasing – according to data from the OECD Public Procurement Surveys (OECD, 2016^[10]), only two countries in the OECD do not have CPBs. Contracting authorities, suppliers and the CPB owner (usually the central or subnational governments) are key stakeholders in their operations (Box 1.1).

Box 1.1. The potential benefits of setting up a Central Purchasing Body

The rationale for establishing and operating a centralised purchasing system (CPS) needs to be examined from various perspectives.

The important stakeholders are:

- the users of the CPB's services - the contracting authorities, representing the wide spectrum of procuring entities that either purchase goods or services acquired by the CPB or use the framework agreements operated by the CPB;
- the private sector market, represented by the suppliers providing the goods or services to the CPB, either directly or under framework agreements;
- the owners of the CPBs – usually ministries, associations of local authorities, and other public bodies representing taxpayers' interests, which may recognise that the CPB contributes to reduced public expenditure, increased value-for-money, and the realisation of certain important policy goals, such as those related to environmental or social issues or to SMEs.

The efficiency and attractiveness of the CPB can only be measured in terms of how well it satisfies the needs of these external stakeholders.

The main rationale for establishing a CPB is often described in the following terms:

- Large procurement volumes generate better prices
- Transaction costs are reduced

Centralised purchasing systems may also offer advantages that cannot be directly expressed in economic terms, the following arguments in favour of centralised purchasing arrangements should be mentioned:

- The need for standardisation or increased administrative efficiency within the public administration,
- Many procuring entities may lack sufficient capacity of their own to prepare and carry out complex tenders in areas requiring specific product or market expertise.
- Professional, centralised purchasing provides certainty to procuring entities in many key aspects legal, technical, economic and contractual
- Simplicity in the acquisition of goods and services
- Governments may use the CPBs as instruments for the execution of policy goals in specific sectors, such as promoting green procurement, innovations and SME participation in public sector tenders.

Source: (OECD, 2011^[11]).

The geographical size of the Republic of Kazakhstan and the number of inhabitants allows centralised purchasing bodies to be set up at a regional level. With the introduction of single organisers in the country, the authorities have already moved towards a common practice of setting up central purchasing units within both central and subnational levels of government to serve internal departments with procurement services. In most OECD countries, such central purchasing units manage the award of framework agreements (Rus. рамочные соглашения) (OECD, 2016^[10]), which do not exist in Kazakhstan. Section 1.4.2 elaborates on the issue of framework agreements and their potential benefits.

The development of standard technical specifications for popular and homogeneous goods and services is a powerful tool that goes along with the centralisation and standardisation of public procurement. As of today, standard technical specifications are available only regarding furniture. The development of standard technical specifications for other goods and services is one of the keys to aggregated purchases since they will make it easier for central purchasing bodies (former single organisers) to aggregate similar lots from different contracting authorities. The Ministry of Finance plans to develop a catalogue of standard technical specifications in 2019. This is a positive development that will enhance the efficiency of public procurement processes, and support increased centralised purchasing by single organisers. The development of standard technical specifications could focus on homogeneous goods and services in demand in all types of government organisations.

Expanding the remit of the GPC and other central purchasing bodies, particularly through the consolidation of purchases, would create negotiating leverage for the state in the market and increase efficiency and productivity by decreasing the number of public procurement procedures. However, this will change the role of GPC and single organisers and will require them to enhance their procurement competency in relation to market and supplier studies.

Contracting authorities will appreciate the value added of bodies like the GPC and other central purchasing bodies once tangible results become visible. Among those results, a lower administrative burden of contracting authorities and better value for money might be particularly relevant. In turn, this increased awareness of the benefits of centralised procurement could create additional demand and increase the procurement conducted by centralised purchasing bodies as contracting authorities would be increasingly incentivised to conduct procurement through the GPC (and the other central purchasing bodies) even concerning non-mandatory items (i.e. items for which they are entitled to could procurement themselves).

Beyond strengthening centralised purchasing bodies, the Ministry of Finance could consider allowing collaborative purchasing arrangements between the contracting authorities or single organisers of different districts belonging to the same region (oblast), for instance. Such arrangements are common in a number of OECD Countries These arrangements may be established formally and permanently, but the government organisations involved may also have a looser relationship in matters of purchasing.

1.4.2. Introducing framework agreements

As mentioned above, the PPL does not provide contracting authorities with an opportunity to use framework agreements. Introducing this kind of possibility in the law, and supporting the implementation of framework agreements promises great benefits in terms of value for money.

Framework agreements generally involve the advertisement of an opportunity by a contracting authority (or authorities). This authority then enters into a contract or other arrangements with one or more economic operators for the provision of works, supplies or services to different contracting authorities over a fixed period. The rationale behind the framework method of purchasing is to achieve savings – both in terms of the cost of procurement and the time spent on the procurement process. Commonly, the most significant savings in procurement are achieved when framework agreements are combined with centralised procurement and e-procurement (OECD, 2011^[12]). Framework agreements have a number of other benefits for stakeholders: Box 1.2 summarises them.

Box 1.2. The benefits of framework agreements

Framework agreements:

- *Deliver value for money*: Aggregating different purchasers' potential needs means individual purchasers can buy goods and services at prices below those normally charged. It also means that individuals can buy goods with special added benefits or more advantageous conditions.
- *Are compliant*: Centrally initiated framework arrangements are fully compliant with procurement regulations. Thus, they reduce the potential for fraud or corruption.
- *Are consistent*: The use of these arrangements drives a more consistent and professional approach to procurement processes. This consistency and professionalism helps educate officials and suppliers dealing with the central procurement body, as well as improve their approaches to each tender exercise.
- *Are faster*: Framework agreements remove the need for contracting authorities to conduct full tender exercises or lengthy supplier evaluations. This saves time, and reduces the costs associated with procurement exercises.
- *Have less risk*: Each of the suppliers in a framework agreement has been subject to a rigorous procurement process. This ensures that they offer the type of goods and services required, and that they meet a certain threshold of quality. Framework agreements establish terms and conditions. This fact means that there is no need to re-draft terms or renegotiate when each procurement is undertaken.
- *Leverage scale*: The public sector has substantial purchasing power. Framework agreements harness the opportunity to leverage this purchasing power and thereby ensure that value for taxpayer money is achieved.

Source: (OECD, 2018^[13]).

Kazakhstan does not currently have any framework agreements in place and currently they are not envisaged to be incorporated in the public procurement legislation. As for the national reform in Kazakhstan, the December 2018 amendments mention public tenders with pre-qualification, which the Government plans to use extensively regarding construction works. This amendment creates the status of pre-qualified supplier. A single qualification body will be created to pre-qualify suppliers, which would then be able to apply to tenders with pre-qualification. In February 2019, the Ministry of Finance defined a list of works and goods for which public tender with prequalification is the mandatory procurement method (Ministry of Finance of the Republic of Kazakhstan, 2019^[6]).

The pre-qualification could act as a stepping stone towards framework agreements as suppliers who are awarded framework arrangements are sometimes termed 'approved suppliers' or 'preferred suppliers' as they have been subject to a supplier appraisal process and therefore considered to offer value for money from a relatively secure source. The expression 'qualified list' of suppliers is also used when referring to suppliers who have been awarded framework arrangements (OECD, 2011^[12]).

However, the instrument is widespread among OECD countries. 97% of responding countries reported using framework agreements in 2012, according to the 2012 OECD Survey on Public Procurement (OECD, 2016^[10]). Ireland is one of many European countries that have a long tradition of using framework arrangements. In Ireland, the Office of Government Procurement (OGP) has put in place 122 framework agreements. These agreements have delivered a total estimated value of EUR 2.5 billion. 89% of frameworks in Ireland were established with a mix of both quality and cost as award criteria. Of those, the median split was 60/40 in favour of quality. (OECD, 2018^[13])

The range of items that are usually covered by framework agreements includes:

1. ICT (information and communication technology) products and services (computers, photocopiers, printers, servers, software), generally the largest product area in terms of purchasing volume;
2. Telecommunications products (networks, mobile phones, landline phones, telephone exchanges);
3. Office furniture;
4. Travel services;
5. Office equipment and supplies;
6. Vehicle and transport services;
7. Fuel (for heating and transport) and electricity;
8. Food (foodstuffs, meal tickets);
9. Organisational and human resources development services (SIGMA, 2016^[9]).

In Latin America, framework agreements are becoming popular in countries like Mexico, Peru, Chile and Colombia. *Colombia Compra Eficiente*, the central purchasing body of Colombia, has deployed 34 framework agreements since 2013, when the first one was set up. Its combination of framework agreements and advanced e-procurement tools offers an example of good practice that is particularly relevant for Kazakhstan (Box 1.3).

Box 1.3. The deployment of framework agreements in Colombia

The framework agreement was a breakthrough for government agencies in Colombia. It helped public agencies in buying fuel at service stations in Bogota. Prior to the agreement, it took four months to complete an open tender. With the agreement, procurement now takes less than an hour, as officials can place purchase orders via the Colombian State Online Store (*Tienda Virtual del Estado Colombiano*), an e-procurement platform within Colombia's SECOP suite of e-procurement systems. In addition, after the implementation of the framework agreement, suppliers offered a discount on the reference price for fuel in a greater number of service stations. Furthermore, the government created a management system for fuel supply to increase control over fuel expenditure. *Colombia Compra Eficiente*, the central purchasing body of Colombia, currently offers public agencies 34 frameworks agreements, including insurance, vehicles, janitorial services and cloud services, among others. Law mandates that central government agencies procure through framework agreements. Other institutions, including Congress, the judiciary system, oversight institutions and institutions at the subnational level, may use the agreements if they deem them useful. The total value of purchase orders placed is more than EUR 1.25 billion, and there is a growing trend for subnational-level entities to use these contracts.

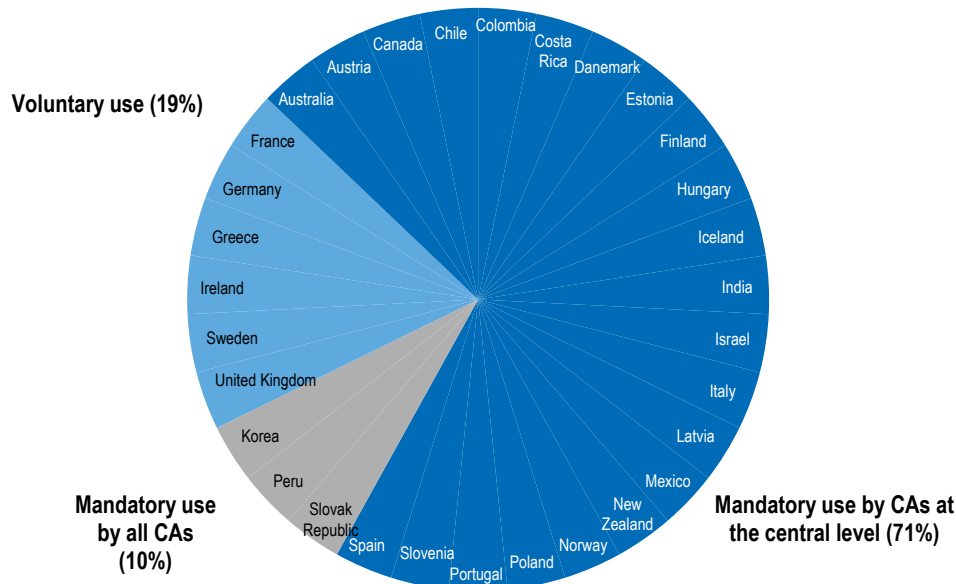
Source: (OECD, 2018^[13]).

Framework agreements in Ireland are aggregated procurement arrangements established through competitive procurement processes. These arrangements are agreements with suppliers or service providers. They set out the terms and conditions under which specific contracts can be made during the period of the agreement. Frameworks agreements are put in place by central purchasing bodies like the OGP. Public sector clients can then modify the amount of goods and services they purchase from suppliers in the framework by means of direct draw down or mini-competitions (OECD, 2018^[13]).

The vast majority of OECD countries that use framework agreements distinguish between contracting authorities at central and sub central level. The majority of OECD countries make it mandatory for contracting authorities at the central level to use framework agreements for available categories. Most often, other institutions such as subnational governments are free to join on a voluntary basis. Only Korea

and the Slovak Republic make it mandatory for all contracting authorities on all government levels to use framework agreements (Figure 1.5).

Figure 1.5. Mandatory vs voluntary use of framework agreements established by CPBs



Source: (OECD, 2016_[10]).

Furthermore, the European Commission has stressed the benefits of making the use of existing framework agreements mostly mandatory (PWC & EU Commission, 2017_[14]). However, the question of whether framework agreements should be mandatory or not also depends on a country's capacity to implement different models. The voluntary use of framework agreements reinforces the need to develop attractive value propositions appealing to contracting authorities and suppliers. A mandatory scheme provides for greater certainty and potential additional spill over effects on the entire administration.

The benefits of framework agreements have already been established. However, in introducing them, the Government of Kazakhstan should recognise that framework agreements might not be suitable for all types of purchasing. The most appropriate use of a framework agreement is in a situation where a contracting authority has a repeated need for works, services or supplies, but does not know the exact quantities that are required. In order to assess the suitability of a framework agreement, contracting authorities need to understand the advantages and disadvantages of framework agreements, the different types of framework agreements, how they are set up and how they operate in practice.

The use of framework agreements (or the lack thereof) follows the procurement rules established by the Eurasian Economic Union (EAEU). In fact, the EAEU rules currently do not allow for procurements to be conducted using framework agreements. According to the Ministry of Finance, an amendment to the union's procurement rules was drafted and is currently pending adoption by the member countries. Once approved, this amendment would establish the EAEU's members' ability to introduce framework agreements.

Proposals for action

The public procurement system in Kazakhstan has already undergone many revisions in recent years, the last one being the December 2018 amendments.

The overall assessment of the institutional setting and procurement structures in Kazakhstan does suggest that the country is moving in the right direction with opportunities to make the system both more streamlined and efficient while achieving greater value for money. To further support the modernization of the system the Government of Kazakhstan could consider the following proposals:

- The Ministry of Finance could set a long-term vision and develop a plan based on that vision and including specific goals and actions. The Ministry could then report progress on them annually.
- There is a need to expand the remit of the GPC and other central purchasing bodies to allow it to function as a genuine centralised procurement body to realise benefits of central purchasing. This would be achieved by introducing an ambitious plan for the consolidation of purchases from different Contracting authorities, particularly concerning commonly procured products in demand in all government organisations. Such ambitious plan could encompass the preparation of standard technical specifications for these products.
- To complement its efforts towards greater centralisation of purchases, the Ministry of Finance could consider introducing framework agreements, a tool used to centralise certain common categories of goods and services while providing flexibility to contracting authorities to focus on their own primary and more specific procurement needs.
- The Ministry of Finance would want to ensure that the introduction of single organisers at all local levels of government do not lead excessive delays in carrying out procurement procedures. The analysis of the impact of these actions could be assessed as part of the centralisation pilot that the Ministry of Finance is undertaking in 2020.
- The Ministry of Finance could balance the need for reform with the drawbacks of frequent changes to the public procurement legal framework: procurement practitioners and potential bidders require time to familiarise themselves with new procedures and rules. This can result in a loss of efficiency and should be considered before attempting reforms that aim at increasing the efficiency and effectiveness of the public procurement system.

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Notes

¹ (Akimat = local public administration, headed by an Akim =Appointed Governor)

² The public procurement framework also provides for tenders with pre-qualification, but no procurement has been conducted through this method yet;

³ These employees are employees of SOEs and of the national holding companies that own them, including Samruk-Kazyna.

2 Increasing efficiency and fairness along the public procurement cycle in Kazakhstan

This chapter provides an overview of the main procurement methods applied in Kazakhstan and assesses the different stages of the procurement cycle to identify challenges and opportunities for improvement. This includes measures to improve procurement planning, the preparation of technical specifications, to increase competition by reducing exceptions to competitive tendering and facilitating access for non-resident suppliers. This chapter also examines how the Government of Kazakhstan can broaden its approach to the application of award criteria by applying a points and percentages system for public tenders. Finally, it discusses how the country can benefit from the implementation of a broad framework for contract management.

2.1. Introduction

Reforms to Kazakhstan's public procurement system have led to the introduction of a government e-procurement system in 2016 and the adoption of a Public Procurement Law (PPL) in 2015 to name the two most important achievements in recent years. These reforms have put Kazakhstan on a path towards more centralisation, ensuring a higher level of standardisation in the execution of contracts and greater transparency of the procurement process. Kazakhstan's public procurement system is highly decentralised. Only 20% of public procurement processes in Kazakhstan are carried out at the central level, with the remaining 80% being conducted at the regional level. Striking aspects of the public procurement framework, when compared to international good practices, include the absence of framework agreements and award decisions based mainly on price. The funding of all public services in Kazakhstan, whether at a central or a local level, is conducted through the Ministry of Finance, with the same public procurement regulations applying to both tiers.

Using the 2015 OECD Recommendation as a benchmark, this chapter looks at how the Government of Kazakhstan can improve its public procurement processes and how it can encourage ministries, administrative units, decentralised bodies, and public administration entities to drive efficiency throughout the public procurement cycle. The principle of efficiency is described in Box 2.1.

Box 2.1. The OECD Recommendation on Public Procurement – Efficiency Principle

VII. RECOMMENDS that Adherents develop processes to drive **Efficiency** throughout the public procurement cycle in satisfying the needs of the government and its citizens.

To this end, Adherents should:

- a. **Streamline the public procurement system and its institutional frameworks.** Adherents should evaluate existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste. Where possible, a more service-oriented public procurement system should then be built around efficient and effective procurement processes and workflows to reduce administrative red tape and costs, for example through shared services.
- b. **Implement sound technical processes to satisfy customer needs efficiently.** Adherents should take steps to ensure that procurement outcomes meet the needs of customers, for instance by developing appropriate technical specifications, identifying appropriate award criteria, ensuring adequate technical expertise among proposal evaluators, and ensuring adequate resources and expertise are available for contract management following the award of a contract.
- c. **Develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money,** including centralised purchasing, framework agreements, e-catalogues, dynamic purchasing, e-auctions, joint procurements and contracts with options. Application of such tools across sub-national levels of government, where appropriate and feasible, could further drive efficiency.

Source: (OECD, 2015^[1]).

This chapter will focus on the different opportunities for Kazakhstan to enhance the efficiency of public procurement within the public procurement cycle, including the different stages such as needs assessments, the choice of the procurement method, the role of tender commissions, and the evaluation of bids and post-award contract management.

Treating bidders in a fair, transparent and equitable manner is closely related to the efficiency of public procurement systems, as it is essential to encourage suppliers and the private sector to participate in public procurement. The 2015 OECD Recommendation urges adherents to facilitate access to procurement opportunities for potential competitors of all sizes, to use competitive tendering as the standard method and to limit the use of exceptions such as direct contracting (Box 2.2). Indeed, the use of competitive tendering is a mean of boosting efficiency by achieving better value for money. Therefore, this chapter also tackles the issues of exceptions to public tendering and obstacles to the access of non-resident suppliers to public procurement opportunities in Kazakhstan.

Box 2.2. The OECD Recommendation on Public Procurement – Access principle

IV. **RECOMMENDS** that Adherents facilitate access to procurement opportunities for potential competitors of all sizes.

To this end, Adherents should:

i) Have in place coherent and stable institutional, legal and regulatory frameworks, which are essential to increase participation in doing business with the public sector and are key starting points to assure sustainable and efficient public procurement systems. These frameworks should:

1. be as clear and simple as possible;
2. avoid including requirements which duplicate or conflict with other legislation or regulation; and
3. treat bidders, including foreign suppliers, in a fair, transparent and equitable manner, taking into account Adherents' international commitments (e.g., the Agreement on Government Procurement within the framework of the World Trade Organization, the European Union Procurement Directives, and bilateral or multilateral trade agreements).

ii) Deliver clear and integrated tender documentation, standardised where possible and proportionate to the need, to ensure that:

1. specific tender opportunities are designed to encourage broad participation from potential competitors, including new entrants and small and medium enterprises. This requires providing clear guidance to inform buyers' expectations (including specifications and contract as well as payment terms) and binding information about evaluation and award criteria and their weights (whether they are focused specifically on price, include elements of price/quality ratio or support secondary policy objectives); and
2. the extent and complexity of information required in tender documentation and the time allotted for suppliers to respond is proportionate to the size and complexity of the procurement, taking into account any exigent circumstances such as emergency procurement.

iii) Use competitive tendering and limit the use of exceptions and single-source procurement. Competitive procedures should be the standard method for conducting procurement as a means of driving efficiencies, fighting corruption, obtaining fair and reasonable pricing and ensuring competitive outcomes. If exceptional circumstances justify limitations to competitive tendering and the use of single-source procurement, such exceptions should be limited, pre-defined and should require appropriate justification when employed, subject to adequate oversight taking into account the increased risk of corruption, including by foreign suppliers.

Source: (OECD, 2015^[1]).

Kazakhstan faces two main challenges related to access to public procurement opportunities, which will be analysed throughout this chapter and notably section 2.3.4. First, non-resident suppliers face substantial hurdles in submitting bids electronically, due to several requirements.

Second, direct award procurements (direct purchasing) account for a very large share of overall procurement value, even though its share decreased from 73.6% in 2017 to 59% in 2017. The regulatory framework does not define public tender as the standard method for conducting procurement. Section 2.3.4 provides more details on direct award procurement.

2.2. The Procurement cycle in Kazakhstan

Any public procurement process in Kazakhstan shall include the following consecutive steps (see article 5.1 of the PPL):

1. Budget formation and procurement planning: contracting authorities draft and approve annual public procurement plans, detailing individual procurements to be conducted, and the maximal value earmarked for each of them, along with the procurement method;
2. Contracting authorities draft and approve tender documentation, including technical specifications with the assistance of single organisers;
3. Publication and submission of bids on the government e-procurement system;
4. Bid evaluation and automatic contract award; and
5. Performance of the public procurement contract.

In the case of direct award, only some aspects of the process are conducted on the e-procurement system, i.e. procurements plans and contract award notices are published online in the same way as for competitive processes. Section 2.2.4 details the different procurement methods while section 2.3.2 covers the issue of direct award procurement.

2.2.1. Budgeting and planning

Public procurement does not take place in a vacuum, but should be integrated with budgeting and programming systems for optimal results. Indeed, the 2015 *Recommendation of the OECD Council on Public Procurement* addresses the importance of this integration (Box 2.3).

Box 2.3. The 2015 Recommendation on Public Procurement –Integration principle

The Recommendation suggests that adherents support integration of public procurement into overall public finance management, budgeting and services delivery processes. To this end, adherents should:

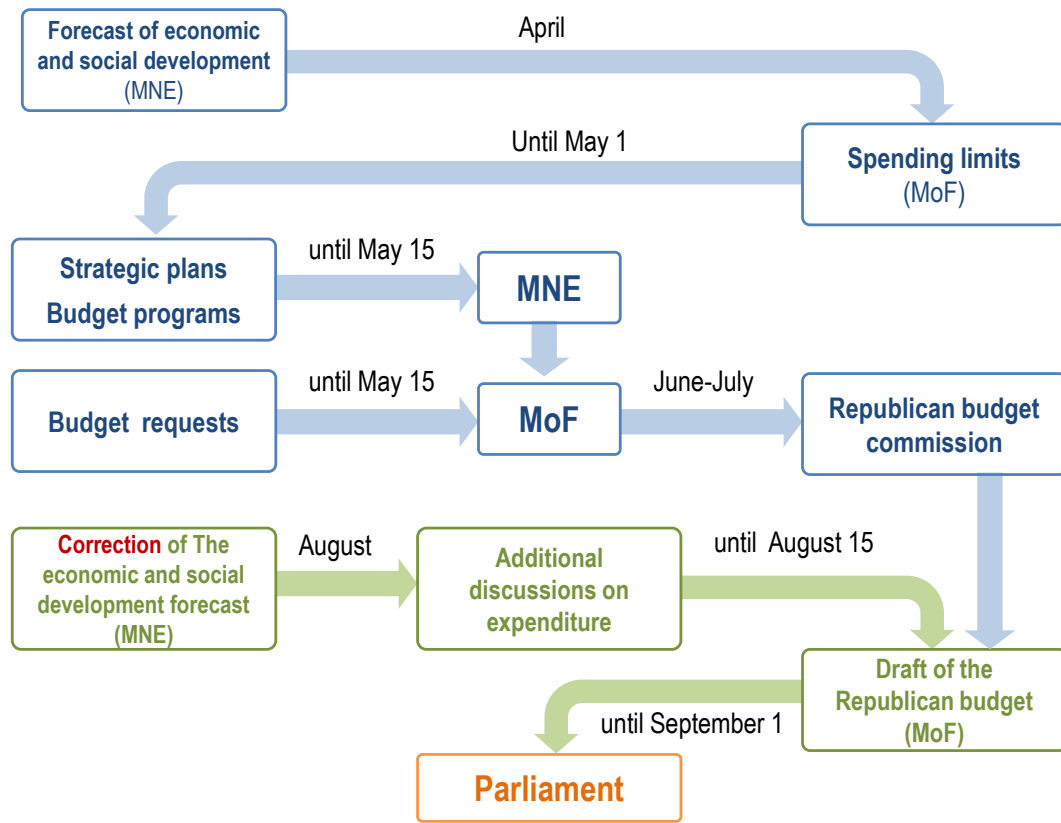
- Rationalise public procurement spending by combining procurement processes with public finance management to develop a better understanding of the spending dedicated to public procurement, including the administrative costs involved. This information can be used to improve procurement management, reduce duplication, and deliver goods and services more efficiently. Budget commitments should be issued in a manner that discourages fragmentation and is conducive to the use of efficient procurement techniques.
- Encourage multi-year budgeting and financing to optimise the design and planning of the public procurement cycle. Flexibility, through multi-year financing options – when justified and with proper oversight – should be provided to prevent purchasing decisions that do not properly allocate risks or achieve efficiency due to strict budget regulation and inefficient allocation.
- Harmonise public procurement principles across the spectrum of public services delivery, as appropriate, including for public works, public-private partnerships and concessions. When delivering services under a wide array of arrangements with private-sector partners, adherents should ensure as much consistency as possible among the frameworks and institutions that govern public services delivery to foster efficiency for the government and predictability for private-sector partners.

Source: (OECD, 2015^[11]), OECD Recommendation of the Council on Public Procurement, OECD, Paris, <http://www.oecd.org/gov/public-procurement/recommendation/>, consulted on 14 March 2016.

Kazakhstan’s contracting authorities develop their public procurement plans based on their allocation of funding from the annual budget. Budgetary legislation and public procurement legislation allows government organisations to resort to multi-year financing and, accordingly, to plan and carry out a procurement process on a multi-year basis. Contracting authorities (called “customers”) at the central and local levels, depending on funding, have the right to develop and approve multi-year public procurement plans. Such procurement plans are often used by large customers and regarding construction work. However, use of these multi-year plans are not widespread in Kazakhstan and OECD field research did not find evidence of long-term, multi-year budget and procurement planning in Kazakhstan. In addition, there does not seem to be a feedback mechanism that links past performance to future budgets. Budgets are mostly defined based on previous expenditure.

There is a three-year budget cycle on a revolving basis, approved every year in December. The financial year in Kazakhstan starts on the 1st of January each year. The Ministry of National Economy (MoNE) is responsible for setting up the budgeting policy while the Ministry of Finance defines spending limits for the forthcoming year based on forecasts made by the MoNE on the expenditures and revenues sides. Public entities submit a budget request every year before May 15th, strictly within these spending limits. Any additional budget request needs to be considered by the Republican budget commission before 1 September. Budget requests contain details about items to be purchased and the sums earmarked for them. Once approved, they serve as the basis for the development of annual procurement plans. Figure 2.1 illustrates this process.

Figure 2.1. The process of the Republican budget development



Source: Information provided by the Ministry of National Economy.

Budget requests are divided into 1) basic operational expenditures (office supplies, travel expenditures, etc.) and 2) new expenditure that have not been financed in the previous period. Each entity has to share with the Ministry of Finance a breakdown of each additional expenditure being requested. The Ministry of Finance analyses the budget requests from different ministries, and has the ability to reject some based on a legitimate justification. No public entity can carry out a purchase that is absent from its annual procurement plan or its preliminary procurement plan (see below), with very few exceptions (emergency situations, operations of the office of the President, legal support for the authorities in dispute resolution, arbitration and courts and operations of security services).

The national budget commission, chaired by the Prime Minister, includes key ministers and members of parliament (MPs) from both chambers. It convenes several times a year to approve budget requests from government organisations. The final meeting for considering the overall draft government budget is in mid-August. Its main role is to agree on the draft budget prior to it going to cabinet for approval.

Under the PPL, every government organisation must publish an annual procurement plan. Government organisations publish procurement plans for the following year on the government e-procurement system in December, within 15 days after the approval of the government budget.

Procurement plans provide details about the goods, services or works to be purchased, the procurement method, the month when the entity plans to conduct its purchase and the expected delivery time (or completion time in case of construction works). It is worth noting that during the course of the year, government organisations can introduce changes to procurement plans; in this event they must publish an updated version of their procurement plan on the government e-procurement system.

The Ministry of Finance in Kazakhstan created the concept of “preliminary procurement plans” in 2016 to address problems related to purchases early in the year, which required the procurement process to start in November or December of the previous year, i.e. prior to the budget being approved by parliament. Contracting authorities can submit preliminary procurement plans to the national budget commission, and upon approval start the public procurement process 2 or 3 months before the final budget is approved in parliament in December. However, contracting authorities must wait for the final budget approval to sign any procurement contract with suppliers. At the end of 2017, many preliminary annual procurement plans for 2018 were already approved, accounting for more than EUR 3.11 billion (Beketaev, 2018^[2]). Preliminary procurement plans may create uncertainty for suppliers, in case of mismatch between the preliminary procurement plan and the final budget approved by parliament in December. The Ministry of Finance could conduct further analysis regarding how often such mismatch happens and what is the impact on suppliers.

The publication of procurement plans is a good practice to give clear visibility to suppliers on upcoming opportunities. Most OECD countries (86%) announce procurement opportunities on their e-procurement systems, and the publication of procurement plans about forecasted government needs is often a legal requirement, including in Kazakhstan (OECD, 2015^[3]). For example, in New Zealand, government agencies must publish a list of planned contract opportunities over the next 12 months and update its annual procurement plans at least once every six months (New Zealand Government Procurement Branch, 2015^[4]).

In Kazakhstan, government organisations often publish incomplete procurement plans or publish them later than the legal deadline (within 15 days after the approval of the government budget). They also introduce frequent changes to procurement plans that they had previously published, adding new purchases during the course of the year. This led to complaints from the supplier community. In order to address this issue, the December 2018 amendments require government organisations to publish procurement plans reflecting the full amounts earmarked for procurement in their annual budgets. Any violation of this requirement, as well as the non-publication (or late publication) of procurement plans, would lead to administrative liability of civil servants and a fine deducted from their salaries.

In practice, stakeholders suggest that government organisations revise procurement plans during the course of the year because they need flexibility, as under the PPL any procurement procedure must correspond to an existing procurement plan. For instance, government organisations sometimes modify their procurement plans to conduct purchases corresponding to unplanned activities or to purchase higher quantities following unintended procurement savings (i.e. when the final price is lower than the budgeted amounts because of tendering).

In order to provide adequate visibility to suppliers on upcoming opportunities while preserving some flexibility for the contracting authority, Kazakhstan could consider adopting measures that provide better visibility of procurement opportunities to suppliers. For instance, regulations could require contracting authorities to publish prior information notices (PIN) two to three months before tendering to raise the awareness of upcoming opportunities among the supplier community, in case of new items added to procurement plans during the course of the year. The publication of a PIN exists in several OECD countries. It is published in several countries with different timeframes: two to 11 months before the tender invitation in Belgium; six to eight months before in Finland, except for very few procedures; and three to four months before in Spain. In the EU and Australia, contracting authorities can reduce the minimum submission period for open tenders if PIN had previously been dispatched for publication.

Another avenue is to extend the minimum submission period (currently 15 days). This could be particularly relevant for goods, works and services that have been added to the procurement plans.

Procurement planning could be an opportunity to consolidate purchases and therefore achieve more value for money. Currently, procurement planning is carried out mainly for compliance and monitoring purposes. The planning activity itself is largely based on budget availability and does not entail sufficient market research and analysis. The following section elaborates on the issue of market research/studies.

2.2.2. Adopting a strategic approach to market studies

A market analysis is a general survey of the potential in the market to satisfy the defined need of a contracting authority. In order to be successful, this analysis has to be conducted in an open and objective manner, focusing on what general solutions are available in the market – and not offers by preferred or favoured contractors. Many OECD countries developed market analysis guides to support contracting authorities in the task of drafting relevant market studies. For instance, the State of Queensland in Australia developed such a comprehensive guide. It refers to Porter's five competitive forces to build a structured approach of market analysis and understand competitive dynamics, and also summarises purchase marketing fundamentals to support contracting authorities when they develop their purchasing strategy etc. (State of Queensland (Dpt of Housing and Public Works), 2018^[5]).

Market analyses may also involve direct engagement with suppliers and other organisations with relevant expertise, such as trade bodies or chambers of commerce. Direct engagement can complement desk-based research, providing first-hand knowledge from the suppliers. Direct engagement with suppliers is also commonly referred to as “market sounding”, “solicitation of supplier information” or “preliminary market consultation” (OECD, 2018^[6]).

The price of goods, works and services is the main focus of market research and analyses in Kazakhstan. Because procurement planners do not have access to any other business intelligence tool, market studies are paramount to the successful management of public procurement processes that achieve the best possible value for money for citizens. Contracting authorities could use these market studies in a strategic way, undertaking them even when there is no legal requirement to do so and particularly for high-value tenders. A thorough understanding of all prevailing market conditions, structures and potential suppliers is essential if contracting authorities want to buy effectively and also detect and avoid bid rigging, bribery and other forms of fraud or wrongdoings.

The national e-procurement system has a module that allows for the gathering and reporting of data on the average, maximum and minimum prices for goods, works and services that have been procured after 2016. The module provides data for the country as a whole and for each of the 17 regions of Kazakhstan. Contracting authorities use the module for market research and budget planning purposes. Contracting authorities complement data from the price module with online research and consultations with potential suppliers (or their representatives in Kazakhstan in the case of foreign suppliers). They focus on Kazakhstan's domestic market, EAEU member countries (i.e., aside from Kazakhstan also Armenia, Belarus, Kyrgyzstan and the Russian Federation) and, if necessary, explore the supplier market from other countries.

The Government of Kazakhstan could implement a comprehensive methodology or guide on how to conduct market research. This guide could include methods:

- to increase awareness of the characteristics of the market and of recent market developments or trends that may affect competition for the tender, or may make collusion more likely (e.g. small number of suppliers, standardised or simple products, little or no entry, among others).
- to collect information on suppliers and their products, prices and cost structures. If possible, a comparison to prices offered in business-to-business procurement is recommended.
- to collect information about recent price changes. This will help procurement practitioners be informed about prices in neighbouring geographic areas, and about prices of possible alternative products.
- to collect information about past tenders for the same or similar products.
- to co-ordinate with other public procuring authorities that have recently purchased similar goods, services or works in order to improve understanding of the market and suppliers (OECD, 2018^[6]).

2.2.3. The development of technical specifications

Development and approval of technical specifications is carried out directly by contracting authorities. In the case of public procurement by a single organiser (a unit corresponding to a central purchasing body), contracting authorities submit technical specifications and the draft contract to their single organisers for approval. Technical specifications must meet all requirements in the field of technical regulation.

According to Article 21 of the PPL, the tender documentation shall be developed by the organiser in both Kazakh and Russian languages. As detailed in Chapter 1, the organiser is responsible for organising and performing public procurement processes. A contracting authority itself can undertake the role of the organiser (i.e. purchaser and organiser would be the same entity). Tender documentation shall contain technical specifications with an indication of required functional, technical, qualitative and operational characteristics of the purchased goods, works and services. It also contains qualification criteria as established by Article 9 of the PPL. In Kazakhstan, the qualification stage shall be conducted on a pass/fail basis based on the compliance of each bid with requirements in the tender documentation. Moreover, the tender documentation details all elements that affect the selection of the winner bidder, including “conditional discounts” (Rus. Условные скидки). The section on bid evaluation (2.2.6) elaborates on qualification and selection criteria.

Contracting authorities conduct limited market analysis that enables them to draft technical specifications. This market research typically identifies whether a specific product exists, and what the conditions (price, delay and others) are for its future acquisition. In contrast, single organisers and the Government Procurement Committee seem to have limited influence on the technical specifications, mostly because these more general institutions lack capacity and skills that would be needed to handle the technical aspects of complex procurements.

The only standard technical specifications that exist in Kazakhstan relate to furniture. This means that the burden of developing appropriate technical specifications lies almost exclusively with contracting authorities. On the positive side, the Ministry of Finance plans to introduce a “catalogue of standard specifications” that will streamline and rationalise the design and drafting of technical specifications by contracting authorities for common or widespread goods, works and services. This is a positive development that will support the ongoing centralisation of public procurement and the functioning of central procurement bodies.

According to stakeholders, many technical specifications are incomplete or flawed. Therefore, potential suppliers consider that they cannot comply with technical specifications and abstain from submitting bids. In turn, due to a lack of bids competitive tendering processes are considered to have “failed” and are then conducted through direct award. As Kazakhstan continues to gradually centralise its procurement processes, it is important for central procurement bodies (single organisers) to develop their internal expertise regarding complex purchases and product categories, as they will be better able to correct mistakes in technical specifications and to assess bids from suppliers.

The lack of specialised skills among contracting authorities’ staff seems to be an acute challenge, leading to mistakes in technical specifications and in the assessment of bids. Moreover, this lack of specialised skills leads contracting authorities to rely heavily on external expertise. Indeed, for some aspects of the preparation of the tender, both contracting authorities and single organisers can hire an independent expert (an individual with special and/or technical knowledge, experience, and qualification) or gather an expert commission. Experts and expert commissions participate in the development of the technical specifications or prepare an expert opinion as part of the evaluation of proposals. Besides, these experts are drawn on to determine whether proposals conform to the technical specifications.

The PPL introduced a “preliminary discussion of technical documentation” on the government e-procurement system to improve the quality of technical specifications. This allows suppliers to either ask for clarifications regarding technical specifications or to submit remarks, for instance regarding mistakes

and irregularities. Procurement regulations require that tender commissions answer all remarks and clarification requests from suppliers and, if necessary, revise technical documentations and specifications before the beginning of the bid submission period. Chapter 3 provides more details on these preliminary discussions, which take place electronically through the government e-procurement system.

2.2.4. Procurement methods

1. Public tender (open tender (Rus. конкурс)), which is a standard competitive tendering process with a qualification stage (to ensure supplier's compliance with tender documentation and technical specifications) and a selection stage (contract award).
2. The PPL also comprises a separate category, public tender with prequalification, although it is not used in practice. The December 2018 amendments establish that prequalification bodies will be in charge preselecting suppliers for public tenders with pre-qualification. It also enshrines the Ministry of Finance with the right to define the list of goods, works and services to be procured through public tenders with prequalification. The Ministry of Finance introduced pre-qualification for some types of construction works, furniture and light industry goods, and programming services (software development). Section 2.3.4 elaborates on the substantial hurdles that the prequalification mechanism creates for the access of foreign bidders to public procurement for certain categories of purchases, while Chapter 3 elaborates on the transparency issues related to the introduction of public tenders with prequalification.
3. Auction (Rus. аукцион), a procurement method applicable only to goods which is actually a reverse auction (or a procurement auction), i.e. the price can only decrease during the bidding process. Bids go through a qualification stage to ensure compliance with tender documentation and technical specifications.
4. Requests for quotations (Rus. запрос ценовых предложений) is the method for procurement for homogeneous (standardised) goods, works and services up to a procurement value of 4 000 monthly calculated indexes. (KZT 10 100 000, or around EUR 24 836). Beyond this threshold, contracting authorities cannot use requests for quotations.
5. Direct award (Single source procurement in the PPL): no competitive tendering takes place and only parts of the procedure are conducted on the e-procurement system. There are two types of direct award procedures:
 - a. Direct award based on exceptions (Rus. Единый источник путем прямого заключение договора, which can be translated as "single source through direct award") is conducted based on a list of 50 exceptions to competitive tendering established in article 39 Point 3 of the PPL.¹ As in most OECD Countries, one of these exceptions corresponds to low-value processes below the value threshold for direct award (subparagraph 42 of Article 39 Point 3 of the aforementioned of the PPL).
 - b. Direct award after failed bidding (Rus. Государственные закупки из одного источника по несостоявшимся государственным закупкам)²: If, in a competitive tender, contracting authorities receive only one or no responsive bid, they must conduct a new open tender (or a new auction). Only if this second open tender (or second auction) also receives only one or no responsive bid can contracting authorities conclude the procedure with direct award after failed bidding. This requirement for a second tender (or second auction) results from the December 2018 amendments (entry into force on 1 January 2019).
 - c. Upon concluding the procedure with direct award after failed bidding, if there is only one qualified bidder, contracting authorities automatically award this bidder the contract. Contracting authorities are free to choose any supplier in case there is no qualified bidder at all. In the case of requests for quotations, direct award can be used according to the

same principle (less than two quotations correspond to the technical specifications; automatic award to the responsive quotation or to any company if no quotation responded to the requirements).

2.2.5. Submission periods and the submission process

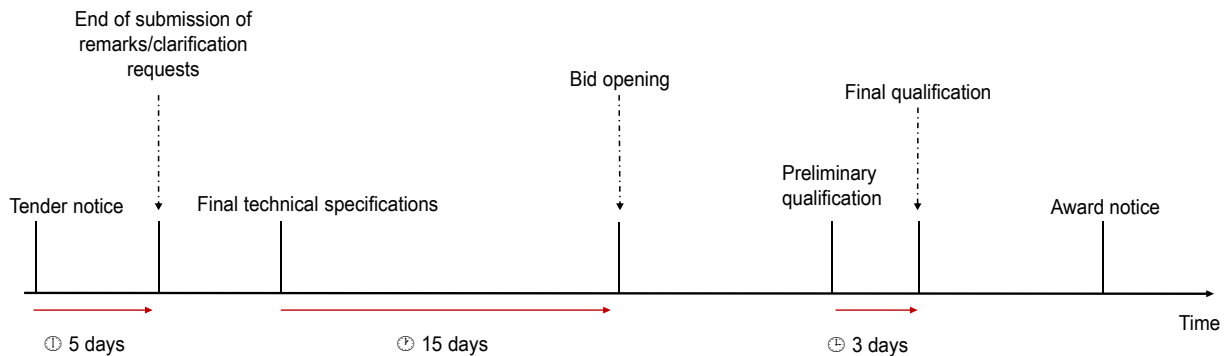
Submission periods vary depending on the procurement method used. The window for submission of public tenders is a minimum of 15 days after the publication of the technical documentation, according to Article 22 of the PPL. In regards to a request for quotations, the deadline for submission of quotations is five working days. Based on cursory review of procedures on the government e-procurement system, the average window for submission in was 16 days for open tenders, and 15.5 days concerning requests for quotations. This is very close to the minimum of 15 days and suggests that few contracting authorities actually use a longer submission period. A large portion of public tenders in Kazakhstan therefore have only the minimum time limit for submission of tenders. 15 days can be too short for many complex tenders, when comparing with international best practice (see below).

It is important to allow suppliers an adequate time period for the preparation of tenders and to take account of the complexity of the contract when fixing the timescale for submitting responses. This is especially necessary as planning is frequently off target. It is likely to increase the number of bidders, leading to more competition, a lower share of failed competitive biddings and eventually better prices. Therefore, the Ministry of Finance could consider extending this minimal window for submission for open tenders with high monetary value (which are more likely to be complex purchases), particularly for public tenders of goods and services, or works without design estimate.

Indeed, regarding construction and installation works, the December 2018 amendments obliged contracting authorities to publish design estimates (construction documents) to complement their annual procurement plan. Contracting authorities must publish their procurement plans maximum fifteen days after the final approval of the state budget, i.e. usually the second half of December. This measure will allow potential suppliers to familiarise themselves in advance with the details of upcoming procurements for construction and installation works, and should increase the number of responsive bids for public tenders for construction and installation works.

Similarly, the minimum period for the receipt of price proposals for request for quotations is only five working days. This period might be too short, especially if the products purchased are multifaceted and not readily available, requiring the suppliers to carry out some internal research prior to providing the quotation.

Figure 2.2 illustrates the bid submission process for open tenders, which can be summarised as follows: after the bid, the procurement commission has ten days to convene and discuss the bids. After convening, the results are published on the government e-procurement system. The commission does not directly contact the bidders; however, the results are posted on the government e-procurement system, summarising what is missing, what is not compliant with the requirements, whether there is a need for certification etc. Following this, potential suppliers have three days to revise their bids. During this period, suppliers cannot change the price; however, they can correct and change their bidding documents. After the resubmission of bids, the commission has five days to consider the submitted documents again and to validate or reject applications. The government e-procurement system automatically defines the winning bidder among valid submissions based on the lowest price, taking into account “conditional discounts” provided for by Public Procurement Rules. The next section (2.2.6) details how conditional discounts work. Suppliers have then five days to appeal once the commission has decided on who to award the contract to.

Figure 2.2. Submission process for open tenders in Kazakhstan

Note: This timeline applies to open tenders (Rus. Конкурсы) and auctions (Rus. Аукционы) in Kazakhstan.
Source: Article 25 and 27 of the PPL, Points 86 to 141 of the Public Procurement Rules.

The December 2018 amendments introduce administrative liability (a fine deducted from their salaries) of procurement officers in case they do not abide by the deadlines established by the law to examine bids in open tenders and auctions, or to publish the protocol of preliminary qualification.

In the European Union, the time offered to suppliers before submitting their bids is longer than in Kazakhstan (35 days), though has the ability to be shortened (see Box 2.4). The Government of Kazakhstan could consider extending the deadlines set in its regulatory framework to enhance the participation of suppliers in procurement opportunities.

Box 2.4. Time limit for submitting bids in the European Union (EU)

Open procedure

In an open procedure, any business may submit a tender. The minimum time limit for submission of tenders is 35 days from the publication date of the contract notice. If a prior information notice was published, this time limit can be reduced to 15 days.

Restricted procedure

In a restricted procedure, any business may participate, but only those who are pre-selected will be invited to bid. The time limit to request participation is 37 days from the publication of the contract notice. The public authority then selects at least 5 candidates possessing the capabilities required, who then have 40 days to submit a tender from the date when the invitation was sent. This time limit can be reduced to 36 days, if a prior information notice has been published.

Source: (European Commission, 2019^[71]).

2.2.6. Bid evaluation

A tender commission created for each specific tender conducts the evaluation of proposals. The PPL established that this tender commission must comprise of no less than three persons. The head of the commission is always the head of the contracting authority, while the remaining members of the commission are employees of contracting authorities. However, when procurement is conducted through single organisers, the tender commission consists of representatives of contracting authorities (including its head as the head of the commission) and professional procurers from single organisers, one of which

is the commission secretary. The commission is formed for the entire period of the procurement process, and is disestablished after full and proper performance of contractual obligations. Decisions made by the commission can be cancelled and are subject to revision by the Committee for Internal Audit Committee or by Kazakhstan's Prosecutor's Office.

Adequate selection and award criteria are paramount for equitable results from the bidding process. The Ministry of Finance identified tender evaluation as particularly vulnerable in Kazakhstan. Overall, the evaluation is characterised by a binary evaluation based on technical specifications (specifications met or not) and an award decision mostly based on the lowest price. The general working logic of selection and award criteria in Kazakhstan foresees two stages that will be specified in this section:

1. Qualification stage: The suppliers have to conform to very basic qualification criteria (absence of tax arrears and bankruptcy procedure, being a legal entity...) and their offer must comply with technical specifications
2. Selection or award stage: The e-procurement system determines the winning bid based on the lowest price; this process includes a calculation of price discounts for bidders complying with additional, specific criteria (relevant experience, environmental certificates, and superior quality of an offer...)

The first step in the bid evaluation is the evaluation of qualification criteria. Tender commissions review bids and assess them against qualification requirements established in tender documentations and technical specifications. The PPL provides for general qualification requirements that submit bids to any public tender or auction (Article 9 of the PPL):

- possession of legal capacity;
- possession of the necessary material and labour resources;
- to be solvent;
- have some work experience;
- Not subject to liquidation or bankruptcy procedures.

In addition, contracting authorities can add additional requirements. However, usually, according to stakeholders, these qualification criteria remain basic and do not go beyond the most elementary aspects of the company's status. For example, a qualification requirement would relate to incorporation and tax debts.

The following provisions for qualification criteria apply:

1. The criteria do not limit and unreasonably complicate the participation of potential suppliers in public procurement;
2. They do not directly result from the need to fulfil obligations assumed under a contract for public procurement of goods, works and services;
3. A non-resident of Kazakhstan shall submit the same documents as the residents of the country;
4. Include permits that the supplier is allowed to conduct the activity (for example, construction licenses).

The evaluation of bid's compliance with technical specifications follows a similar pass/fail logic as the evaluation of the qualification criteria; all bidders whose proposals do not comply with the technical specifications are disregarded. The tender commission evaluates the proposals of bidders based on the technical specifications that the contracting authority previously developed.

After suppliers go through the qualification stage and their bids are deemed valid, the government e-procurement system automatically selects the valid bid with the lowest price, which is then awarded the contract. However, the PPL provide for special criteria ("conditional discounts") affecting the price offer of a valid bidder, but only for the purpose of contract award. Conditional discounts therefore favour some

bidders over others during the process of contract award. They translate non-price factors into a price discount. The Public Procurement Rules define all criteria and associated discounts. Tender commissions cannot take into account conditional discounts that are not defined in Public Procurement Rules. Conditional discounts are a percentage of the initial price of a bid and can be awarded to bidders regarding:

- Relevant work experience on the market of purchased goods and services (one year of relevant experience provides a reward of a 0.5% percent conditional discount, up to a ceiling of 5%).
- Relevant work experience in the conduct of construction works (one year of relevant experience as general (main) contractor provides a reward of a 1% percent conditional discount. As a subcontractor, one year of relevant experience grants a 0.5% conditional discount. There is no ceiling).
- Documented confirmation of adherence to relevant national technical standards (up to 2%).
- Documented confirmation of adherence to a quality management standard recognised in the legislation of Kazakhstan (up to 2%).
- Documented confirmation of adherence to an environment management standard recognised in the legislation of Kazakhstan (up to 1%).
- Documented confirmation that the production of procured goods comply with environmental-friendly (clean) production standard recognised in the legislation of Kazakhstan (up to 1%).

Some conditional discounts rely upon the assessment by the expert or expert commission involved in the public procurement process:

- If technical characteristics of offered goods and services proposed by bidder are better than what is required in technical specifications, the tender commission can award him an additional conditional discount of 0.5% for each characteristic that is better compared to minimal requirements, up to 3% overall;
- If a bidder offers goods or services that have additional useful functionalities or features not prescribed in technical specifications, or better qualitative characteristics, the tender commission can award him a conditional discount of 5%;
- If goods offered by a bidder offer superior characteristics or conditions related to delivery, storage, exploitation and maintenance, the tender commission can award him a conditional discount of up to 3%.

These conditional discounts cannot exceed 10% of the initial price. Kazakhstan's bid evaluation process poses challenges to those developing and evaluating technical specifications. There is a need for high-level capacity among employees when assessing the bids for complex purchases. Bids are qualified if they meet the technical specifications as closely as possible. Given the lack of flexibility, tender commissions are incentivised to follow a tick box approach and stay close to the precise formulation of the technical specifications. Later, at the selection stage, conditional discounts are not the driving factor of award decisions and therefore, prices are decisive in the selection of the winning bid in a vast majority of open tenders. The PPL does not allow for the use of points and percentages for public procurement. In fact, the discounts provided are quite small and cannot reflect the potential range in quality or additional features that suppliers might offer. That means that suppliers do not have an incentive to surpass the technical specifications in a bid, or even deviate from them. A deviation could mean that a bid is not qualified.

For suppliers, the bid evaluation process disincentivises innovative solutions or a focus on quality. By offering a very low price, bidders can increase their chances of winning the bid. Moreover, the bid evaluation process hinders the usage of award criteria based on concepts such as the most economically advantageous tender (MEAT) or life-cycle costing (LCC). For instance, the definition of conditional discounts in Public Procurement Rules restrict the influence of potential savings over the life cycle to only 10% of the overall price, even if more savings can be achieved.

By using a binary qualification system, the Government of Kazakhstan is excluding certain other criteria, such as quality and longevity. This binary system also deters more innovative companies to participate. The bid evaluation system is particularly inappropriate to evaluate the quality and technical capacity of consultancy and advisory services, while Kazakhstan's public procurement framework does not foresee any a specific procurement method for that purpose. The Government of Kazakhstan could consider using the points and percentages criteria in public tenders rather than the current approach, where price is the predominant award criteria. Points and percentages criteria could take into account such strategic objectives and ensure better value for money by incentivising suppliers to offer quality and prove their capacity to deliver. This is particularly decisive as Kazakhstan is facing challenges related to suppliers that promise delivering the sought product or service for a low price but ultimately cannot deliver. This results in delays in public service delivery, increased transaction costs and opportunity costs for the government.

Countries have found it beneficial to incorporate a range of criteria in their tender evaluations, such as the following among many others:

1. environmental aspects;
2. quality of the offer, improvements in addition to the minimum technical requirements;
3. additional functionalities in addition to the minimum technical requirements;
4. delivery terms;
5. costs during the whole exploitation cycle of the product (maintenance, repair, disposal, etc.)

In order to maintain a transparent process for evaluating these complex criteria, a proven method has been to assign relative values to each of the criteria as part of the tender documentation, and announce the weighting as part of the tender notice. Practically, each criterion is assigned a value in percentage terms. During the evaluation and based on the bidders' proposals, the tender commission assigns points for each of the criteria. These points are used to calculate the overall score of the proposal. The proposal with the highest score wins and is awarded the bid. Box 2.5 provides an example of how Colombia has implemented this system.

Box 2.5. Points-based evaluation in Colombia

Open tenders in Colombia are evaluated using three criteria: 1) economic; 2) technical; and 3) the nationality of goods and services offered. Economic points are awarded according to the price of the bid. As for technical points, the procuring entity must allocate points based on the quality, delivery time or sustainable sub-criteria. Up to 20% of points must be given to bids of goods and services whose origin is Colombia or one of its trading partners, following the rules set in trade agreements.

For example, in the open tender carried out by Colombia Compra Eficiente, the Colombian CPB, to select suppliers for the janitorial services framework agreement, formulas were set to allocate points based on the prices offered by bidders. Bidders provided prices for the provision of persons in charge of cleaning and performing related activities, as well as the price of the necessary products needed to complete these tasks. Technical points were given to suppliers that offered environmentally friendly cleaning products, and to those that committed to hiring victims of war or former guerrilla members.

Source: (OECD, 2016^[8]).

New financial qualifications requirements

The December 2018 amendments established a new qualification criterion: the financial situation of a potential supplier. According to the Ministry of Finance, the financial situation would be defined based on

tax payments, the size of suppliers' payroll, fixed assets, and working capital. This data would be retrieved through automated data exchange with tax databases (Committee on Government Revenues). This would stimulate suppliers to improve their tax compliance. The details of the financial criteria used as qualification requirement is still to be integrated to the Public Procurement Rules. Discussions with Ministry officials suggests that financial qualification criteria for suppliers could be introduced for construction works only, possibly when conducting a public tender with prequalification.

It is not clear whether qualification criteria regarding the financial position of a potential supplier would be introduced for other procurement methods or categories of purchase. In introducing financial position as a qualification criterion, the Ministry of Finance should keep in mind the need to “*encourage broad participation from potential competitors, including new entrants and small and medium enterprises*” (Principle on Access of the OECD 2015 Recommendation on Public Procurement, see Box 2.2). For instance, in the European Union, requirements concerning economic and financial capacity of suppliers should be related and proportionate to the subject-matter of the public contract. In particular, contracting authorities should not be allowed to require suppliers to have a minimum turnover that would be disproportionate to the subject-matter of the contract; the requirement should normally not exceed at the most twice the estimated contract value (European Union, 2014^[9]).

2.2.7. Improving contract management and payment of suppliers

Contract management can be understood as a process that requires three broad areas: delivery management, relationship management and contract administration (see Box 2.6).

Box 2.6. The process of contract management

Contract management activities can be broadly grouped into three areas: delivery management, relationship management and contract administration.

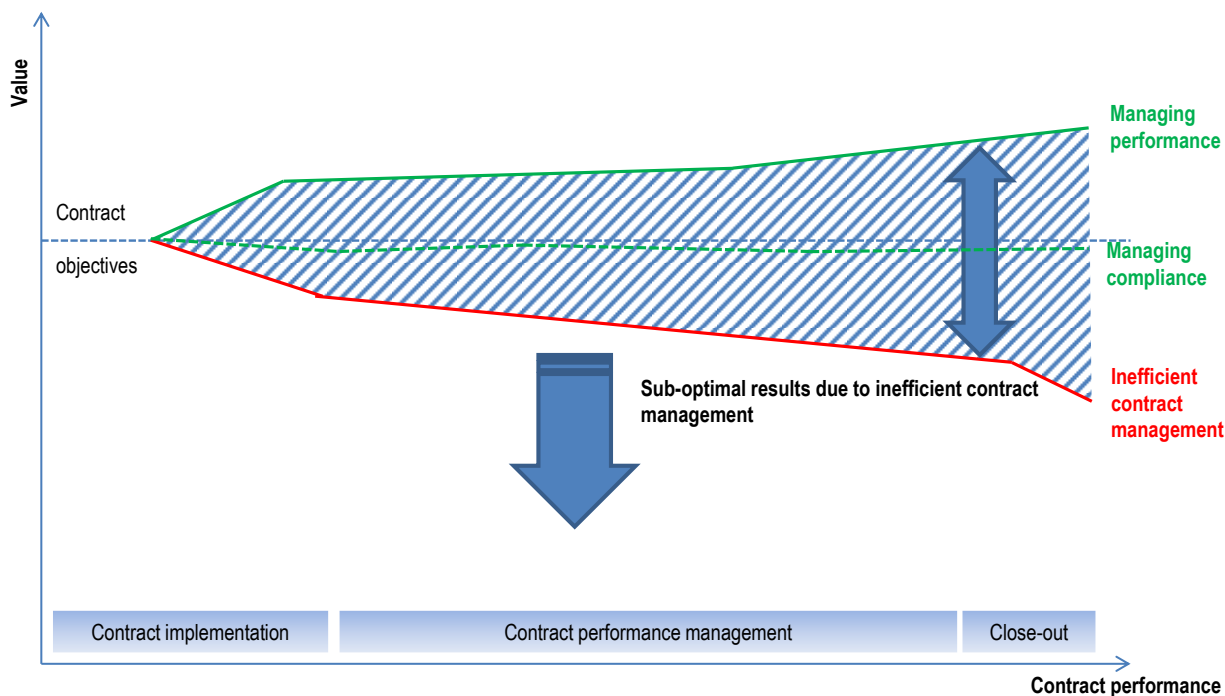
- Delivery management ensures that whatever is ordered is actually delivered with the required level of quality and performance, as stated in the contract. Delivery management may include checking the nature, quantity and quality of:
 - goods supplied on delivery, and, also when appropriate, at the time of manufacture;
 - works carried out, including conformity with designs and drawings, quality of workmanship and materials;
 - services performed, including checking that required service levels and timescales are met.
- Relationship management seeks to keep the relationship between the supplier and the contracting authority open and constructive. The aim of this is to resolve or ease tensions, and identify potential problems at an early stage while also identifying opportunities for improvement. Relationships should be professional, and should include a professional approach to managing issues and dispute resolution.
- Contract administration covers the formal governance of the contract and any permitted changes to documentation during the life of the contract. This area of contract management ensures that the everyday aspects of executing the contract effectively and efficiently are taken care of.

Source: (OECD, 2011^[10]).

Timely monitoring of suppliers and adequate management of relationships with them improve the quality of supplier services and facilitate the fulfilment of user expectations. By monitoring the performance of

suppliers, public officials can request corrective actions when the contractual conditions are not being met. Figure 2.3 shows some of the possible performance contributions that can be obtained from contract management, as opposed to the costs of inefficient management.

Figure 2.3. Contract management's contribution to performance



Source: (OECD, 2017^[11]).

In Kazakhstan, the implementation of contractual obligations is controlled directly by contracting authorities with limited assistance from the Ministry of Finance. According to Article 43 of the PPL, a draft public procurement contract shall be drawn up in accordance with standard contracts for goods, works and services approved by the Ministry of Finance. The contracting authority sends a draft contract to the selected supplier. The draft contract is certified by an electronic digital signature through the government e-procurement system within five working days from the date of expiration of the period for lodging an appeal against the results of public procurement tenders. The selected supplier shall certify the contract with an electronic digital signature within three working days from the date of notification. If the chosen supplier has not signed the draft public procurement contract, the contracting authorities shall conclude the public procurement contract with the selected supplier within two additional working days.

The supplier needs to submit a bid security for the public procurement contract within ten working days from the date the contract has been concluded as a guarantee that it will properly fulfil its contractual obligations. Bid security amounts to three percent of the contract value.

Article 45 of the PPL allows for changes to the contract if the conditions that led to the selection of the supplier remain unchanged. The conditions for change are very rigid, both regarding changes to the draft public procurement contract and after its signature. Prior to signing a contract, it is possible to modify it before it is registered with the Treasury. The Treasury is a department of the Ministry of Finance performing implementation and control functions in the execution of the national budget and servicing the execution of local budgets. It manages the public finance information system (State Treasury of Kazakhstan, 2015^[12]).

Changes to the draft contract need to be initiated by any of the parties no later than five working days after they release the tender results report. Once a contract is signed on the government e-procurement system, a supplementary agreement is needed to make further changes. According to the Ministry of Finance, modifications occur quite frequently. The Public Procurement Rules define the list of grounds to make amendments to a signed contract. For changes to be made to a contract after its signature, a mutual agreement is needed from both parties concerning the reduction of prices for goods, works and services.

There are few formal mechanisms in place to track supplier performance across the public procurement system. At present, the Government of Kazakhstan does not have systems or monitoring tools in place that allow the government to obtain information beyond the administrative steps established in its contracts. Put simply, the only information that the government is able to obtain is on the delivery and reception of goods and services.

By developing a comprehensive contract management framework that covers all the areas mentioned above, the Government of Kazakhstan could not only facilitate compliance with its contracts, it could also systematically record information regarding its suppliers and the quality of goods and services that they provide. Having this information could lead to a better evaluation of past purchasing procedures, as well as strategic planning of future processes. To carry out adequate contract management that covers delivery management, relationship management and contract administration and favours performance monitoring. Chapter 3 suggests that Kazakhstan develops a detailed supplier database that tracks standardised information on supplier's performance regarding past public procurement contracts.

During the execution of contracts, there is always the possibility of unforeseen conditions and other obstacles that threaten the achievement of planned objectives. Strategic contract management should allow authorities to anticipate unforeseen situations, and respond to them (OECD, 2018^[6]). Currently, it is difficult for officials from contracting authorities to have accurate information on the risks that can occur during the execution of a contract. The Government of Kazakhstan could consider designing tools that can help identify potential risks and report these risks or poor practices when they materialise. Some of these risks are described in Box 2.7.

Box 2.7. Risk and risk management

Many of the risks involved in contract management relate to the supplier being unable to deliver, or suppliers delivering goods and services with a dissatisfactory level of quality. The risk of these issues arising increase when the following failures occur:

- Lack of capacity.
- The supplier's key staff is re-deployed elsewhere, which erodes the quality of the works delivered or the service provided.
- The economic operator's business focus moves to other areas after the award of the contract, reducing the added value for the contracting authority in the arrangement, or impacting the timeliness for delivery of goods or works.
- The supplier's financial standing deteriorates after the award of the contract, eventually endangering its ability to maintain agreed-upon quality requirements for goods purchased or levels of service.
- Demand for goods or services is much greater than expected, and the supplier is unable to cope
- Demand for a service is too low, meaning economies of scale are lost and operational costs are disproportionately high.

- Staff at the contracting authority with knowledge of the contract are transferred or move on, weakening the relationship between the contracting authority and supplier.
- Factors beyond the supplier's control disrupt delivery of goods or services. For example, premises cannot be accessed because of a natural disaster
- The contracting authority is unable to meet its obligations under the contract.

Source: (OECD, 2011^[10]).

A comprehensive system of contract management should also facilitate timely and efficient payment of suppliers. Having a well-coordinated payment-processing scheme can help increase the competitiveness of public procurement processes, making them more attractive to businesses, particularly small and medium enterprises (SMEs), which cannot take the risk of long and uncertain payment periods. Kazakhstan's legal framework allows advance payments. However, if the supplier receives an advance payment the supplier shall, in addition to bid security for the public procurement contract, provide an "advance payment bond" equal to the advance payment amount. While performing the obligations assumed under the public procurement contract, contracting authorities shall, upon a written notification from the supplier, reduce the amount of the advance payment bond in proportion to the obligations fulfilled under the public procurement contract. This mechanism therefore allows a gradual payment of suppliers depending on their fulfilment of their contractual obligations.

The legislation on public procurement requires that the full payment to the supplier must be made within 30 calendar days from the execution of the suppliers' obligations under the contract. A payment to suppliers can take place when an act of acceptance has been signed. The contracting authority may have up to 10 days in order to study the report by the supplier. However, contracting authorities need to notify the supplier within three days in case they need more time to verify that the product or service delivered or rendered fulfils the terms of the contract. Payment delays are a common problem in both OECD and EU member countries.

In Kazakhstan, contracts have to be registered by the Treasury (Ministry of Finance) to come in to effect. However, the National Chamber of Entrepreneurs often receives grievances from suppliers that contracts are signed but not registered in the Treasury, leading to contracts not being paid on time. Sometimes the only way to resolve a payment issue is through the court system. According to the National Chamber of Entrepreneurs, the most frequent court cases regarding public procurement do involve payment issues, with over 2 000 cases in 2017.

One of the most important causes of late payments is lack of co-ordination between organisers, contracting authorities and the Department of Treasury. Any hurdle in communications between the organiser and the purchaser can lead to excessive delays, particularly in agreeing upon the act of acceptance. Upon signature of a procurement contract, the government e-procurement system automatically sends them to the Treasury to be registered. Therefore, it would be important that the Ministry of Finance identify why the Treasury might not register incoming public procurement contracts within a reasonable amount of time.

To ensure that the purchase of goods and services is carried out in a proper manner and according to the national legislation, an encompassing system for contract management that integrates the entire procurement cycle is needed. Contracting authorities could focus on implementing systems that allow feedback from the contract implementation stage to inform future procurements and associated planning. By doing this, they can ensure both compliance with contractual conditions and the best use of resources. This is especially important for public organisations, as they often have long-lasting contracts with very specific characteristics. To ensure that the management of contracts is carried out in a timely and efficient manner in all circumstances, it is necessary that regulations and personnel prioritise not only the fulfilment of the contracts, but also monitoring and learning from performance.

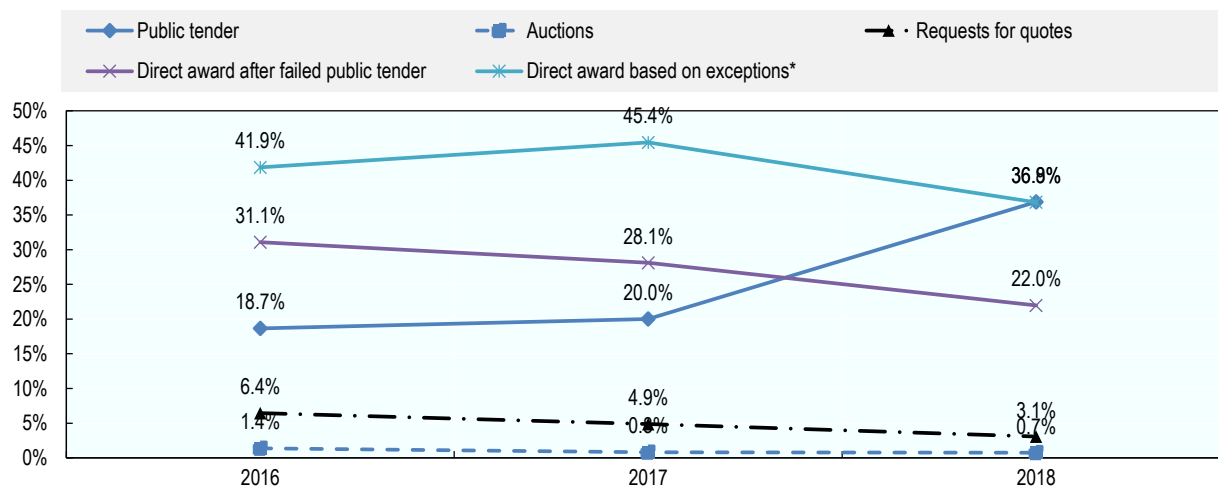
2.3. Challenges and areas of opportunity towards achieving value for money along the procurement cycle

2.3.1. Data on procurement methods show excessive use of direct awards

According to data provided by the Centre of Electronic Commerce, the most common procurement method in 2018 in Kazakhstan was direct award based on exceptions. It accounted for 77.5% of all public procurement *contracts* signed in 2018. Of this, 65.5% were low-value purchases below the threshold (Figure 2.4). The share of the other procurement methods have been stable since 2016 in Kazakhstan, with the exception of an increase of the share of open tenders (from 1.4% of processes in 2016 to 2.5% in 2018) and a decrease in the share of direct award after failed bidding (from 7.9% of processes in 2016 to 5.1% in 2018).

In Kazakhstan, direct awards account for a large share of overall public procurement value. Direct awards based on exceptions accounted for 45% of overall procurement *spending* in 2017, while direct award after failed bidding represented 28% of overall procurement *spending* during the same year (Figure 2.4). Public tender was the third procurement method, accounting for 20% of overall public procurement *spending* in 2017. This raises concerns, as direct award based on exceptions is a non-competitive procurement method and therefore the scope of its usage should be limited in order to ensure proper competition and value for money (see Principle on Access of the OECD Recommendation of the Council on Public Procurement in Box 2.2 above).

Figure 2.4. Procurement methods as a share of procurement spending (2016-18)



Note: Direct award based on exceptions is consolidated in this graph (below threshold and other exceptions). Below threshold purchases account for only a small share of procurement spending (4.7% in 2016, 4.3% in 2017 and 3.4% in 2018).

Source: Ministry of Finance of the Republic of Kazakhstan.

The share of direct awards in procurement value is very high in Kazakhstan by comparison with most OECD countries: for instance, in the European Union, in 2016 only a third of all public contracts were awarded without meaningful competition, either through negotiation or because only one bid was received (European Commission, 2017^[13]). Moreover, in Kazakhstan, direct award after failed bidding was the second most significant procurement method in terms of value, which raises questions about whether competitive procurement methods (open tenders, requests for quotations and auctions) attract a sufficient number of responsive bids to ensure proper competition.

However, public procurement data for 2018 show an improvement with a higher share of public tenders, which accounted for almost 37% of procurement *spending* and became the most important procurement method (in terms of procurement spending). Simultaneously, the share of direct award based on exceptions and direct award after failed tender decreased as compared to 2017 (Figure 2.4). However, this positive trend is observed only in 2018, and it remains to be seen whether the weight of public tenders in procurement spending keeps increasing in the following years. One possible explanation for the 2018 spike in the weight of public tender could be an unusually high amount of overall procurement spending, as compared to previous years. Section 2.3.2 provides more details on direct award procedures of both types (direct award based on exceptions and direct award after failed bidding) and regarding competition between suppliers in public procurement processes.

2.3.2. The different types of direct award: an analysis

The high prevalence of direct award (i.e. non-competitive procurement method) is one of the main challenges of Kazakhstan's public procurement system. The Ministry of Finance aims at reducing the share of such direct award procurement during upcoming years. Procurement opportunities conducted through direct award are still published in annual procurement plans, so that potential supplier are aware of them and are in position to submit commercial proposals to contracting authorities. As described in section 2.2.4, there are two types of direct award procurements in Kazakhstan: 1) Direct award based on exceptions (Rus. Единый источник путем прямого заключение договора); 2) Direct award after failed bidding (Rus. государственные закупки из одного источника по несостоявшимся государственным закупкам).

The OECD Recommendation on public procurement (Principle on Access, see Box 2.2) calls for limiting exceptions to competitive tendering. Indeed, open bidding generally attracts more bidders than restricted procedures, maximizing competition and obtaining better “value for money” (World Bank, 2015^[14]). Contracting authorities benefit from choosing between different providers, and so does the economy as a whole.

Direct award based on exceptions

As detailed in section 2.2.4, in 2018 direct award based on exceptions accounted for 36.8% of overall public procurement spending. It is worth noting, that the weight of direct award based on exceptions was higher in previous years: for instance, it accounted for 45.4% of overall public procurement spending in 2017. It is not clear whether the decrease in the relative share of direct award of both types in 2018 was due to temporary factors (such as a spike in public procurement spending) or testifies to a long-term trend.

As detailed in section 2.2.4, one of the 50 exceptions providing for direct award procurement is the purchase of homogeneous goods, works and services under the value threshold for direct award. Most OECD Public procurement systems have such exceptions for low value-processes. In Kazakhstan, such low-value processes below the threshold for direct award accounted for 65.5% of all public procurement processes in 2018, but only 3.4% of overall procurement value. The 49 other exceptions of Article 39 Point 3 of the PPL accounted for 12% of all public procurement processes in 2018, but 33.4% of overall public procurement value.

The 50 exceptions allowing contracting authorities to use the direct award procurement method (Article 39 Point 3 of the PPL provides the list of exceptions) comply with the provisions of the Treaty on the Eurasian Economic Union. Some of these exceptions correspond to situations where there is no competitive environment (procurement from monopolists, such as purchase from public utilities, procurement of intellectual property from legal entities or persons having copyrights, etc.). However, other exceptions (acquisition of goods, services and works from entities defined by laws and regulations...) are very broad and do not correspond to a specific category (Table 2.1).

Table 2.1. Most important exceptions to competitive tendering (2018)

Short descriptions	Share of overall public procurement value	Legal base (art. 39, Point 3)
Government grants for educational institutions (acquisition of education services)	7.3%	Subparagraph 19
Acquisition from national holdings and companies (as defined by laws and regulations) or from public enterprises subordinated to the contracting authority	6.3%	Subparagraph 27
Acquisition of goods, services and works from entities defined by laws and regulations	4.0%	Subparagraph 36
Acquisition from monopolists (purchase of energy, electricity, etc.)	3.6%	Subparagraph 1
Homogeneous goods, services and works below the value threshold for direct award	3.4%	Subparagraph 42
Acquisitions of goods and services from holders of exclusive intellectual property rights	2.7%	Subparagraph 3
Acquisition from government-run enterprises of the penitentiary system (list of goods, services and works defined by government decree)	1.8%	Subparagraph 29
Acquisition of goods, services and works whose price is established in laws and regulations	1.5%	Subparagraph 2
Acquisition of real estate (except housing) as defined by laws and regulations, and property maintenance and upkeep (under certain conditions)	0.8%	Subparagraph 53
Others	5.4%	41 other exceptions

Source: Ministry of Finance of the Republic of Kazakhstan, PPL.

For some of the 50 exceptions, the Public Procurement Rules requires contracting authorities to request quotations from at least three potential suppliers before deciding to whom to award the contract (Article 378-1 of the Public Procurement Rules). Nevertheless, this requirement does not apply to the most significant exceptions in terms of procurement value that are listed in Table 2.1.

Reducing the use of direct award based on exceptions throughout the public procurement system is an explicit policy goal of the Ministry of Finance. As detailed in Chapter 1 of the report, the December 2018 amendments decreased the number of exceptions as per Article 39 Point 3 from 54 to 50. However, this abolition of five exceptions will not affect the scope of exceptions to competitive tendering in Kazakhstan. Indeed, the five abolished exceptions accounted for only 0.2% of overall procurement value in 2018, and an even smaller share of overall procurement processes. Meanwhile, the amendments created a new exception under Article 39 Point 3 regarding goods, services and works for special law enforcement units, and extends the scope of an existing exception related to security services (see chapter 1 for details).

The high value share of procurement through direct award is hampering substantial efforts undertaken by the Ministry of Finance to make public procurement more open and increase its efficiency. In addition to decreasing effectiveness and efficiency of procurement, such a high share of direct contracting can represent a fertile soil for corruption. Decreasing the excessive use of non-competitive procurement methods, particularly direct award procurement based on the list of 50 exceptions provided for by the PPL, would bring Kazakhstan's public procurement system closer to the principles for good public procurement expressed in the OECD Recommendation.

The Ministry of Finance should reconsider the list of exceptions detailed in Article 39 Point 3 of the PPL, with the goal of reducing it as much as possible to allow for the highest degree of competition. In doing so, an independent assessment could be undertaken to determine which of the exceptions are justified based on the principles of objectivity, transparency and fairness. Some existing exceptions under Article 39 Point 3 of the PPL do not match exceptions that typically exist in OECD countries. These are, for instance, exceptions of subparagraph 38 (acquisition of services related to the processing of statistical data) and subparagraph 45 (purchase of materials of exhibitions, seminars, conferences, meetings, forums, symposia, trainings, as well as payment for participation in these events) under Article 39 Point 3 of the PPL. Based on the results of this independent and systematic assessment, the government could revise

the PPL to abolish unnecessary exceptions to competitive tendering. The case of abolishing some exceptions is even stronger because of the recent increase of the value threshold for direct award (see next subsection of the report).

The importance of regulating and standardising the use of exceptions was recognised in the Agreement on Government Procurement (GPA) within the framework of the World Trade Organisation (WTO). In an effort to promote transparency and open public procurement practices, the GPA standardised the reasons under which a procurement can be exempt from open tender (Box 2.8). Kazakhstan pledged to initiate accession to the GPA as part of its WTO Accession Protocol (World Trade Organisation, 2019^[15]). This accession process could provide a valuable opportunity to review exceptions systematically and work towards reducing them.

Box 2.8. Exceptions allowed under international trade agreements

Countries adhering to the GPA (thereafter, parties) must ensure that the rules they put in place to allow exceptions to open competition in procurements covered by the Agreement do not adversely affect suppliers from other parties. Contracting authorities within countries that are parties to the agreement may conduct what is termed ‘limited tendering’. This is defined as a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice. This method can be undertaken where:

- A limited number of (compliant) tenderers have responded in the first stage of an open tender process
- The product/service can only be supplied by one supplier, given it is a work of art, there are exclusive rights or patents, or there is no competition for technical reasons
- Additional deliveries/services are required from the original supplier, where a change of supplier is not possible
- There are reasons of extreme urgency brought about by events unforeseeable by the procuring entity
- Goods are purchased on a commodity market
- A prototype is being procured
- Short term, extremely advantageous conditions exist
- The product is the result of a design contest

Source: (World Trade Organisation, 2012^[16]).

As a recent party to the GPA (2015), New Zealand had to enshrine the provisions of the agreement in domestic procurement legislation. In New Zealand, the Government Procurement Rules are the cabinet-mandated rules to govern public procurement. The Rules clearly outline the situations under which open competition is not required. The Cabinet endorsed the fourth edition of the Rules on 13 May 2019.

Table 2.2 provides a non-exhaustive overview of the Rules related to exceptions in New Zealand.

Table 2.2. Exemption from open advertising in New Zealand

Categories of exceptions		Examples
	Emergency	<ul style="list-style-type: none"> • A genuine emergency (meeting the definition); note that urgent situations that are created by an agency, such as lack of advance planning, do not constitute an emergency.
Exceptions that do not require open advertising (all rules apply, except the procurement does not need to be openly advertised; a closed competitive process or a direct award process must be used (subject to the policy of the contracting authority))	Limited supply market	<ul style="list-style-type: none"> • The tender has been openly advertised in the last 12 months and no responses were received that complied with pre-conditions. • The goods, services or works can be supplied by only one supplier and there is no reasonable alternative or substitute for technical reasons or intellectual property rights are being purchased. • An agency receives an unsolicited proposal which is unique, represents value for money and the goods, services or works are not otherwise readily available in the marketplace.
	Specific goods or services being purchased	<ul style="list-style-type: none"> • -Purchasing a prototype for research, experiment, study or original development (once the contract for the prototype has been fulfilled, an agency must openly advertise any subsequent procurement). • Where a contract is awarded to the winner of a design contest, where the contest has been organised in a manner consistent with the rules. • - Goods purchased on a commodity market.
	Secondary procurement (e.g. selection from a multi-supplier framework agreement)	<ul style="list-style-type: none"> • Where an agency has established a panel of suppliers (though specific rules should still apply to the panel selection process) • Purchasing from a government Framework Agreement (though the Framework Agreement secondary procurement process should be followed)

Note: Refer to Rule 14 for exemption to open advertising
Source: (New Zealand Government Procurement Branch, 2015^[4]).

Recognising the benefits of increasing the level of competition in public procurement, the government of Costa Rica requested the OECD Secretariat to provide expert advice on international best practices regarding exceptions to competitive tendering and the related thresholds, so as to inform ongoing reforms in this area (Box 2.9).

Box 2.9. Streamlining the use of exceptions and simplifying the threshold system in Costa Rica

Ensuring an adequate level of competition has clear impacts on the value for money achieved through public procurement. The public procurement regulatory framework of Costa Rica foresees the possibility to use three main procedures: open tenders, limited tenders and direct awards. The system includes 26 categories of exceptions to ordinary procedures that could be undertaken through direct award or limited tender.

In 2017, the use of exceptions to ordinary procedures accounted for 47.6% of the total procurement volume and 80.3% of the total number of procedures in Costa Rica. Among the exceptions most used by contracting authorities, “procurement volume below threshold” accounts for 58.3% in terms of values and 75.3% in terms of number of procedures, followed by the exception used in case of “single supplier” (11.2% in terms of values and 6.4% in terms of number of procedures).

Many countries have a threshold system based only on the procurement category and the categories of entities. In Costa Rica, however, thresholds applied by contracting authorities depend on: i) the procurement category; ii) the budget allocated to each entity (ten different categories are foreseen in the legal framework); and iii) the scope of the law. Mexico and Colombia also have similar threshold systems based upon the budget allocation, but their thresholds are lower than the ones of Costa Rica. In addition, special public entities are not subject to the threshold set out in the LCA. The multiplicity of

those parameters and criteria undermines the clarity of the country's procurement regulatory framework.

Recognising the benefits of enhancing the level of competition in public procurement, the government of Costa Rica requested the OECD to review its public procurement system with a particular emphasis on: i) the exceptions to competitive tendering; and ii) the threshold system in place in the country. The OECD provided the following key recommendations based upon the evidence-based analysis through comparing the system of Costa Rica with international best practices.

- Streamlining and reviewing each of 26 exceptions to ordinary procedures
- Exceptions should be clearly defined, justified, and streamlined. Many exceptions could be grouped together, and others could be undertaken through a competitive process. Some exceptions foreseen in the legal framework should be classified as exclusion.
- Enhancing the monitoring of exceptions
- Streamline the procurement procedures and processes
- Reviewing the threshold system in place, by providing options for simplification and alignment with international practices

These recommendations are now being used by Costa Rica as a key input to ongoing legal and regulatory reforms, the most comprehensive in 20 years, which will allow Costa Rica to enhance the level of competition and improve value for money by increasing the effectiveness of the country's public procurement system.

Source: (OECD, 2019^[17]).

According to the OECD Recommendation on Public Procurement “if exceptional circumstances justify limitations to competitive tendering, such exceptions should be limited, pre-defined and should require appropriate justification when employed...” (Box 2.2, Principle on Access). Where the regulatory framework allows exceptions, laws, regulations and rules that define them should be clearly laid out, in plain language, in a way that procurement officials can easily understand. This level of clarity should limit the amount of discretion that can be applied by officials (Ware, G. et al., 2007^[18]) Excessive amounts of discretion in the selection of procedures can adversely affect perceptions of fairness and predictability, discouraging firms from entering a market (Evenett and Hoekman, 2005^[19]).

Several exceptions to competitive tendering in Kazakhstan are difficult to grasp and require specialised legal knowledge and some analysis to fully understand their scope. This is true regarding two of the largest exceptions in terms of procurement spending: Acquisition from SOEs as defined by laws and regulations (Article 39 Point 3 Subparagraph 27) and acquisition of goods, services and works from entities defined by laws and regulations (Article 39 Point 3 Subparagraph 36, see Table 2.1). To understand the scope of each of these exceptions, it is necessary to go through a large number of laws and regulations, and evidence from legal forums suggests that the exact perimeter is not fully understood by suppliers or contracting authorities (URKO, n.d.^[20]). In order to bring transparency and clarity to these exceptions, the Ministry of Finance could adopt by decree an exhaustive list of cases when these two exceptions are applicable. The aim is to provide guidance to contracting authorities about whether they can apply these exceptions or not.

Direct award below the value threshold

As previously mentioned, one of the 50 exceptions foresees direct awards below a value threshold, i.e. the purchase of homogeneous goods, works and services by contracting authorities below a certain value (Article 39 Point subparagraph 42 of the PPL). In Kazakhstan this value threshold is currently 500 monthly

calculated indexes or KZT 1 262 500 (roughly equivalent to EUR 3 100 or 7.2 average wages in Kazakhstan) for services and works, and 100 monthly calculated indexes for goods or KZT 252 500 (roughly equivalent to EUR 620 or 1.4 average wages in Kazakhstan).

As detailed in chapter one, the December 2018 amendments increased fivefold the threshold for services and works: it was previously equivalent to the one for goods (100 monthly calculated indexes). According to the Ministry of Finance, this will simplify procurement processes, particularly for CAs with limited budgets, such as kindergarten, hospitals and clinics, cultural centres, senior centres and boarding schools. As a result of this increase, the frequency of direct award below the value threshold will increase in 2019, as well as its weight as a share of overall procurement value.

When setting the thresholds, countries need to balance the transaction costs of public tenders against with the benefits of competition:

- For government buyers, the value gained from a competitive process (in Kazakhstan, public tenders, auctions and request for quotations) should justify the cost of undertaking a procurement exercise; That is why, when the value of the contract is limited, contracting authorities stand to gain from a simple and efficient process such as direct award.
- For suppliers, the threshold for a competitive process must be sufficiently high to justify the cost of participating in a public tender.

Factors to be taken into account include the average cost of a procurement exercise for a contracting authority, assessing the economic environment, including the level of competition for government tenders, and the level of procurement capability of contracting authorities (Box 2.10). It is important that the government pay due attention to these factors, including the capacity of procurement authorities in terms of human resources. Indeed, stakeholders reported that excessive workloads and insufficient trainings are common problems among procurement officers in contracting authorities (Chapter 6 of the present report).

Box 2.10. Direct and indirect tender preparation costs for public entities

Direct costs:

- Salary of officials / cost of consultants in charge of the tender procedure X months (drafting administrative documents and tender specifications)
- Publication cost (official journal or and the use of e-procurement system)

Indirect costs:

- Validation cost of the tender procedure (hierarchical, legal approvals or budgetary validations)
- Office space cost and the use of facilities and IT equipment (phone, computer, etc.).

Source: adapted from (OECD, Germany) (OECD, 2017^[21]).

For suppliers, preparing bids can also be costly. Bidding requires having capable staff to prepare the bids, which includes gathering the necessary documents, responding strategically to the tenders. Rare resources such as experts may be required to work on bids, which means they will not be available for other work or backfill resources will need to be hired to do their normal work for them. A 2015 study found that bid costs for professional services firms involved in public sector built environment projects range between 0.6% and 2.9% of total project value (Deloitte, 2015^[22]).

The value threshold for direct award in Kazakhstan (procurements below the threshold are one of the 50 exceptions allowing direct award based on exceptions) is quite low compared to equivalent national thresholds allowing direct awards of procurement contracts (without advertisement) in many OECD

Countries. For example, in Korea, contracts below EUR 15 665 (KRW 20 million) can be awarded directly without competition. In Canada most Federal Departments can enter into non-competitive goods and service contracts with a value up to EUR 16 623 (CAD 25 000) (OECD, 2019^[17])

In the EU, direct award, i.e. purchasing from a supplier without a requirement for an advertisement or competitive process, is often permitted for very low-value contracts. The definition of a very low-value contract varies between member states (OECD, 2011^[23]). For instance, in the Netherlands direct award is authorised for contracts below EUR 33 000 and in France for contracts below EUR 25 000, provided that certain conditions are respected. In Lithuania, the public procurement law gives contracting authorities considerable flexibility for contracts under EUR 10 000, including direct award purchases (OECD, 2019^[17]).

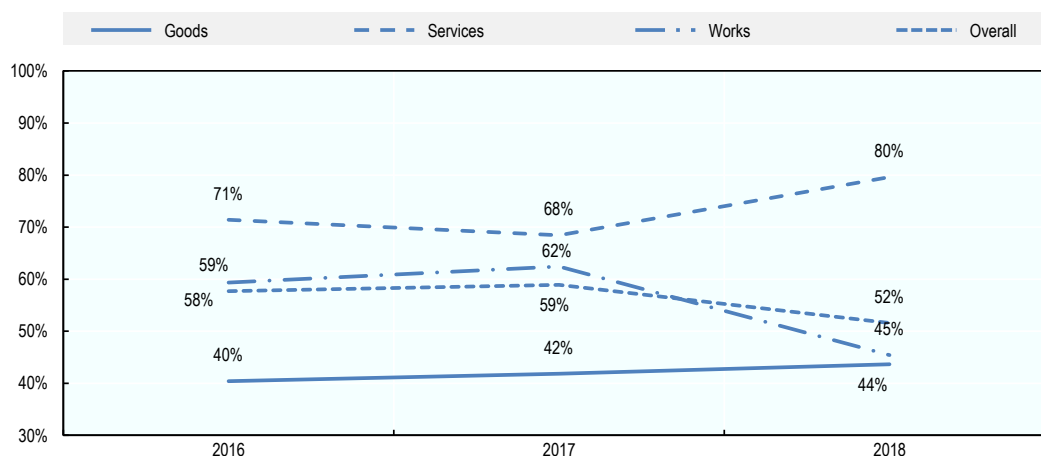
Therefore, the recent increase of the value threshold for direct award regarding services and works is a positive step forward, and may contribute to reducing the administrative burden on contracting authorities. However, the December 2018 amendments left the value threshold for goods unchanged, at KZT 252 500 (roughly equivalent to EUR 620 or 1.4 average wages). International best practices and evidence from OECD fact-finding missions suggest that this threshold might be excessively low. Hence, the Ministry of Finance could engage in a comprehensive assessment of whether this is the case, including field research with diverse contracting authorities. The Ministry could also make sure that suppliers are able to file complaints regarding award decisions below the threshold(s) for direct award as a way to mitigate possible integrity risks.

Direct award after failed bidding

As mentioned in section 2.2.4, direct award after failed bidding is the procurement method used if contracting authorities receive only one or no responsive bid to a public tender (or auction) or to a request for quotations, i.e. after a failed public tender (a failed auction, a failed request for quotations). As of January 1st, 2019, a new open tender (or a new auction) must be launched after a failed public tender (or a failed auction), and direct award after failed bidding can be used only if contracting authorities receive once again only one or no responsive bid.

Overall, in 2018, 41% of public tenders resulted in direct award after failed bidding, i.e. they “failed” because contracting authorities received only one or no responsive bid. Failed public tenders accounted for 52% of overall procurement value for public tenders in 2018. Figure 2.5 depicts the recent evolution of failed public tenders leading to direct award (as a share of overall procurement value for public tenders) and provides a breakdown for goods, services and works.

Figure 2.5. Value share of failed open tenders leading to direct award



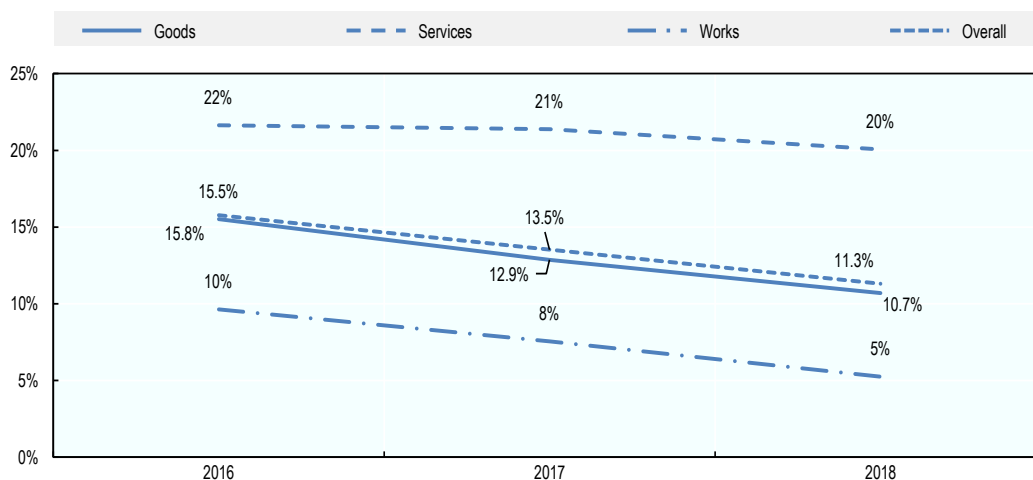
Note: Depicts the value of failed open tenders leading to direct award divided by overall procurement value
Source: Ministry of Finance of the Republic of Kazakhstan.

Figure 2.5 shows that while the relative share of failed tenders decreased for works in 2018, it actually rose for goods and particularly regarding services, to the extent that tenders resulting in direct award after failed bidding accounted for 80% the overall value of open tenders for services. This could point to low competition in public tenders for services. This is corroborated by the average number of bids per public tender of services, which is lower than for goods and works and decreased in 2016 and 2017 (see also Figure 2.6).

One area with a high share of failed public tenders is large construction works (value exceeding KZT 1 billion, roughly equivalent to EUR 2.5 million), almost 100% of which resulted in direct award after failed bidding in 2017. Often, only one supplier is actually deemed to comply with the technical specifications, while bids from other bidders are rejected based on formal mistakes in bidding documents. This, indicates that the challenges are related to the technical specifications and their representation of market capabilities, rather than a lack of suppliers that would be fit to deliver. Contracting authorities eventually sign a contract with the only supplier that complied with the technical specifications, whose bid offered the maximal authorised price (Beketaev, 2018^[2]).

Regarding requests for quotations (RFQs), only 16.7% of them resulted in direct award after failed bidding in 2018, accounting for 11.3% of the overall procurement value for RFQs. Figure 2.6 depicts the recent evolution of failed RFQs (as a share of overall procurement value for RFQs). The value of failed RFQ (as a share of overall procurement value for RFQs) has been declining since 2016, and like with open tenders, RFQs for services display the highest share of failed processes leading to direct award.

Figure 2.6. Value share of failed RFQs leading to direct award



Note: RFQ: Request for quotations.

Source: Ministry of Finance of the Republic of Kazakhstan.

The high share of failed public tenders raises (as a percentage of overall procurement value) questions about whether they attract a sufficient number of responsive bids to ensure proper competition. Data suggests that, contrary to RFQs, failed public tenders have usually a higher value than average, i.e. those public tenders that receive only one or no responsive bid are mostly high-value tenders. This is particularly true regarding failed open tenders for services, which accounted for 80% the overall procurement value of open tenders for services but only 55% of their overall number in 2018.

In addition to higher prices, the large proportion of direct award procurements after failed bidding is also problematic because it reflects a lack of genuine competition and gives additional discretionary power to tender commissions. Indeed, in cases where no valid bid is submitted to a public tender, the PPL enables

the tender commission to choose a supplier through direct award, or to launch a new competitive tendering process through the government e-procurement system. Therefore, the high share of failed competitive bidding could create corruption risks.

Reducing the frequency of direct award procurements after failed bidding is among the strategic objectives of the Ministry of Finance. It has taken two key measures to tackle this problem:

- Reducing the amount of formal documents, certificates and licenses submitted by potential suppliers in open tenders for construction works, in order to reduce the potential for formal mistakes in bidding documents (OECD, 2017^[21])
- Following the December 2018 amendments, a new open tender (or a new auction) is compulsory after a failed public tender (or a failed auction). Direct award after failed bidding is allowed only after the second public tender (or the second auction) receive once again only one or no responsive bid. This measure does not apply to request for quotations (RFQs).

Regarding the first policy measure, even though it is not possible to establish causality, one should notice that the value share of direct award after failed bidding has decreased in public tenders for works since 2016 (see Figure 2.5 above). The frequency of failed public tenders for works also fell, from 43.2% of all public tenders for works in 2016 to 23.4% in 2018. It is too early to gauge the impact of the second policy measure, which Kazakhstan adopted with the explicit goal of diminishing the share of failed open tenders.

Besides these policy measures, the Ministry of Finance could study further the causes of the high prevalence of failed bidding in open tenders. Data available from the e-procurement system would be important for such in-depth assessment. One obvious priority would be to understand why high-value open tenders for services receive so often either only one or no responsive bid. Such assessment would cast light on possible improvements to Kazakhstan's public procurement system as whole, as failed open tenders testify of insufficient genuine competition that is harmful for all contracting authorities.

Indeed, general improvements to the public procurement framework examined in this section (providing better access to procurement opportunities for non-resident suppliers, improving tender and supplier solicitation procedures, increasing the quality of tender documentations and technical specifications, etc.) are key to the reduction of failed competitive bidding and reviving competition between suppliers over the long term.

Dumping prices in open tenders

Given that price is the predominant award criteria and largely determines the selection of winning bids, winning bids have often artificially low prices. This has detrimental consequences on the quality of purchased goods or on contract execution. Kazakhstan's Public Procurement Rules encompass a definition of "dumping prices" for some types of purchases, see Table 2.3.

Table 2.3. Definition of artificially low ("dumping") prices in Kazakhstan

Procurement type	Price difference	Reference price
Construction works and road repair	Lower by 10% and more	Price established in design and budget documentation
Services related to architecture, engineering and construction, (including technical supervision)	Lower by 15% and more	prices set by relevant state technical standards
Repair works and works unrelated to construction or design estimates	Lower by 40% and more	initial value earmarked by contracting authorities
Services	Lower by 40% and more	

Source: Compilation based on Kazakhstan's Public Procurement Rules.

The public procurement legal and regulatory framework provides for one noteworthy loophole in relation to the prohibition of dumping prices: Suppliers can offer lower prices than the above-mentioned limits if they pay additional bid security. This loophole means effectively that bidders can “buy” the bid: the contract will be awarded among those bidders that conform to the technical specifications based on the lowest price – and the e-procurement system calculates the winning bidder automatically. Such additional bid security shall correspond to the difference between minimal non-dumping price and the price offer of the potential supplier, according to article 26 of the PPL. All potential suppliers participating in an open tender provide mandatory bid security amounting to 1% of the value earmarked by contracting authorities.

The December 2018 amendments partially addressed this loophole by prohibiting any price dumping for six categories of purchases related to construction, the elaboration of construction documents (plans and estimates), technical oversight and specialised architecture services. Indeed, referring to Table 2.3, price dumping is now only possible regarding services, and is prohibited in all other purchase categories. This measure, which aims to improve contract execution by excluding bidders with abnormally low prices, is a progress that brings Kazakhstan’s public tendering practices closer to OECD Standards.

In addition to prohibiting artificially low prices, the Government of Kazakhstan could consider measures that incentivise suppliers to submit realistic proposals and perform them with high quality. For example, as mentioned in section 2.2.6 on bid evaluation, tender commissions should use an evaluation method that takes into account more aspects than price and allows for a more detailed consideration of the bid, not just in a pass/fail approach in relation to set technical specifications. A points and percentages system could incorporate aspects like quality, sustainability, innovation and other strategic aspects of procurement.

2.3.3. Clarification meetings and debriefings

Since 2016 suppliers in Kazakhstan have had the opportunity to provide feedback about tender documentation and technical specifications on the e-procurement system, through preliminary discussions of technical documentation. Chapter 3 provides further details on this issue.

Similarly, in many OECD countries, contracting authorities conduct clarification meetings to answer questions on technical specifications and receive a feedback from suppliers. Clarification meetings are likely to ensure a greater number of bidders taking part in the tender, under the condition that they are conducted properly, all questions and inquiries are answered, potential bidders that have missed the meeting should not be at a disadvantage, etc... For that purpose, it is important to incorporate clear deadlines for the submission of questions, such as twenty-four hours before the scheduled clarification meeting date, is key to the success of clarification meetings. Each meeting is documented and published in the e-procurement platforms, except when there are any legal restrictions, such as confidential information.

Verbal debriefings are also used in some OECD countries to engage with the market and to expand the supply base. Implementation of adequate debriefing with suppliers provides a valuable opportunity for both parties to benefit from the process. Verbal debriefings can improve the relationship with suppliers and the quality of their offers, if properly documented and monitored (OECD, 2017^[11]).

The debriefing should be conducted at the request of a bidder after the award is made and the contract has been signed. To get maximum benefit from a debriefing, it is better not to delay it beyond two weeks after contract award. It is recommended that certain generic content be considered in its development (OECD, 2017^[24]). See also Box 2.11.

Box 2.11. The benefits of supplier debriefings

Debriefing is beneficial to bidders, in that it:

1. helps them to rethink their approach in order to make future bids more successful
2. offers targeted guidance to new or smaller companies to improve their chances of doing business with the public sector
3. provides reassurance about the process and their contribution or role (if not the actual result)
4. provides a better understanding of what differentiates public sector procurement from private procurement.

Constructive and transparent dialogue between procuring authorities and suppliers benefits contracting authorities by:

1. identifying ways to improve subsequent solicitation processes, including the associated communications
2. making sure best practice and guidance is updated to reflect any relevant issues that have been highlighted
3. encouraging better bids from those suppliers in the future
4. getting a better understanding of how that segment of the market thinks, enhancing the organisation market intelligence;
5. helping establish a reputation as a fair, open and ethical buyer with whom suppliers will want to do business in the future
6. potentially reducing the number of challenges.

Effective supplier debriefing can also benefit government and the wider public sector, by:

1. demonstrating commitment to good practice and openness
2. contributing to intelligence gathering about the market
3. educating the market, letting it know that the public sector is value-driven and not cost-driven.

Source: (United Kingdom Office of Government Commerce, 2003^[25]).

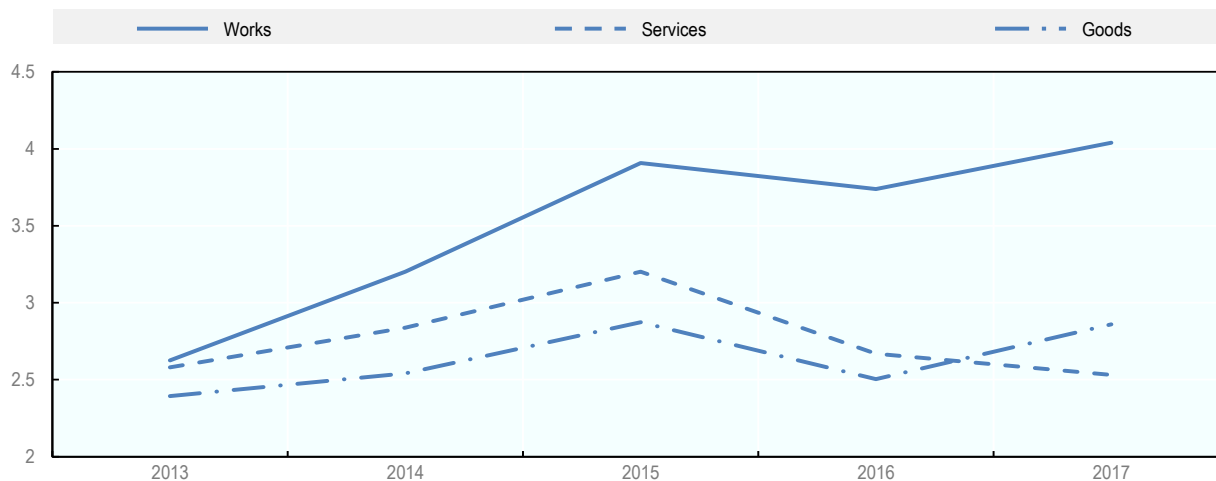
Kazakhstan could benefit from implementing supplier debriefings and clarification meetings for tenders of high-value or complex purchases, and might benefit from involving the expert or the expert commission involved in assessing product characteristics into such supplier debriefing. In order to increase the benefits of such meetings while mitigating any potential risks, the Ministry of Finance should support that activity with clear guidelines that provide a structured framework, and clarify elements such as when and where debriefings take place, what information can and cannot be provided, the standard discussion structure to be followed, etc.

2.3.4. Access to public procurement opportunities

When Kazakhstan introduced mandatory use of e-procurement, participation in competitive tendering increased. Between 2013 and 2017, as the coverage of the e-procurement system progressively extended to processes previously conducted on paper, the average number of bids per public tender increased for both goods (2.4 to 2.9) and construction works (from 2.6 to 2.9). However, the average number of bids per public tender of services decreased after reaching a peak in 2015 and stagnated over the period (from 2.6

to 2.5, see Figure 2.7). This suggests that e-procurement did not contribute to increase competition for public tenders regarding services.

Figure 2.7. Average number of bids per tender



Source: Ministry of Finance of the Republic of Kazakhstan.

The PPL affirms that the equal treatment of suppliers, including foreign ones, is one of the core principles of Kazakhstan’s public procurement framework. However, the prequalification mechanism currently in place impedes the access of foreign bidders to public procurement opportunities for certain categories of purchases. Otherwise, public procurement rules and regulations do not contain discriminatory provisions regarding foreign or non-resident suppliers. Moreover, Kazakhstan is a party to the Treaty on the Eurasian Economic Union dated 29 May 2014, which establishes the “national regime” in the sphere of public procurement for the member countries of the Eurasian Economic Union (EAEU). Accordingly, Kazakhstan shall provide EAEU suppliers with the same access to public procurement opportunities as its own resident suppliers.

As of July 2019, the Public Procurement Rules set up mandatory prequalification to bid for public procurement tenders of furniture, light industry goods and programming services (software development). The prequalification body is the National Chamber of Entrepreneurs (“Atameken”), which regroups all businesses in Kazakhstan. The Chamber issues industrial certificates that testifies that the supplier is a domestic producer included on the corresponding “register of domestic producers”. Suppliers of furniture, light industry goods and programming services must hold such industrial certificate in order to prequalify and submit bids for public procurement tenders (Ministry of Finance of Kazakhstan, 2019^[26]).

The National Chamber of Entrepreneurs (Atameken) issued Rules governing the register of domestic producers and the issuance of industrial certificates (National Chamber of Entrepreneurs (Atameken), 2018^[27]). Accordingly, the issuance of industrial certificate is possible only to a domestic producer registered in Kazakhstan. Moreover, Article 5 of the aforementioned Rules sets up specific requirements for the issuance of certificates and inclusion on the register. Manufacturers performing only simple assembly, disassembling or dismantling of goods in Kazakhstan, as well as superficial transformations such as painting or packaging cannot be considered “domestic producers” and issued an industrial certificate. Ironing and pressing of imported textiles is also excluded. There is no mechanism whatsoever for foreign bidders to obtain industrial certificates, and the process requires physical inspections by an industry expert in Kazakhstan and checking licenses, permits, tax reports, compliance with safety regulations, etc. Tax registration in Kazakhstan and an electronic signature under the national framework

established in Kazakhstan are also indispensable (National Chamber of Entrepreneurs (Atameken), 2018_[27]).

The prequalification mechanism for public procurement tenders of furniture, light industry goods and programming services *de facto* prevents foreign bidders from participating directly in public procurement tenders, and reduce their possibilities to participate through local intermediaries. The participation of foreign bidders provides for an increased competition in public tenders, and finally a more efficient public procurement spending (World Trade Organisation, 2015_[28]). Consequently, the prequalification mechanism introduced in June 2019, is likely to affect the ability of contracting authorities to obtain the better price/quality ratio available on the supply market, to create artificial rents for selected domestic producers shielded from international competition and to increase the frequency of failed biddings and thus of direct awards after failed bidding.

Beyond this prequalification mechanism, in practice, non-resident suppliers face obstacles in participating in public procurement opportunities through the government e-procurement system because they usually do not have an electronic signature (Russian: электронно-цифровая подпись) under the national framework established in Kazakhstan. Indeed, the PPL stipulates that all bids on the government e-procurement system should be signed electronically using the electronic signature in force in Kazakhstan, which is provided by the National certification authority of the Republic of Kazakhstan (NCA RK).³ In order to obtain such electronic signature, non-resident companies and individuals face cascading administrative requirements, including mandatory tax registration in Kazakhstan and opening of a bank account in a resident bank in Kazakhstan. Performing these steps is costly and time-consuming, and requires a physical presence in Kazakhstan.

In practice, OECD fact-finding missions established that most foreign companies access public procurement in Kazakhstan through local intermediaries or through the establishment of an affiliate or a representative office in Kazakhstan, which once again generates additional costs and delays as compared to domestic suppliers. Contracting authorities face complications when dealing with foreign business partners and organisations, which are often not ready to bear additional costs to access Kazakhstan's market for smaller orders. Overall, these additional costs may explain "a low level of competition on many tenders and relatively high prices in certain sectors" (OECD, 2017_[21]).

As detailed in Chapter 3 of the present report, the December 2018 amendments established mandatory annual subscription fees paid by suppliers to submit bids and sign contracts on the government e-procurement systems. The payment process for these subscription fees creates additional obstacles for foreign (non-resident) suppliers to access public procurement opportunities in Kazakhstan. Indeed, suppliers need to pay the fees by bank transfer from an account in a resident Kazakhstani bank, and suppliers must mention their Kazakhstani tax or business register identifications on the transfer documents. From 2020 onwards, the introduction of e-wallet and associated requirements for payment of fees and bid bonds would increase further the above-mentioned obstacles to the participation of foreign (non-resident) suppliers to public procurement.

Available statistics confirm that direct foreign (non-resident) suppliers play a marginal role in Kazakhstan's public procurement market. In 2017, they accounted for around 0.03% of suppliers awarded public procurement contracts and 0.44% of the overall monetary value of public procurement (Government e-procurement system, 2018_[29]). By comparison, in the EU, in 2009 3-4% of the value of contracts above the GPA thresholds were awarded to other GPA signatories (Brühlhart and Trionfetti, 2001_[30]). Most non-resident suppliers (59%) are from the Russian Federation (Government e-procurement system, 2018_[29]).

These obstacles for foreign (non-resident) bidders, including the prequalification mechanism for public procurement of furniture, light industry goods and programming services, contradict the Principle on Access of the 2015 OECD Recommendation on Public Procurement. Indeed, under the 2015 OECD Recommendation on Public Procurement (Principle on Access), Adherent countries are invited to "*treat bidders, including foreign suppliers, in a fair, transparent and equitable manner, taking into account*

Adherents' international commitments (e.g., the Agreement on Government Procurement within the framework of the WTO)" (see also Box 2.2).

As far as the prequalification mechanism for public procurement of furniture, light industry goods and programming services is concerned, Kazakhstan would gain from enabling foreign bidders to prequalify, by setting up a specific mechanism dedicated to them. Removing Article 5 of the Rules governing the register of domestic producers and the issuance of industrial certificates would be a first step in the right direction. This would allow foreign suppliers to access the public procurement Kazakhstani market by partnering with local manufacturers and retailers.

In order to facilitate foreign suppliers' access to public procurement opportunities, the Government of Kazakhstan would need to ease the access of non-resident suppliers to the country's official electronic signature and to revise the payment process for subscription fees (see chapter 3 of this report). For instance, it could set up mechanisms to enable non-resident bidders to obtain digital signature certificates, submit the electronic bid security and pay for access fee to the e-procurement system from abroad.

The implementation of these measures regarding prequalification and the country's official electronic signature would bring Kazakhstan closer to OECD standards. Besides, it would increase competition, particularly in regards to large, high-value procurements, and therefore contribute to reducing the share of failed bidding in competitive tendering.

Proposals for action

The assessment of the public procurement process in Kazakhstan suggests that the system places an excessive emphasis on compliance with public procurement rules rather than introducing tools aiming at increasing efficiency or competitiveness. Key parts of the public procurement process in Kazakhstan need to be strengthened, especially the planning process, such as market analysis and the development of technical specification; and the access of non-resident suppliers to the government e-procurement system. They are key to reduce the number of failed bids and ensure more competition in certain tenders.

The Ministry of Finance could take careful steps in introducing more value for money oriented procurement, incorporating quality criteria's and going beyond the price factor. To further build on recent reforms, processes need to be much more strategically managed and pay more attention to the contract management phase of the procurement cycle. To achieve greater savings and better value for money for the whole public sector, the Ministry of Finance could consider the following proposals for action:

- Stimulate competition by taking actions that facilitate participation of suppliers, taking into account the complexity level of the different procedures. Two international good practices can offer potential bidders information and time necessary to prepare adequately: In order to provide adequate visibility to suppliers on upcoming opportunities, while also preserving some flexibility, contracting authorities could publish prior information notices (PIN). A regulation could require the publication of PIN in a reasonable time (one to three months) before tendering to raise the awareness of upcoming opportunities among the supplier community in case new items are added to procurement plans during the course of the year. Another avenue is to extend the minimum submission period (currently 15 days) for complex procedures.
- In order to facilitate the access of foreign suppliers to public procurement opportunities, the Government of Kazakhstan could reconsider its policy regarding the participation of foreign suppliers in public procurement, for example as part of the upcoming accession process of Kazakhstan's to the Agreement on Government Procurement (GPA). A specific mechanism dedicated to foreign bidders could be created, so that they can to qualify for specific product

categories that fall under this scheme, currently public procurement tenders of furniture, light industry goods and programming services.

- In order to facilitate the access of foreign suppliers to public procurement opportunities, the Government of Kazakhstan would need to ease the access of non-resident suppliers to the country's official electronic signature. For that purpose, it could set up mechanisms to enable non-resident bidders to obtain digital signature certificates, submit the electronic bid security and pay for access fee to the e-procurement system from abroad. This would increase competition, particularly as regards large, high-value procurements, and therefore contribute to providing better value for money to contracting authorities. It could also contribute to reducing the share of failed bidding in competitive tendering.
- The Ministry of Finance should consider introducing points and percentages criteria in open tenders and requests for quotations. It should weigh different criteria such as sustainability aspects, quality, life cycle costs, delivery terms, additional functionalities and updates, among others.
- The Ministry of Finance should consider developing a comprehensive contract management framework that covers delivery management, relationship management and the contract administration.
- Within the boundaries prescribed by the existing anti-corruption framework, rules and regulations, the Ministry of Finance should consider introducing supplier debriefings in order to improve relationships with bidders and suppliers as well as the efficiency of public procurement processes. The Ministry of Finance should support that activity with clear guidelines that provide a structured framework. Insights from contract management should feed into the planning phase.
- There is a need for more specialist knowledge on specific categories in relation to both the development and evaluation of specifications. As Kazakhstan gradually centralises its procurement framework, it would be important for Central Procurement Bodies (single organisers) to develop their internal expertise regarding complex purchases and product categories, as they will be better able to correct mistakes in technical specifications and to assess bids from suppliers, but also to conduct market research and monitoring during the procurement planning phase.
- The Ministry of Finance should reconsider the list of exceptions detailed in Article 39 Point 3 of the PPL, with the goal of reducing it as much as possible to allow for the highest degree of competition. In addition, the Ministry of Finance could detail the exact scope of some exceptions that are very broad because they refer to all existing laws and regulations. The aim is to provide guidance to contracting authorities about whether they can apply these exceptions or not.
- The Ministry of Finance could launch an independent assessment of whether the value threshold for direct award of goods is too low, and increase the threshold depending on the conclusions. The Ministry could also make sure that suppliers are able to file complaints regarding award decisions below the value threshold for direct award as a way to mitigate possible integrity risks.
- The Ministry of Finance could study further the causes of the high prevalence of failed bidding in open tenders. One obvious priority would be to understand why high-value open tenders for services receive so often either only one or no responsive bid, which may be related to low competition in public tenders for services. Such assessment would cast light on possible improvements to Kazakhstan's public procurement system as whole.

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Notes

¹ Direct award based on exceptions are called “single source through direct award” in the 2015 PPL, but this Review uses the formula “Direct award based on exceptions”.

² The PPL refers to direct award after failed bidding as “public procurement through single source after failed procurement”.

³ For more details, please consult the non-resident webpage of the National Certification Authority in Kazakhstan: <http://www.pki.gov.kz/index.php/en/>

3

E-procurement to strengthen transparency and develop performance evaluation of public procurement in Kazakhstan

The chapter covers e-procurement and transparency of public procurement in Kazakhstan. While the e-procurement system generally provides adequate transparency regarding individual purchases, the quantity and the quality of aggregated procurement data are insufficient. Kazakhstan would gain from collecting and disclosing more aggregated statistics on its public procurement system and move towards an open data approach. Certain mechanisms providing information to suppliers need to be fine-tuned, such as procurement plans or the reciprocal review of suppliers' offers. Enhanced availability of aggregated procurement data would allow Kazakhstan to measure and disclose performance indicators in a more structured and systematic manner, allowing for evidence-based assessments of the procurement function of contracting authorities, and of the public procurement system as a whole.

E-procurement is the integration of digital technologies to replace and redesign paper-based procedures in public procurement (OECD, 2017^[1]). OECD countries have long used e-procurement systems to increase transparency and efficiency in public procurement. Regarding transparency, e-procurement systems and online platforms are essential tools to provide free access to relevant procurement information for all stakeholders, making contracting authorities more accountable to citizens. Concerning efficiency, e-procurement systems allow for automation and standardisation of procedures along the entire procurement cycle, reducing the time needed to perform tasks and the room for human error. E-procurement drives efficiency gains by facilitating market access, thereby increasing competition and decreasing administrative burden and transaction costs (EBRD, 2015^[2]). The essential role of e-procurement is recognised by the 2015 OECD “Recommendation of the Council on Public Procurement” (hereafter, the “OECD Recommendation on Public Procurement”) which includes e-procurement as one of its 12 integrated principles (Box 3.1).

Box 3.1. OECD Recommendation on e-procurement

VII. RECOMMENDS that Adherents improve the public procurement system by harnessing the use of digital technologies to support appropriate e-procurement innovation throughout the procurement cycle.

To this end, Adherents should:

i) **Employ recent digital technology developments that allow integrated e-procurement solutions covering the procurement cycle.** Information and communication technologies should be used in public procurement to ensure transparency and access to public tenders, increasing competition, simplifying processes for contract award and management, driving cost savings, integrating public procurement, and public finance information.

ii) **Pursue state-of-the-art e-procurement tools that are modular, flexible, scalable and secure in order to assure business continuity, privacy and integrity, provide fair treatment and protect sensitive data,** while supplying the core capabilities and functions that allow business innovation. E-procurement tools should be simple to use and appropriate to their purpose, and consistent across procurement agencies, to the extent possible; excessively complicated systems could create implementation risks and challenges for new entrants or small and medium-sized enterprises.

Source: (OECD, 2015^[3]), OECD Recommendation of the Council on Public Procurement”, www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf.

Since 2016, contracting authorities in Kazakhstan have advertised and performed almost all government procurement through the government e-procurement system (called Goszakup, www.goszakup.gov.kz). It is mandatory for all public contracting authorities (i.e. Ministries and Committees, subnational governments, government agencies and some SOEs). JSC “Center for Electronic Commerce” (hereafter: Center for Electronic Commerce) under the Ministry of Finance operates and maintains the government e-procurement system. Up until the end of 2018, the government budget provided funding for the system’s operations and maintenance. However, since January 2019, supplier subscription fees have become the main source of funding for the operations and maintenance of the e-procurement system.

In addition to the government e-procurement system, national companies (i.e. SOEs with a special status) conduct procurement through distinct e-procurement systems. For instance, Samruk-Kazyna and Baiterek holdings have their own e-procurement systems. This chapter focuses on the government e-procurement system while Chapter 6 addresses procurement by national companies and national holdings, such as the Sovereign Wealth Fund JSC Samruk-Kazyna.

This chapter assesses the use of digital technologies in the procurement process in Kazakhstan against the OECD Recommendation and international good practices. This chapter will first provide an overview of the government e-procurement system, with a focus on functionalities and transparency throughout the whole procurement cycle. An adequate and timely degree of transparency is indispensable in order to ensure fair and equitable treatment of suppliers and promote competition. Transparency also relates to procurement laws, regulations and policies, as well as the choice of the procurement method.

During the last decades, a majority of OECD countries focused on building centralised systems for publishing public procurement information online. However, investment in e-procurement systems has gradually shifted away from this original purpose towards developing systems that help increase efficiency and streamline procurement procedures (OECD, 2018^[4]). This chapter also assesses the status of e-procurement in Kazakhstan and possible avenues for improvement, based on OECD and international best practices. This includes better coordination through integration of the government e-procurement system with other government IT systems (such as tax, budgeting and public finance management).

E-procurement systems are also key to the evaluation of the effectiveness of public procurement, because they allow for automated generation and aggregation of procurement data at different levels (national, contracting authority, and for every contract). The last section of this chapter therefore covers performance assessments of the public procurement system, for instance through key performance indicators (KPIs, for instance savings) that should be a tool of strategic policymaking.

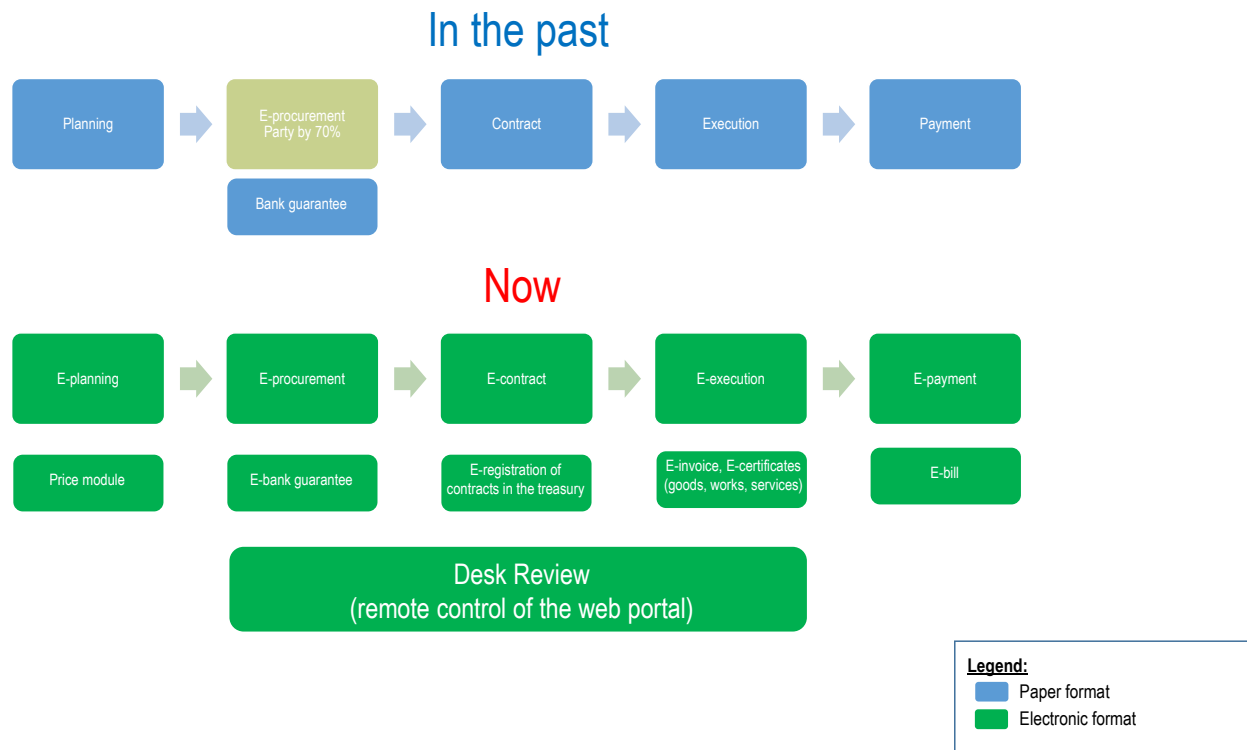
3.1. Main features of Kazakhstan's e-procurement system

Kazakhstan has developed its government e-procurement system gradually, expanding its coverage and functionalities to account for frequent changes to the public procurement regulatory framework. The Government defined JSC "Center for Electronic Commerce" as the operator of the government e-procurement system and introduced e-procurement into the country's legislative framework in 2008. JSC "Center for Electronic Commerce" launched a pilot of the government e-procurement system that hosted requests for quotations (RFQs) in the same year, and added other procurement methods to the system during the following years. In 2014, the center introduced e-contracts to the system.

The current version of the government e-procurement system, launched in 2016, is based on the Public Procurement Law (PPL) and the accompanying government procurement rules. All public contracting authorities and public entities falling under the scope of the PPL (see Chapter 1) must perform procurement through the government e-procurement system. Openness and transparency of the public procurement process are among the eight principles of public procurement in Kazakhstan defined in Article 4 of the PPL. Nevertheless, there are a few exceptions to transparency stipulated in article 1 of the PPL regarding goods, services and works of military and double usage as part of defense procurement or concerning "special orders" (Rus. *Особый порядок*) procurement involving confidential information and state secrets. These purchases are not published on the e-procurement system.

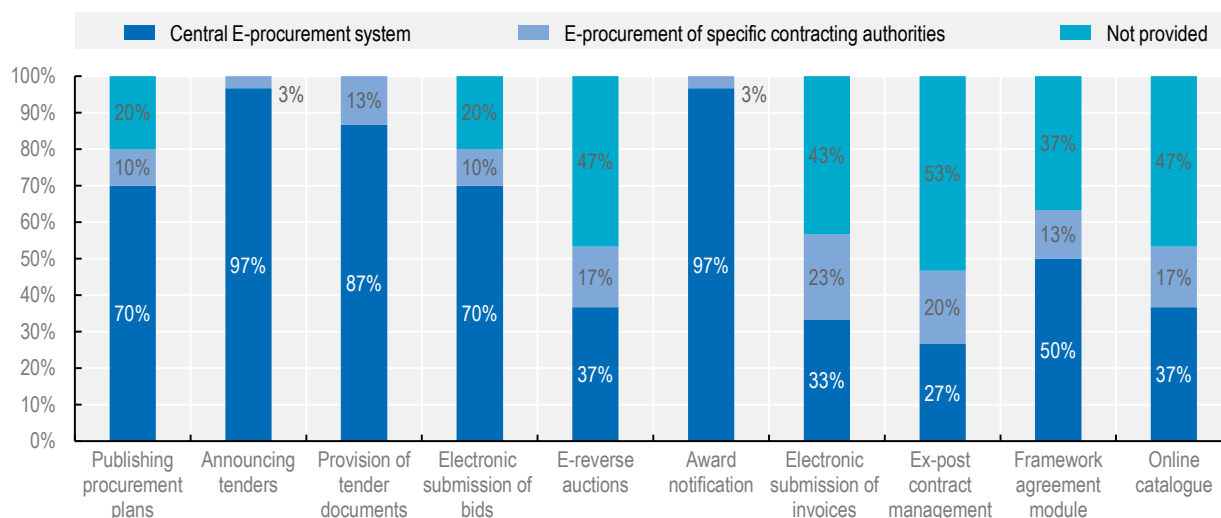
Kazakhstan's e-procurement system provides a wide range of functionalities, covering the different phases of the procurement cycle, from publishing procurement plans to the e-submission of bids and some elements of *ex post* contract management. This makes the state e-procurement system a rather comprehensive e-procurement system when compared to many OECD countries. Figure 3.1 illustrates the coverage of e-procurement functionalities by the system, which expanded from tendering to cover other phases of the e-procurement cycle.

Figure 3.1. Expansion of e-procurement functionalities



Source: Ministry of Finance of Kazakhstan.

Already as of 2014, all OECD member countries announce procurement opportunities and provide tender documents through their e-procurement systems. In most OECD countries e-procurement systems provide functionalities at the beginning of the procurement cycle - publishing tender notices (97%), electronic submission of bids (80%), and notification of award (97%) (Figure 3.2). In contrast, a lower number of OECD member countries provides those towards the end of procurement cycle. Fewer countries provide ordering, electronic submission of invoices (56%) and *ex post* contract management (57%) through their e-procurement systems. It is worth noting, though, that e-invoicing has become mandatory for all contracting authorities in the EU as of April 2019.¹

Figure 3.2. Use of e-procurement functionalities in OECD countries

Note: The chart is based on data from 30 OECD countries that answered the 2016 Survey on public procurement (OECD countries except Lithuania, France, United States, Switzerland, Czech Republic and Luxembourg).

Source: (OECD, 2016^[5]).

By expanding functionalities offered by its government e-procurement system, Kazakhstan is in line with many OECD countries (Figure 3.3).

Figure 3.3. Functionalities of Kazakhstan's e-procurement system

Publishing Procurement plans	Tender notices	Tender documents	E-submission of bids	Evaluation criteria	E-reverse auctions	Award notification	E-invoicing	Ex post contract management	Framework agreements	Online catalogue
✓	✓	✓	✓	✓	✓	✓	✓	≈	✗	✗

Note: ✓ provided by the e-procurement system, ≈ partially provided ✗ not provided.

Source: OECD elaboration based on the e-procurement system, available at: <https://goszakup.gov.kz/>.

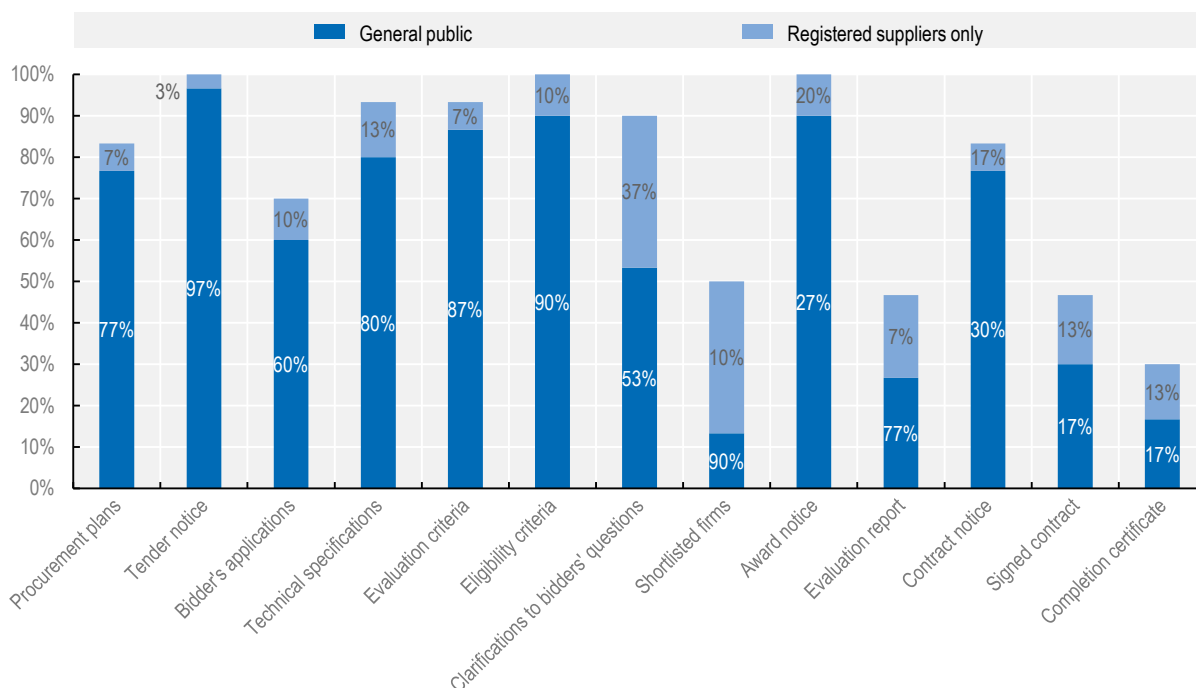
In 2017, Kazakhstan made e-invoicing mandatory for all public procurement purchases. Suppliers and contracting authorities must now use the national e-invoicing system provided by Kazakhstan's state revenue committee, an online platform that is distinct from the e-procurement system. A module in the e-procurement system manages acceptance acts or receipts. This helps accelerating payment of suppliers through the electronic national treasury system. The acceptance act and receipt module contains data in electronic format, as submission of acceptance acts and receipts is electronic since the beginning of 2018.

The home page of the e-procurement system provides access to legislation and norms related to public procurement (i.e. the PPL, government procurement rules and various orders of the Ministry of Finance), as well as detailed instructions for different types of users (suppliers, contracting authorities, single organisers and banks) without registration. In addition, it contains information about updates or modifications of the PPL or public procurement rules, as necessary. Standardised protocols provide for easy access to details regarding suppliers' compliance with requirements in technical specifications and contract award decisions.

In terms of the documents available to the public regarding each public procurement procedure, Kazakhstan compares well to most OECD countries, with almost all key documents and modules of its e-procurement system available online, and clarification to bidder's questions available to registered

suppliers (Figure 3.4 and Figure 3.5). Transparency was indeed Kazakhstan's strongest dimension in the EBRD 2012 Regional self-assessment of public procurement legislation (OECD, 2016^[6]).

Figure 3.4. Availability of public procurement documents in OECD countries



Note: The chart is based on data from 30 OECD countries that answered the 2016 Survey on public procurement (OECD countries except Lithuania, France, United States, Switzerland, Czech Republic and Luxembourg.)

Source: (OECD^[5]).

Kazakhstan's e-procurement system provides a number of procurement documents to the public, see Figure 3.5.

Figure 3.5. Availability of public procurement documents in Kazakhstan

Procurement plans	Tender notice	Bidding docs	Technical specifications	Evaluation criteria	Eligibility criteria	Clarifications to bidders' questions	Award notice	Evaluation report	Contract notice	Signed contract	Completion certificate
✓	✓	◆	✓	✓	✓	◆	✓	✓	✓	✓	✓

Note: ✓ Available to the general public, ◆ Available to registered suppliers, Source: OECD elaboration based on the government e-procurement system, available at: <https://goszakup.gov.kz/>.

In addition to past public procurement transactions, the e-procurement system makes publicly available various "registers": a supplier blacklist ("list of unreliable suppliers"), a list of public procurement plans published by contracting authorities, and a register of complains.

Kazakhstan's government e-procurement system contains a contract management module that generates standard contracts for different categories of purchases. After the text of the contract is agreed upon, contracts can be signed through an electronic signature. The e-procurement system provides for the possibility of signing supplementary contracts introducing modifications to public procurement contracts. Suppliers and contracting authorities sign and manage these contracts through the e-procurement

system's contract management module. However, the PPL (Article 45) sets more restrictive rules regarding possible revisions to signed public procurement contracts. Since Kazakhstan's legislation does not encompass framework agreements or product catalogues available for contracting authorities (see Chapter 2), these features are absent from the e-procurement system.

The e-procurement system is among the 20 most popular websites in Kazakhstan in terms of web frequentation. At the end of 2018, the number of registered users including suppliers was 225 896, while the number of registered contracting authorities (government entities, agencies and different types of SOEs) reached 24 201 (Table 3.1). In 2016, because of the launch of the new version of the e-procurement system, suppliers had to register again, hence the low number of registered users and suppliers for that year. Almost 60% of registered suppliers are individual entrepreneurs.

Table 3.1. Main indicators of the government e-procurement system (Goszakup)

Year	Registered users (end of year)	Registered suppliers (end of year)	Overall amount of purchases (Billion KZT)
2014	230 180	181 728	1 367
2015	270 023	214 055	2 368
2016	130 093	108 826	1 948
2017	194 185	171 520	2 875
2018	250 099	225 896	4 152

Note: In 2016, Kazakhstan launched a new version of its e-procurement system, requiring all users (suppliers, CAs, etc.) to go through registration again. This is why the number of registered users and suppliers were lower at the end of 2016 than one year before.

Sources: Ministry of Finance of the Republic of Kazakhstan (Strategic plan for 2017-2021); Extracts from <https://www.goszakup.gov.kz/>, Register of participants in public procurement, retrieved on 23 April 2019.

The e-procurement system is not the largest e-procurement system in Kazakhstan. National holdings (a specific sub-group of SOEs) conduct procurement activity through their own e-procurement platforms, accounting for a larger amount of purchases. This is due to high procurement volumes of national holding Samruk-Kazyna. It purchased around KZT 4.1 trillion in 2016, i.e. more or less two times the volume of public procurement during this year (KZT 1.9 trillion). Other national holdings have much lower procurement volumes, even though they also operate their own e-procurement systems. Chapter 6 provides more details on the procurement of national holdings, including the Sovereign Wealth Fund JSC Samruk-Kazyna.

Amendments to the PPL adopted on 26th December 2018 (hereafter: December 2018 amendments) introduce a mandatory user subscription fee on Kazakhstan's e-procurement system. The access to most information will remain free and accessible without subscription – including tender notices, lots, contracts, tender specifications, and protocols regarding different procedural steps. However, two key functionalities are accessible to suppliers only after payment of the mandatory user subscription fee:

- Submitting a bid to any public procurement process (including for direct award processes; exceptions apply where national, confidential information is involved).
- Agreeing upon and signing any public procurement contract.

The Center for Electronic Commerce determines and collects the subscription fee, with the approval of the Ministry of Finance. The updated PPL stipulates that “subscription fees for using the e-procurement system must entirely compensate expenditures related to the functioning of the e-procurement system” (Article 17 of the updated PPL). This is a significant change as, up until the end of 2018, the National Budget had been funding the development, operations and maintenance of the e-procurement system. According to discussions with the Center for Electronic Commerce, previously, the Ministry of Finance earmarked

EUR 1.5 million (KZT 600 million) annual for maintenance, operations and new developments of the e-procurement system.

The level of fees depends on the procurement volume earmarked for the procurement process in which the supplier participates, or on the value of the contracts signed by the supplier through the e-procurement system. The number of bids and contracts signed are unlimited. Suppliers pay the subscription fee once a year. Table 3.2 presents the annual subscription fees established for 2019.

Table 3.2. Subscription fees for using the e-procurement system

Maximal procurement value	Annual fee (2019)	Ratio of yearly fee to average monthly wage*
Up to KZT 1 million (EUR 2 460)	KZT 2 525 (EUR 6)	0.01
Up to KZT 10 million (EUR 25 591)	KZT 25 250 (EUR 62)	0.15
Up to KZT 100 million (EUR 245 906)	KZT 50 500 (EUR 124)	0.29
Up to KZT 1 billion (EUR 2 459 057)	KZT 151 500 (EUR 373)	0.86
No limit	KZT 308 050 (EUR 758)	1.75

Note: * Based on the last available average monthly wage (for Q4 2018) from the Committee on Statistics.

Source: (Government e-procurement system, 2019^[7]), Kazakhstan's Committee on Statistics and Central Bank.

Supplier fees are not the most common funding arrangement for public e-procurement systems in OECD countries. Instead, in most countries the government funds the operations of e-procurement systems or financing is provided by contracting authorities (often through a fee for each tender process). However, the subscription fees in Kazakhstan are modest and proportionate to contract value, and consequently the possible detrimental impact on the access of SME bidders to procurement opportunities should be limited. More importantly, subscription fees create new obstacles for foreign bidders in accessing Kazakhstan's e-procurement system, because suppliers need to pay the fees by bank transfer from an account in a resident Kazakhstan bank registered in Kazakhstan, and payment is possible only in KZT. What is more, tax or business register identification numbers are mandatory on the transfer documents, even though non-resident do not have any tax or business registration. Applying for tax or business register identification is possible for non-residents, but requires cumbersome administrative procedures (including opening a bank account in a resident Kazakhstani bank) (Government e-procurement system, 2019^[7]).

These additional obstacles for foreign (non-resident) bidders are in contradiction with the Principle on Access of the OECD Recommendation on Public Procurement. Chapter 2 of this report elaborates on foreign bidders' access to public procurement opportunities. The Ministry of Finance should revise the payment process for subscription fees to open it to foreign and non-resident suppliers without tax or business register identification and without bank account in a resident Kazakhstani bank.

From 1st January 2020 onwards, each potential supplier will have to set up an electronic wallet (e-wallet) on the e-procurement system. E-wallets will be used for two purposes: depositing and returning bid bonds, and paying the annual subscription fee to the Center for Electronic Commerce as operator of the government e-procurement system. The introduction of E-wallets is a positive development as it simplifies and automates transactions between suppliers and the Center for Electronic Commerce. The Ministry of Finance should pay attention to the potential additional obstacles that the E-wallet might create for foreign suppliers.

3.2. Using digital technologies to increase transparency and integrate *Goszakup* with other government IT systems

3.2.1. Improving the public availability of high quality procurement data

Transparency has been a cornerstone of the development of Kazakhstan's e-procurement system. It is based on the principle that almost all details of each purchase are publicly available on the system. This same principle presided for example over the reform of public procurement in Georgia in 2010, and led to the creation of the Georgian electronic Government Procurement (Ge-GP) system, one of the most transparent e-procurement systems worldwide (EBRD, 2015^[2]). One should note, however, that in Kazakhstan only *de facto* domestic users can use the e-procurement system fully. Indeed, there are significant barriers for non-residents to obtain the national electronic signature. This electronic signature is indispensable to submit bids and participate in the preliminary discussion of tender documentation. Beyond public procurement, in Kazakhstan the national electronic signature is widely used in interactions between citizens, businesses and the government (for instance, to submit tax declarations).

A well-implemented e-procurement system enables and facilitates timely collection of comprehensive and reliable data. In Kazakhstan, the e-procurement system provides an adequate level of transparency at the level of each public procurement purchase (see previous section). However, the availability of data and information on the e-procurement system does not allow for a meaningful performance assessment of specific contracting authorities or of the public procurement system as a whole. Providing access to more detailed, aggregated data on public procurement, and making this data accessible through user-friendly tools, would require reasonable efforts and funding. This is because, contrarily to several OECD countries, Kazakhstan has a centralised government e-procurement system used by most public entities. This greatly facilitates the centralised collection of procurement data.

The OECD Recommendation on Public Procurement calls for free access, through an online portal, to information on the performance of the public procurement system, including meaningful data for different groups of stakeholders (Box 3.2). The availability of aggregated procurement data is important to external parties interested in the performance of the government e-procurement system, such as journalists, representatives of civil society and suppliers, or even public servants outside of the Ministry of Finance. An adequate level of transparency is widely regarded as an effective tool to deter or detect corruption, but the relationship is not automatic: the availability of timely and high quality data is one of the conditions for effective accountability of public procurement officials and suppliers (OECD, 2016^[8]).

Box 3.2. OECD's Recommendation of the Council on Public Procurement – principle on transparency

II. RECOMMENDS that Adherents ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle. To this end,

Adherents should:

i) **promote fair and equitable treatment for potential suppliers, by providing an adequate and timely degree of transparency in each phase of the public procurement cycle**, while taking into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid information that can be used by interested suppliers to distort competition in the procurement process. Additionally, suppliers should be required to provide appropriate transparency in subcontracting relationships.

ii) **allow free access, through an online portal, for all stakeholders**, including potential domestic and foreign suppliers, civil society and the general public, **to public procurement information**, notably related to the public procurement system (e.g. institutional frameworks, laws and regulations), the specific procurements (e.g. procurement forecasts, calls for tender, award announcements) and the performance of the public procurement system (e.g. benchmarks, monitoring results).

iii) **ensure visibility of the flow of public funds, from the beginning of the budgeting process** through the public procurement cycle, to i) let stakeholders understand government priorities and spending, and ii) allow policy makers to organise procurement strategically.

Source: OECD (2015^[3]) OECD Recommendation of the Council on Public Procurement”, www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf.

The Ministry of Finance centralises detailed aggregated data, develops performance indicators for the government e-procurement system, and occasionally publishes such indicators in strategic documents (such as its strategic plan for 2017-2021) or uses them to substantiate speeches and presentations by high-ranking officials. For instance, Vice-Minister Beketaev presented members of parliament (MPs) with such aggregated statistics during a presentation of the (at the time) draft amendments to the PPL in January 2018.

In contrast, the scope of aggregated statistics and real-time reports publicly available on the government e-procurement system is very limited. Each module provides a statistical tool with basic real-time statistics and the corresponding infographics. For instance, the lots (Rus. Лоты) and notices (Rus. Объявления) module provides basic statistics on the breakdown of lots and notices by status (completed purchase, cancelled, under review...). Nevertheless, this piece of data is insufficient for any detailed analysis: Statistical definitions (“meta data”) are lacking and there is no option to query data for a specific time-period or export data in machine-readable format.

The main statistical reporting module (“report on conducted purchases of construction works, services and goods”) provides a minimal degree of transparency regarding past purchases. It automatically generates data tables on the number of purchases, budgeted amounts, purchase amounts, procurement method, the country of residence of suppliers, and conditional savings.² The module provides for some degree of disaggregation, i.e. it allows querying data for each contracting authority, for different regions of Kazakhstan, etc. Moreover, it is possible to query data for 100 different aggregated categories of goods, works and services corresponding to the public procurement catalogue. Once again, the module lacks clear statistical definitions that would allow users to make sense of each statistical category. More importantly, data from the main statistical reporting module does not correspond to data reported

elsewhere (such as in its strategic plan for 2017-2021) by the Ministry of Finance, leading to questions regarding data reliability or the existence of multiple databases.

There is a lack of transparency regarding aggregated statistics on different aspects of public procurement in Kazakhstan. No data is publicly available on the amounts corresponding to each of the 50 exceptions to competitive procedures allowing for direct award based on exceptions. The government e-procurement system does not make available detailed statistics about complaints filed through the government e-procurement system and the result of their examination. Most of the performance indicators that the Ministry of Finance uses to assess the performance of the government e-procurement system, such as the average number of bidders in tenders or the share of competitive procedures resulting in failed competitive bidding, cannot be retrieved or computed from the government e-procurement system. Some statistical reporting tools are available online on the e-procurement system, although they report old data (2012-2016) from the previous version of the government e-procurement system.

Some contracting authorities make available their procurement data through Kazakhstan's open data portal (<https://data.egov.kz/>) in different machine-readable formats. For instance, the Ministry of Finance made available its 2017 procurement plan in the open data portal in December 2016. However, these pieces of data are not available on the government e-procurement system and there is no consolidated dataset for all contracting authorities. This means that there is no meaningful way to collect aggregated data about public procurement for Kazakhstan as a whole.

In order to provide better access to aggregated data, the Ministry of Finance could publish an annual statistical report on public procurement in Kazakhstan. Some countries have found this a useful approach, for example the government of Québec. It publishes such a report on the website of its *Secrétariat du Conseil du Trésor*.³ Such a report would contain detailed aggregated data and feature prominently on the government e-procurement system. It could also encompass a set of KPIs selected by the Ministry of Finance to measure the performance of the public procurement system (see section 3.3.1). A download centre on the government e-procurement system could give users access to the report's data in different machine-readable formats, as well as to all information on the system as whole, including datasets in different machine-readable formats, following the example of the *USA Spending* platform in the United States (Box 3.3).

Box 3.3. USA Spending and its associated data lab

USAspending.gov⁴ is the official source for spending data for the U.S. Federal Government. It contains a wealth of user-friendly, easily accessible information about federal government procurement, and clearly demonstrates the link between federal budget spending and procurement information.

It regroups many sources of information from a variety of government systems, including the system of record for federal procurement data (the Federal Procurement Data System Next Generation (FPDS-NG)), and data from sub-awards records.

Federal agencies submit contract, grant, loan, direct payment, and other award data at least twice a month to be published on USAspending.gov. Federal agencies upload data from their financial systems and link it to the award data quarterly.

USA Spending contains several user-friendly modules:

- Spending profiles of federal agencies help users understand how each agency spends its funding. It entails an award tool enabling the identification of contract awards to different government suppliers for each budget program and type of expenditure.
- An advanced federal award data search tool makes it easy to find any government contract, and includes a spending map of federal contract awards by state.
- A download center allows users to download details providing the exact mapping of the flow of federal funds by type, agency/sub-agency and date range in a variety of machine-readable formats.

The US Treasury is also developing a data lab (<https://datalab.usaspending.gov/>) accompanying USAspending.gov website and providing innovative infographics on aggregate federal government spending, broken down to the level of each Agency, Department and Sub Agency. A dedicated contracting tool shows the percentage of contracts awarded through competitive procedures for each federal government agency.

Sources: OECD Elaboration based on USA Spending Website <https://www.usaspending.gov/#/> and its associated data lab (<https://www.usaspending.gov/#/>).

The Ministry could also enhance the main statistics-reporting module to include more details, including the amounts and number of purchases corresponding to each of the 50 exceptions to competitive procedures (Article 39 Point 3 of the PPL) and key performance indicators (average number of bidders, share of failed biddings, etc.) The government e-procurement system could also include a specific statistical reporting tool regarding complaints, detailing the number of complaints upheld or rejected by the Internal Audit Committee. Transparency regarding contract execution could be improved by making acceptance documents available systematically on the government e-procurement system, along with signed contracts.

In order to increase the quality and coverage of the procurement data it makes available, and to mobilise the different stakeholders (Ministry of Finance, Center for electronic Commerce, Ministry of Information and Communication), Kazakhstan is transitioning to the Open Contracting Data Standard (OCDS).⁵ One of the countries that recently adopted open contracting is Mexico. Mexico's approach to developing open contracting was characterised by its inclusiveness: in 2017, the government created an alliance for open contracting involving stakeholders from the public and private sectors. Expected benefits include increasing traceability and auditability of tender submissions and make available data for subsequent analysis. (OECD, 2018^[4]). This transition aims at providing increased availability of aggregated indicators and statistics regarding the public procurement system as a whole, as well as concerning all phases of the

public procurement cycle: planning, tendering, awarding, contracting and implementation. As the government e-procurement system's coverage extends to the post-award phase of the procurement cycle, a systematic approach such as the OCDS would make sure that the corresponding data (acceptance acts, invoices, effective payment dates, etc.) is published in structured and machine-readable format.

Better transparency of aggregated public procurement data can be instrumental in enhancing the role of civil society and the media in overseeing public procurement. In Kazakhstan, *Forbes.kz* published a ranking of the largest suppliers of the government – based on their share of public procurement spending.⁶ Nevertheless, journalists had to use a sample of 1 800 purchases extracted from the government e-procurement system and to hire an external data-analytics company to create the ranking, because of the lack of user-friendly, machine-readable data on the system. More data in such a format would facilitate this kind of analysis, bringing additional transparency to public procurement. Several OECD countries provide detailed statistical reports regarding public procurement. For example, the public procurement system of Chile (*Chile Compra*) makes available annual and monthly reports providing aggregated data and performance indicators of the public procurement system.⁷ In the United States, the transparency platform *USA Spending* and its associated data lab provides user-friendly access to federal government spending and public procurement data from 2017 onwards (Box 3.3 above).

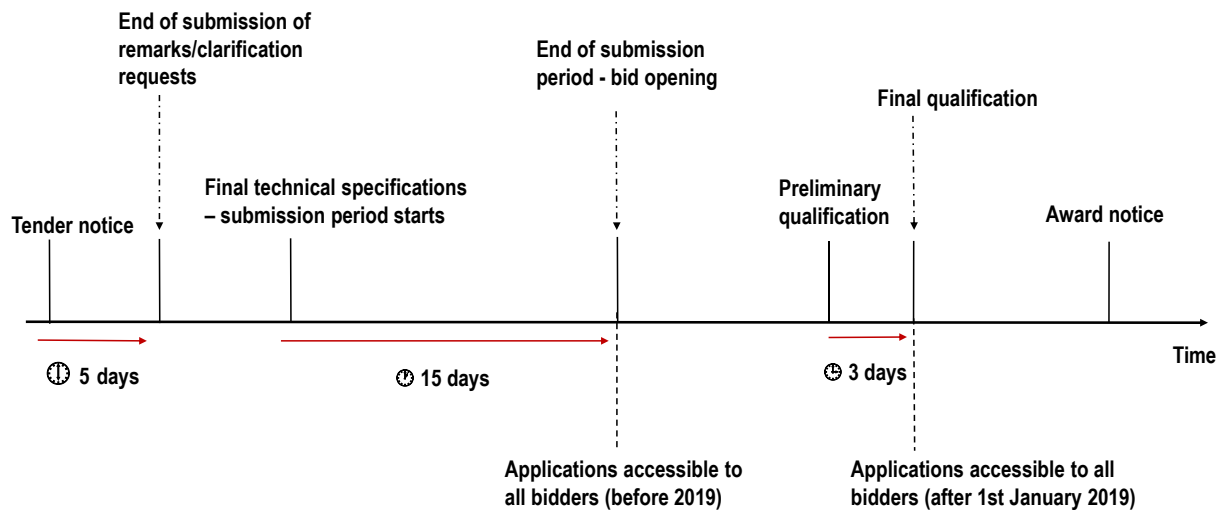
3.2.2. Providing adequate and timely information to suppliers

The legislative December 2018 amendments comprise several measures related to transparency and information available to suppliers during the pre-tendering and bid submission phases of the public procurement cycle.

Reciprocal review of offers from other bidders in open tenders

On Kazakhstan's government e-procurement system, registered suppliers bidding in a tender procedure can access all documents from other bidder's offers without restriction. As discussed in the next paragraphs, this is at odds with the OECD best practices that emphasize the need to take into account the legitimate needs for protection of trade secrets, proprietary information and commercially sensitive information of suppliers as well as to avoid disclosing information that facilitate collusion or can be used to distort competition in the procurement process. Such open access to competitor's offers allows bidders to file complaints regarding irregularities or errors in their competitor's offers. This is possible through the complaint module of the e-procurement system. In practice, field research show that spurious suppliers often behave as "*professional complainers*" by submitting systematic complaints based on irregularities or missing documents in their competitors' offers. Chapter 4 provides more details on this issue.

The timing of the access to other bidders' offers (at the bid opening stage, Figure 3.6) was a major flaw in current tender procedures (auctions and tenders). It allowed bidders to review offers from other bidders *before* submitting their own final bid documents. Suppliers can change the documents in their offers after tender commissions issue preliminary qualification protocols. Protocols detail the reasons for the disqualification of each supplier. Disqualified suppliers have then three days after preliminary qualification to re-submit improved their offer, e.g. by submitting missing documents and certificates or redrafting the documents in their offers (Figure 3.6). Given access to all documents in their competitors' offers while they could still re-submit their own, disqualified suppliers often used to copy elements from their competitors, including technical characteristics of products, in their own final offer.

Figure 3.6. Timeline of tender submission processes

Note: This timelines apply to open tenders (Rus. Конкурсы) and auctions (Rus. Аукционы) in Kazakhstan.

Source: Article 25 and 27 of the PPL, Points 86 to 141 of the Government procurement Rules.

The December 2018 amendments removed this loophole by changing the stage when bidders can access and review offers from other bidders. Indeed, the updated PPL (Article 24) grants such an access only at the final qualification stage (i.e. when bidders can no longer re-submit, see Figure 3.6), solely to bidders having paid the tender’s performance bond (1% of the planned budget for the contract). Removing this loophole will affect positively the efficiency and the integrity of public tender processes in Kazakhstan.

Suppliers also report that the reciprocal transparency of documents in offers often leads to the disclosure of commercially sensitive or confidential information (such as internal financial documents) to competitors. According to stakeholders, some bidders on the e-procurement system are shell companies, i.e. companies that do not conduct any actual business and therefore are not participating in the tender because of the business opportunity, but rather to access sensitive information in the bidding documents of competitors.

The OECD Recommendation on Public Procurement (Principle on transparency) highlights that transparency must “take into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid information that can be used by interested suppliers to distort competition in the procurement process”(Box 3.2). Indeed, sharing commercially sensitive information such as pricing models and profit margins can discourage businesses from participating in public procurement. According to the OECD Competition Committee, disclosing such commercially sensitive information can also facilitate collusion or bid-rigging between bidders (OECD, 2016^[9]).

Therefore, to avoid disclosure of commercially sensitive information to competitors, the Ministry of Finance could consider making the most sensitive documents in their offers available only to contracting authorities, tender commissions and auditors. Such sensitive or confidential information would no longer be available to other suppliers through the e-procurement system. There are several options available: the Ministry of Finance could set up a list of such commercially sensitive or confidential documents for which access through the e-procurement system would be restricted. Alternatively, the e-procurement system could include a tool allowing the bidders themselves to mark confidential information contained in the bids. The regulatory framework needs to be revised accordingly to introduce confidentiality provisions and appropriate procedures to manage specific confidentiality clause.

Preliminary discussion of technical specifications in tenders

Kazakhstan's e-procurement system has a dedicated mechanism to make sure that suppliers have opportunities to provide feedback regarding technical specifications of tenders and auctions. After procurement organisers publish tender notices on the e-procurement system, suppliers have five days to analyse technical specifications and submit comments or request clarifications from contracting authorities (see timeline on Figure 3.6). Contracting authorities then have five days to provide clarifications or to amend technical specifications if necessary. Clarifications and amended technical specifications are accessible to all registered suppliers through the e-procurement system. This “preliminary discussion of technical specifications” (Rus. Предварительное обсуждение проекта конкурсной документации) has proven popular with bidders, who submitted 19 000 remarks and requests for clarifications in 2017. Approximately 11 000 of these remarks and requests led to a revision of technical specifications prior to the opening of the submission period. According to the Ministry of Finance, in 2016 contracting authorities revised 53% of all technical specifications for which suppliers submitted remarks regarding excessive or unachievable requirements.

Preliminary discussion of technical specifications has become one of the main avenues for contracting authorities to engage with suppliers, with the Ministry of Finance considering this a useful mechanism to increase the quality of technical specifications of tenders. This mechanism is in line with the OECD Recommendation on Public Procurement. Its Principle on participation highlights that “*effective communication should be conducted to provide vendors with a better understanding of the country's needs, and government buyers with information to develop more realistic and effective tender specifications by better understanding market capabilities*” (OECD, 2015^[3]).

The December 2018 amendments created a link between the e-complaint mechanism and the preliminary discussion of technical specifications, which takes place before the bid submission period (see timeline on Figure 3.6). In order to be entitled to file a complaint regarding any provision of technical specifications after bid opening, suppliers need to have submitted comments on these provisions during the preliminary discussion of technical specifications. Suppliers who did not comment on specific provisions of technical specifications cannot file complaints regarding these provisions after the contract award.

This reform makes the preliminary discussion of technical specifications central in enabling bidders to challenge flawed technical specifications. According to the Committee on Internal State Audit, the most common violations and irregularities in procurement processes are technical specifications that artificially exclude some suppliers from the bidding process. Therefore, it is paramount that suppliers have enough time to identify excessive or biased requirements in technical specifications during the preliminary discussion stage, and submit the corresponding comments. The period of five days after the publication of procurement notices is too short to allow for an adequate analysis of complex technical specifications and the drafting of comments.

Kazakhstan could extend the period for suppliers to submit comments and requests for clarifications to at least 10 days. Such an extension is all the more important after the limitation on complaints after contract award, in order to give more time for a meaningful preliminary discussion of technical specifications. It would also give more time to suppliers to prepare their bids: as mentioned in Chapter 2, the minimal submission period in Kazakhstan is short compared to good practices in several OECD countries.

Introducing prequalification of suppliers

The PPL also includes a separate category on public tender with prequalification, although it is not used in practice. The December 2018 amendments establish that a single qualification body will be in charge preselecting suppliers for public tenders with pre-qualification. According to the Ministry of Finance, this mechanism would be modelled after the prequalification of suppliers currently in force in Samruk-Kazyna, which aims at improving the performance of suppliers. Chapter 6 provides a description of the

prequalification of suppliers in Samruk-Kazyna. It entails a questionnaire and a risk based audit depending on the complexity of the procurement. While in Samruk-Kazyna prequalification covers 9 000 items, the Ministry of Finance plans to introduce pre-qualification to the public procurement system regarding around 150 items, mostly related to construction works.

In order to ensure transparency of the pre-qualification mechanism, it would be advisable to disclose all prequalification requirements suppliers have to comply with online with a link and references on the government e-procurement system. Training videos, questions and answers (Q&A) would also be useful to inform suppliers about each step of the pre-qualification mechanism. The time allotted for suppliers to respond should be proportionate to the extent and complexity of the information they have to provide in order to prequalify. In order to ensure an equal treatment of all bidders and to maximise supplier's participation in public procurement, information about an upcoming opportunity to participate in pre-qualification should be widely available before the pre-qualification actually enters into force.

3.2.3. Pursue integration with other Government IT systems

Integrating public procurement with public finance management, budgeting and service delivery systems can lead to greater effectiveness in public resource utilisation. These benefits come from various channels: improved information transmission, timeliness of information and enhanced data quality, improved accountability through stronger potential for control; and efficient management, since automation and standardisation do reduce redundant and unnecessary tasks and activities. Recognising the aforementioned potential benefits, the OECD Recommendation on Public Procurement underscores the importance of integration of public procurement with public finance management. (OECD, 2015^[31])

In line with the OECD Recommendation on Public Procurement, Kazakhstan's e-procurement system is already integrated with several other government IT systems, though the degree of integration differs. The most significant integration are automated checks on suppliers. The e-procurement system automatically checks suppliers against various registers of companies and/or individuals to make sure that suppliers are solvent, do not have tax arrears and are not on a List of Unreliable Suppliers ("blacklist")(Chapter 4 of the report). Regarding budget planning, it is not clear whether there is a real integration of budget IT tools with the e-procurement system. State entities prepare procurement plans based on their draft budget in November-December for the following year, and publish them once Parliament approves the final budget at the end of December. One challenge for OECD countries includes integrating e-procurement systems into other government IT platforms. According to an OECD survey, 60% of e-procurement systems are not integrated with other e-Government digital solutions such as budgeting, business and tax registries, social security databases, financial systems for payments or Enterprise Resource Planning systems. (OECD, 2016^[31])

However, many OECD countries are now evolving towards more integration of their e-procurement system with a goal of achieving a fully integrated, end-to-end procurement system. Korea's KONEPS e-procurement system is an example of successful integration of an e-procurement system with many other public and private sector IT Systems (Box 3.4). Moreover, Korea measured savings focusing on the amount of public and private funds saved thanks to integration, demonstrating the potential benefits of further integration of government IT Systems with e-procurement systems.

Kazakhstan plans further integration of its e-procurement system with an external, inter-agency IT system.

Box 3.4. Greater efficiency and reduced costs through data connections in KONEPS

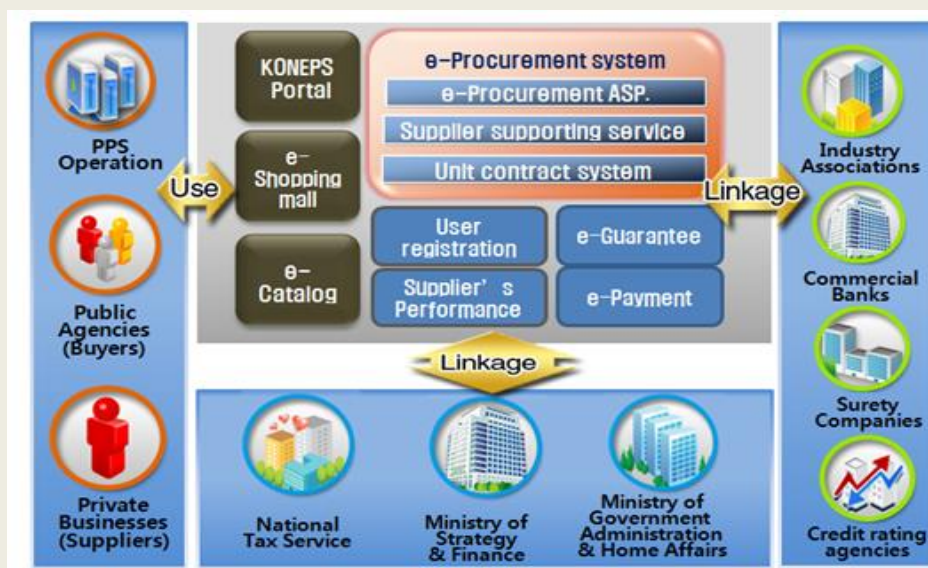
KONEPS (Korea Online E-procurement System) is interconnected with over 160 diverse electronic systems, both within and outside the government's reach. This resulted in increased efficiency, reduced duplication and cost savings. A study conducted by Hanyang University in 2009 indicates that these changes led to an estimated USD 8 billion in annual transaction-cost savings. Out of this, around 16% of savings (USD 1.3 billion) accrued to the public sector, thanks to reduced labour and processing time. The rest of the savings accrued to suppliers and account for reduced costs in obtaining certificates, proof documents, and registering or updating accounts in multiple systems.

Businesses are able to participate in biddings after a one-time registration with KONEPS: users save their documents and certificates on the system to be automatically retrieved by KONEPS for future biddings. Otherwise, KONEPS extracts documents and certificates from other government IT Systems through data exchange interfaces. For instance, business registration certificates and tax payment certificates are transmitted through appropriate data exchange interfaces.

Connection with 19 surety companies allows for automated verification of 4 types of sureties, including bid bonds and performance bonds. Interfaces with 12 private sector associations and 9 credit ratings companies allows for the automatic collection of credit and past performance data, which is used to verify qualifications and evaluate bids. Fifteen commercial banks are connected for e-payment through electronic funds transfer, and for processing loans that are available to support government contract holders.

Because of this integration, 477 document forms used in public procurement including bid forms, contract forms, inspection requests and payment requests have all been converted to digital equivalents. Moreover, for construction work tenders, bidders are no longer required to submit certificates on their experience, because data is electronically collected through data interchange with databases of construction industry associations.

Figure 3.7. The KONEPS E-procurement process



Source: (OECD, 2016_[10]).

An electronic portal providing a single access point to procurement opportunities is under development by the National Chamber of Entrepreneurs (“Atameken”). The access point is expected to be a modular system that aggregates all procurement notices and opportunities from the government e-procurement system, Samruk-Kazyna’s e-procurement system, as well as other national holdings and companies. It is intended to function as an aggregator providing access to procurement opportunities from a single website, with a link to each platform for bid submission. While private-sector tender aggregators already exist, the access point would be free and therefore enhance the access of SMEs to procurement opportunities from the government procurement system and national holdings and companies. In order to maximise its effect, the access point could provide registered suppliers with RSS feeds or email alerts on newly published tender notices in their business area and in their regions.

Kazakhstan could further integrate its e-procurement system with other government IT information systems, and consider setting up data exchange interfaces with private sector IT platforms or data systems. One priority area would be to develop inter-operability and data exchange interfaces between the e-procurement system and the national tax system. This could help identify shell companies that did not actually pay any tax (no genuine economic activity). The Ministry of Finance could consider excluding such companies from the most complex and the largest tenders, for instance as part of the prequalification procedure for construction works. However, the Ministry needs to balance the efficiency benefits of eliminating bidders without previous economic activity (and potential spurious bidders) and the need to grant reasonable access of new entrants and SMEs to public procurement opportunities. Moreover, the Ministry needs to set up adequate safeguards to ensure data privacy (i.e. for instance, restrict procurement officer’s access to tax records data to the minimum necessary so that they can enforce applicable regulations). Such safeguard is necessary to minimise the risk the inappropriate use of the data.

Appropriate data exchange interfaces could also help streamlining other tasks of the e-procurement system, such as assessing the completeness of procurement plans. An automated review of procurement plans against the budget would require data exchange between the e-procurement system and the budget planning systems of the Ministry of Finance and/or of contracting authorities.

The Ministry of Finance could also simplify the calculation of the number of years of experience of suppliers for establishing conditional discounts (see Chapter 2). Procurement officers report that determining the years of experience of a potential supplier is a cumbersome process and that the complexity of the rules allow for different interpretations. Kazakhstan could explore the computation of supplier experience to determine conditional discounts through automated data exchange with relevant business associations. Korea’s public e-procurement system (KONEPS) offers such a functionality through data exchange with business associations from the construction industry (Figure 3.7).

3.3. The e-procurement system provides opportunities to strengthen evaluation and performance management

The 2015 OECD Recommendation on Public Procurement encourages countries “*to drive performance improvements through evaluation of the effectiveness of the public procurement system*” (Box 3.5). Such evaluation is highly dependent on the availability of reliable and up-to-date procurement data at all levels: contract management, contracting authority and national level (performance of the public procurement system as a whole). When aggregated and developed into performance indicators, such data can support substantial reforms to increase efficiency and eliminate waste.

Box 3.5. OECD Recommendation on evaluation

X. RECOMMENDS that Adherents drive performance improvements through evaluation of the effectiveness of the public procurement system from individual procurements to the system as a whole, at all levels of government where feasible and appropriate. To this end, Adherents should:

- i) Assess periodically and consistently the results of the procurement process. Public procurement systems should **collect consistent, up-to-date and reliable information** and **use data on prior procurements**, particularly regarding price and overall costs, **in structuring new needs assessments, as they provide a valuable source of insight** and could guide future procurement decisions.
- ii) Develop **indicators to measure performance, effectiveness and savings of the public procurement system** for benchmarking and to support strategic policy making on public procurement.

Source: OECD (2015^[31]) OECD Recommendation of the Council on Public Procurement”, www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf.

As mentioned earlier in this chapter (section 3.2.1.), in Kazakhstan the collection of aggregated procurement data is insufficient for meaningful performance assessment at the contracting authority and national levels. Nonetheless, the Ministry of Finance periodically collects limited aggregated data and computes some performance indicators on an *ad hoc* basis. Overall, the Ministry or other government entities do not seem to conduct evidence-based, systematic performance evaluation of public procurement. One exception is the price module, an analytical tool available on the e-procurement system that contracting authorities use to inform their budget planning process.

3.3.1. Monitoring key performance indicators to provide strategic guidance of the e-procurement system

The 2015 OECD Recommendation of the Council on Public Procurement calls on OECD countries to develop indicators to measure the performance, effectiveness and savings of the public procurement system to support strategic policy making on public procurement. In Kazakhstan, the existence of a centralised, mandatory e-procurement system and the wide coverage of electronic procedures create favourable conditions for collecting more consistent, up-to-date and reliable data on procurement processes.

Such data is indispensable to measure performance through the development and deployment of procurement metrics and indicators. Indicators of this sort provide insights into trends over time, for instance regarding market changes that call for new procurement approaches. If combined with better integration of various existing data systems, as recommended above, such indicators allow for the comparison of performance across different contracting authorities or different regions (*oblasts*), eventually driving improved performance by sharing best practices. It would also provide a mechanism to detect inefficient practices, irregularities and fraud.

Kazakhstan already monitors a few performance indicators on an ad hoc basis

In line with best practices from OECD countries, Kazakhstan already collects and computes a few performance indicators concerning public procurement. However, the Ministry of Finance computes such indicators in a centralised manner on an *ad hoc* basis, i.e. to contribute to documents such as the Ministry of Finance’s strategic plan or to speeches and presentations by high-level officials. It is unclear whether these performance indicators are used to benchmark the performance of contracting authorities or of the

public procurement system as whole, and to what extent performance is measured against predefined targets. Table 3.3 details the main performance indicators that the Ministry of Finance puts forward in analytical documents regarding the e-procurement system.

Table 3.3. Main performance indicators for public procurement in Kazakhstan

Aspect of public procurement	Performance indicator	Year	Value
Level of competition	Average number of bidders	2016	Tender: 4 Request for quotations/auction: 3
Efficiency	Budget savings (or conditional savings)	2017	KZT 2019 billion
Level of competition	Share of failed competitive procedures	2017	63%
Feedback from suppliers	Share of revised technical specifications following remarks by suppliers (during preliminary discussion)	2017	53%
Risk management	Share of purchases with irregularities (desk review)	2016	20%

Note: Failed competitive bidding means a competitive procedure with no or a single bidder. This entitles contracting authorities to resort to direct award (direct award after failed public tender).

"Share of revised technical specifications following remarks by suppliers" refers to preliminary discussion of technical specifications in tenders. Another associated key indicator could be the share of technical specifications for which suppliers submitted remarks.

Budget savings (or conditional savings) is the difference between the budgeted amount for a specific procurement and the actual amount in the procurement contract. It is measured for each procurement purchase and then aggregated for the public procurement system as a whole.

Sources: Strategic plan of the Ministry of Finance for 2017-2021, External analysis of corruption risks in public procurement (2017), Ministry of Finance.

Beyond the share of failed competitive bidding (Table 3.3), the Ministry of Finance could monitor other indicators regarding exceptions to competitive biddings. The percentage of direct award purchases as a share of overall purchases is an important indicator of the coverage of competitive procedures. The same applies for the number of procedures using the direct award method as a share of overall procurement value. A breakdown of direct award procurements into direct award based on exceptions (exceptions to competitive procedures as per article 39 point 3 of the PPL) and direct award after failed public tender brings valuable additional information, as demonstrated in Chapter 2 of this report.

Overall, Kazakhstan would need to define a comprehensive set of key performance indicators (KPIs) regarding each aspect of its public procurement system and closely monitor them on a regular basis. The Ministry of Finance would need to track and report these KPIs in a systematic, structured manner, as official indicators of public procurement performance. Since one of the main issues of public procurement in Kazakhstan is the high share of non-competitive procurement procedures, monitoring performance indicators related to the level of competition and the coverage of exceptions to competitive tendering would be a priority. The Ministry could also develop indicators regarding supplier performance and payment delays thanks to the supplier database suggested in the next section (3.3.2).

These indicators could be published annually as part of the annual statistical report on the government e-procurement system suggested in section 3.2.1. The same indicators could also be a valuable tool to benchmark the performance of the procurement function of contracting authorities and government agencies both at the central level and at the level of regional and local administrations.

Best practices from OECD countries regarding performance indicators in public procurement

Performance indicators rely on up-to-date and reliable data on prior procurements. These indicators are at an early stage of development in many OECD countries. Many countries focus on indicators measuring efficiency, i.e. the proportionality between, on the one hand, the costs and time requirements for each public procurement procedure and, on the other hand, the value of the contract. (OECD, 2016^[5]).

There is no unique methodology to measure savings in public procurement. Turkey measures savings the same way as Kazakhstan, i.e. as the ratio of contract value to estimated cost (or budgeted amount for the purchase). Chile measures savings as the difference between the average value of bids received in each process and the value of the awarded bid. Greece has a business intelligence module that generates market prices that allow for a benchmark of prices resulting from tenders. Along with savings from the tendering process itself, Portugal measures efficiency generated by aggregating purchases (OECD, 2016^[5]). This would be a good practice for Kazakhstan, since it plans to introduce for aggregated purchases by single organisers as part of the current reform of the government procurement system.

As part of its e-procurement system SECOP II, Colombia recognised the importance of developing key performance indicators derived from data provided by its e-procurement system. The central procurement body *Colombia Compra Eficiente* identified and defined eleven key indicators across four areas, and assessed baseline values regarding the overall public procurement system for year 2014. The six most relevant performance indicators for Kazakhstan are presented in Table 3.4. Each indicator has a baseline value for the previous year and *Colombia Compra Eficiente* systematically develops target values for the years to come. Some of these KPIs could be a source of inspiration for the Ministry of Finance, particularly the percentage of contracts with modification of time or value or the average time of the selection process.

Table 3.4. Key procurement indicators of *Colombia Compra Eficiente*

Value for money		
Average time of the selection process	Period of time between the beginning of the procurement process and contract signature	Open tender: 37 days Direct contracting: 26 days
Integrity and transparency in competition		
Average of new suppliers	Percentage of new suppliers in a public entity (New suppliers/Number of suppliers during previous year)	24.1%
Concentration of the contracts' value by contractor	Concentration of a public entity's procurement budget by supplier measured by the Gini coefficient	0.638
Percentage of contracts awarded to plural bidders	Frequency of awarded contracts to plural bidders by a public entity	10%
Percentage of contracts awarded in non-competitive processes	Percentage of public contracting that is done under non-competitive processes	38.5%
Risk management		
Percentage of contracts with modifications in time and/or value	Proportion of contracts modified as regards contract value or contract execution time	23%

Sources: Adapted from Box 1.6 in (OECD, 2016^[11]).

Colombia's KPIs are consistent with the efforts of other OECD countries to develop performance indicators for public procurement.

The Methodology for Assessing Procurement Systems (MAPS) is a universal tool that aims to catalyse and accelerate the implementation of modern, efficient, sustainable and more inclusive public procurement systems in all countries. MAPS contains a number of quantitative indicators. Box 3.6 presents key indicators in four areas that might be relevant for Kazakhstan, particularly regarding contract management and payment.

Box 3.6. Key procurement indicators from MAPS

Suppliers

- Number of registered suppliers as a share of total number of suppliers in the country (in %)
- Share of registered suppliers that are awarded public contracts (in % of total number of registered suppliers)
- Total number and value of contracts awarded to domestic/foreign firms (and in % of total)

Audit and risk management

- Number of training courses conducted to train internal and external auditors in public procurement audits
- Share of auditors trained in public procurement (in % of total number of auditors)
- Share of internal and external audit recommendations implemented within the time frames established in the law (in %)

Competition and Submission of bids

- Value of contracts awarded through competitive methods (most recent fiscal year)
- Average time to procure goods, works and services: number of days between advertisement/solicitation and contract signature (for each procurement method)

Contract management and payment

- Time overruns (in %; and average delay in days)
- Contract amendments (in % of total number of contracts; average increase of contract value in %)
- Quality-control measures and final acceptance is carried out as stipulated in the contract (in %)
- Invoices paid on time (in %).

Source: Methodology for Assessing Procurement Systems, 2018.

Australia's National Audit office developed guidelines on Key Performance Indicators in Public Procurement, which can also be a source of inspiration for Kazakhstan (Box 3.7), particularly concerning indicators focusing on the contract management phase of the procurement cycle (Delivery, customer service, product in Box 3.7).

Box 3.7. Establishing good key performance indicators for procurement

In order to be useful tools to benchmark performance, good key performance indicators must possess some fundamental qualities.

- Relevant, i.e. linked to key objectives of the organisation (critical outcomes or risks to be avoided), rather than on process.
- Clear, i.e. spelled out as simple as possible to ensure common understanding
- Measurable and objective, i.e. expressed on pre-determined measures and formulas, and based on simple data that can be gathered objectively and in a cost-effective manner.
- Achievable, i.e. realistic and compatible with existing regulations/constraints
- Limited, i.e. as few as required to achieve the objectives while minimising their disadvantages (costs, efforts). To the extent possible, they should rely on information and documentation already available on the e-procurement system.
- Timed, i.e. include specific timeframes for completion.

Procurement key performance indicators can also be established to manage the performance of suppliers. While a wide variety of dimensions of supplier performance can be considered, the following ones may be appropriate:

- Delivery, i.e. whether the supplier delivers on time, delivers the right items and quantities, provides accurate documentation and information, responds to emergency delivery requirements, etc.
- Pricing: competitiveness, price stability, volume or other discounts, etc.
- Customer service: number of product shortages due to the supplier, training provided on equipment and products, warranty services, administrative efficiency (including order acknowledgement and accurate invoice), etc.
- Product: meets specifications (including percentage of rejects/defects), reliability/durability under usage, packaging, quality and availability of documentation and technical manuals, etc.

Finally, key performance indicators should ideally be monitored on the same frequency, ideally quarterly or at least annually.

Source: (Australian National Audit Office, 2011^[12]).

3.3.2. Using data on past procurements to inform future budgeting and procurement decisions

Kazakhstan's e-procurement system and the existence of e-contracts enabled data collection about the prices of purchases. This enabled the development of a price module on the government e-procurement system. The module reports standardised data on average, maximal and minimal prices for goods, works and services procured through the government e-procurement system after 2016. For instance, Table 3.5 shows the output of the price module for the most popular car with contracting authorities in 2017, for Kazakhstan as a whole. The price module reveals large differences in purchasing prices for the same category of cars. Part of it may be related to different automotive brands that all fall under the same category in the public procurement nomenclature.

Table 3.5. Price module output (KZT) for year 2017

Passenger car (European class: C). Manual transmission, engine volume up to 2000 CC, power steering, air conditioning, airbags

Nomenclature code	Name	Quantity	PLANNED PRICE			PRICE OF ACQUISITION		
			Minimal	Average	Maximal	Minimal	Average	Maximal
29.10.22.300.000.0796.02	Passenger car	1 296	KZT 863 101	KZT 4 497 535	KZT 15 178 571	KZT 2 345 536	KZT 4 311 225	KZT 14 687 500

Note: This table is based on the nomenclature codes from Kazakhstan's unified nomenclature guide of products, services and goods, which contains 30 numbers.

Source: Price module of the government e-procurement system, available at <http://portal.goszakup.gov.kz/portal/index.php/ru/pricereport/report1>

The module entails a search function, making it possible to consult prices for a single region or for a single contracting authority and to combine these different search criteria. The Ministry of Finance sees the price module as a precious tool to tackle the issue of public procurement purchases with artificially inflated prices, as they could be the result of breaches of integrity or corruption schemes involving suppliers and contracting authorities.

Contracting authorities use the price module for market research and budget planning purposes. The government e-procurement system does not have any other market research or business intelligence module. Contracting authorities complement data from the price module with online research and/or consultations with potential suppliers.

The price module is a good example of systematic and aggregated data collection on Kazakhstan's government e-procurement system. Kazakhstan could collect more procurement data to set the foundation for evidence-based performance assessments of public procurement. For instance, collecting and structuring data on supplier performance has the potential to improve supplier compliance with contract obligations and reduce the waste of public funds related to inadequate suppliers.

Kazakhstan maintains a register of suppliers on its e-procurement system. This register provides basic information about a given supplier, such as its address or its tax registration number. However, the database contains no information about suppliers' activities, past experiences or past performance in public procurement contracts. Currently, the only input about past performance of potential suppliers available to contracting authorities and tender commissions is the black list (officially "list of unscrupulous suppliers"). Chapter 4 discusses the debarment process in details. The e-procurement system automatically excludes debarred suppliers from bidding to any public procurement during 24 months.

Kazakhstan could consider setting up a more detailed supplier database that would be available for contracting authorities, single organisers and auditors. Such supplier database would contain data regarding suppliers' activities, experience (at least regarding public procurement contracts) and past performance, as well as financial and tax information from data exchange with the IT financial system of the Committee on State Revenue (Tax Authorities). The Past Performance Information Retrieval System (PPIRS) and the Federal Awardee Performance and Integrity Information System (FAPIIS) databases accessible to US Procurement officers in the United States could provide examples of how to track and use supplier performance information (Box 3.8).

Box 3.8. Supplier performance information in the United States

In working to build supplier relationships, the United States focuses on doing business with contractors who place a premium on integrity, performance and quality. To this end, government agencies have been directed to improve the quantity, quality, and utilisation of supplier performance information through the use of two systems.

Supplier past performance information including an identification and description of the relevant contract, ratings across six dimensions (quality, schedule, cost, utilisation of small business, etc.), and a narrative for each rating is contained within the Past Performance Information Retrieval System (PPIRS, www.ppirs.gov). Government agencies are required to report past performance information on this system, which will then be available to other contracting officers within PPIRS, on all contracts and orders above USD 150 000.

This web-based, government-wide application provides timely and pertinent information on a contractor's past performance to the federal acquisition community for making source selection decisions. PPIRS provides a query capability for authorised users to retrieve report card information detailing a contractor's past performance. Federal regulations require that customers complete report cards annually during the life of the contract. The PPIRS consists of several sub-systems and databases (e.g. Contractor Performance System, Past Performance Data Base, and Construction Contractor Appraisal Support System).

Additional information regarding certain business integrity issues, including contracts terminated for default or cause, information about criminal, civil, or administrative procedures related to a federal contract; and prior findings that a contractor is not responsible, is captured in the Federal Awardee Performance and Integrity Information System (FAPIIS). Agencies are taking steps to improve the value of both systems by providing information that is both more complete and more useful.

Source: (Office of Federal Procurement Policy, 2013^[13]).

Such a database could guide the choice of contracting authorities regarding direct award procurement while potentially increasing competition and reducing the risks of integrity breaches. Contracting authorities would have access to a wide pool of registered suppliers with detailed information allowing them to make an informed judgment. Moreover, such a detailed supplier database would simplify the process for determining (computing, in fact) bidders' past experience.

3.3.3. Making better use of e-procurement to implement Kazakhstan's procurement strategy

Kazakhstan has an advanced public e-procurement system, which offers functionalities that cover almost the entire procurement cycle, as recommended by the OECD Recommendation on Public Procurement. Nonetheless, benefits from e-procurement are usually a result of better management and co-ordination facilitated by technology, rather than technology *per se* (Asian Development Bank, 2013^[14]). E-procurement can play a significant role in public procurement reform, but it will not necessarily remedy poor procurement practice and it may not solve underlying problems in public procurement operations. Poor practices can easily be perpetuated through e-procurement (OECD, 2011^[15]).

In order to make the most of e-procurement, Kazakhstan could develop new procurement functionalities to support the ongoing modernisation and centralisation of its procurement system. In Kazakhstan, e-procurement has the potential to drive the modernisation of public procurement in at least 3 areas:

- **Consolidation of purchases:** As detailed in Chapter 1, Kazakhstan reformed its public procurement regulations to allow central procurement entities to consolidate purchases of homogeneous goods, works and services from different contracting authorities. The December 2018 amendments entitle the Ministry of Finance to define the exact goods, services and works to be procured through central procurement entities. This would provide for the reduction of the number of public procurement procedures and therefore drive cost-savings on par with the gradual centralisation of the public procurement system (Chapter 1).
- To define the exact goods, services and works whose procurement will be centralised, the Ministry of Finance could undertake a systematic and automated analysis of procurement plans based on its unified nomenclature of goods, services and works ENS-TRU (Russian : EHC-TPY).
- **One-time registration of suppliers:** Suppliers could save all their documents and certificates on the system to be automatically retrieved in future biddings, eliminating the need to submit documents and certifications for every new bid submission. Such a system already exists for suppliers on the Korean e-procurement system KONEPS (Box 3.4 above). In the EU, a similar one-time registration system entered into force along with the transition to mandatory e-submission of bids in November 2018, as stipulated in [EU Directive 2014/24/EU](#).
- **Development of standard technical specifications:** As mentioned in Chapter 1, the Ministry of Finance plans to develop a catalogue of standard technical specifications in 2019. Standard technical specifications are one of the keys to aggregated purchases since they will make it easier for central procuring entities to aggregate homogeneous lots from different contracting authorities. In this regard, it is important that they are available to contracting authorities on the e-procurement system.

Until now, Kazakhstan has focused its efforts on transitioning from paper-based procurement to e-procurement and using e-procurement to streamline pre-existing procedures and increase transparency. The ongoing reform of the public procurement system offers an occasion to build on the existing e-procurement system and the procurement data it collects to improve the efficiency and the transparency of the procurement system, and to strengthen the performance evaluation of each purchase, of contracting authorities and of the public procurement system as a whole. The centralisation of e-procurement will be a success only if it is conceived and implemented with due account of the opportunities offered by e-procurement.

Proposals for action

The updated e-procurement system launched in 2016 along with the PPL brought more transparency to public procurement in Kazakhstan. It also made available useful new functionalities, such as the Preliminary discussion of technical specifications in open tenders or the e-complaint module available from the beginning of 2018. The e-procurement system can be a tool for further improvement of public procurement in Kazakhstan.

The Ministry of Finance could address certain drawbacks regarding transparency in open tenders, such as excessive transparency in the reciprocal review of offers from other bidders, or the short bid submission period. More and better consolidated data concerning the public procurement system as a whole could be disclosed on the e-procurement system in a machine-readable format. This would contribute to reducing corruption risks and bring more transparency to the system, for the benefit of interested third parties (journalists, CSOs, etc.) The Ministry could also make a better use of procurement data to monitor performance of suppliers, contracting authorities and conduct evidence-based evaluation of the procurement system as a whole.

Using digital technologies to increase transparency and integrate Goszakup with other government IT systems

- The Ministry of Finance could consider restricting access to the most sensitive information. What kind of information or documents should be confidential could be considered in cooperation with the suppliers' community. Possible documents and information could include business secrets or financial information that is not publically available. Another option is that the e-procurement system could include a tool allowing the bidders themselves to mark confidential information contained in the bids. Upon review, such information could be made accessible only to contracting authorities, tender commissions and state auditors. The public procurement regulatory framework needs to be revised accordingly to introduce confidentiality provisions and appropriate procedures to manage specific confidentiality clause.
- In undertaking further reforms of the e-procurement system, and considering the pending accession process to the Agreement on Government Procurement (GPA), Kazakhstan could consider implicit technical barriers to access and participation by non-resident bidders. Further improvements could aim at removing existing barriers to facilitate access to the largest number of potential suppliers in order to maximise competition and value for money for Kazakhstan's citizens. Innovations to the e-procurement system could be vetted from this angle, ensuring that no additional barriers are introduced.
- For complex procurements, Kazakhstan could extend the period for suppliers to submit comments and requests for clarifications in the preliminary discussion of technical specifications to at least ten days (instead of five days now) to ensure potential suppliers understand the tender and can prepare adequate bids.
- In a similar vein, data related to public tenders with prequalification should be published once prequalification is implemented. In addition, to ensure transparency of the pre-qualification mechanism, it would be advisable to disclose all prequalification requirements suppliers have to comply with on a single web-portal, easily accessible from the e-procurement system. Information about upcoming opportunities to participate in pre-qualification could be accessible a few months before pre-qualification actually enters into force.
- The Ministry of Finance could further integrate the e-procurement system with other government IT information systems, and consider setting up data exchange interfaces with private sector IT platforms or data systems. One priority area would be to develop inter-operability between the

e-procurement system and the national tax system to detect shell companies without genuine business activity on the e-procurement system.

- The Ministry of Finance could set up an electronic depository on the e-procurement system, providing for one-time registration of suppliers, i.e. all suppliers' documents and certificates would be stored electronically and retrieved by the system in all future bids by the same supplier.

The e-procurement system provides opportunities to strengthen evaluation and performance management

- The Ministry of Finance could define a comprehensive set of key performance indicators (KPIs) regarding different aspects of the public procurement system. The Ministry could monitor them in a systematic, structured manner. These KPIs would cover several phases of the procurement cycle, including contract management (supplier performance, payments time, modification of contracts after signature). In addition, the Ministry could publish these KPIs annually as part of an annual statistical report on public procurement.
- The Ministry of Finance could collect and monitor indicators regarding the level of competition in public procurement, including the percentage of direct award procurement both as a share of procurement purchases and as a share of overall procurement volumes, the average number of responsive bids per public tender, etc. The Ministry of Finance could set up a detailed supplier database regarding suppliers' activities, experience (at least regarding public procurement contracts) and past performance, as well as financial and tax information from data exchange with the IT financial system of the Committee on State Revenue (Tax Authorities). This database should be available to tender commissions and procurement officers. Such a registry could also provide an opportunity to consolidate and store information that is supplied by bidders repeatedly.
- The Ministry of Finance could publish an annual statistical report on public procurement using the data gathered through the e-procurement system. The report is recommended to include aggregate statistics of the public procurement system and selected performance indicators. To improve public access to public procurement data, a download option should provide access data from the report in machine-reading format, and cover issues such as the exceptions and complaints.

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Notes

¹ See EU Directive 2014/55/EU, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0055>

² Conditional savings are the difference between initially budgeted amount for the purchase and the final purchase amount. The Ministry of Finance uses it as one of the main performance indicators of the public procurement system.

³ See Québec's public procurement statistics, available at (in French) : https://www.tresor.gouv.qc.ca/nouvelles/?tx_ttnews%5Btt_news%5D=470&cHash=ad9e526b8a8537e59e7f18c566f0779a

⁴ <https://www.usaspending.gov/#/>

⁵ See a presentation of the standard on the OCP Website : <https://www.open-contracting.org/data-standard/>

⁶ See article "Aydin Rakhimbaev leads the ranking of the largest recipients of public procurement orders in Kazakhstan", *Forbes Kazakhstan*, available (In Russian) at : https://forbes.kz/leader/gosudarstvennyiy_zakaznik_2_1523606498

⁷ See *Chile Compra* analysis module : <http://www.analiza.cl/web/Modulos/Cubos/CubosOlap.aspx>

4 Managing risks and supporting accountability through the public procurement cycle in Kazakhstan

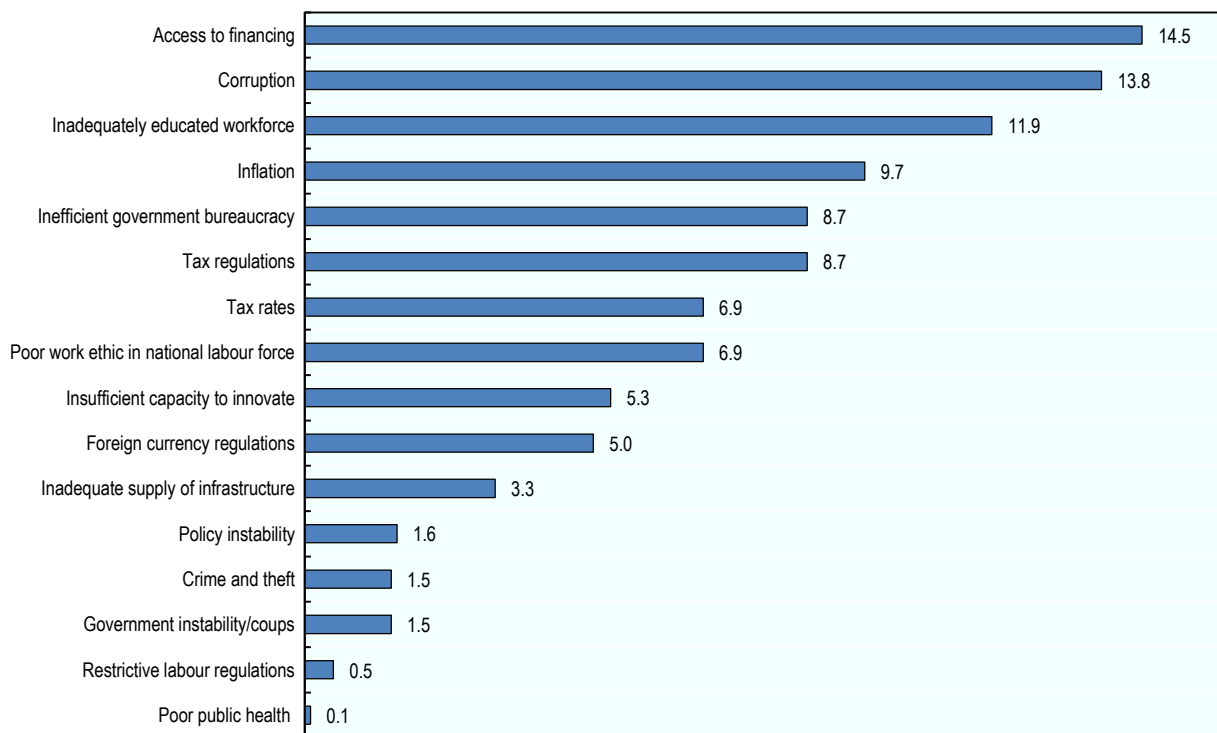
This chapter covers issues related to integrity in public procurement. It analyses the existing risk-based internal control procedures in place, and finds that while corruption risk assessments take place, the process could be integrated more effectively into everyday activities. Assessing the application of integrity standards to the procurement profession, this chapter finds that Kazakhstan could develop tailored integrity standards and training for the procurement workforce. Recognising the role of participation by external stakeholders to increase transparency and integrity, this chapter also finds that Kazakhstan could build on existing social control projects to institute a social witness programme. Kazakhstan has taken strides to broaden its complaints management system, and should now focus on ensuring it is efficient and effective.

4.1. Introduction

Addressing corruption is a national priority, with the Government of the Republic of Kazakhstan instituting a series of reforms and developing a number of tools over the past few years to facilitate change. Recently, a number of high-level officials have been prosecuted for corruption offences, showing a willingness by the state to bring to account corrupt actors (OECD, 2017^[1]). General society is slowly becoming more willing to participate in the fight against corruption, and the relationship between government and civil society organisations is improving (Shibutov et al., 2018^[2]). Taken together, these events demonstrate that the once taken-for-granted acceptance of corruption is under threat.

Nevertheless, challenges remain. While the Agency for Civil Service Affairs and Anti-Corruption has instituted a progressive corruption prevention policy, internal opposition to their efforts exist (Shibutov et al., 2018^[2]). Perceptions of corruption in society, while changing, are still high. Indeed, on a scale of 0-100 (0 being “highly corrupt”, 100 being “very clean”), Kazakhstan scored 31 in the 2017 Corruption Perceptions Index (in comparison, Kazakhstan scored 29 in 2016, 28 in 2015). Amongst the business community exclusively, corruption is identified as the second most problematic factor for doing business (see Figure 4.1).

Figure 4.1. Most problematic factors for doing business



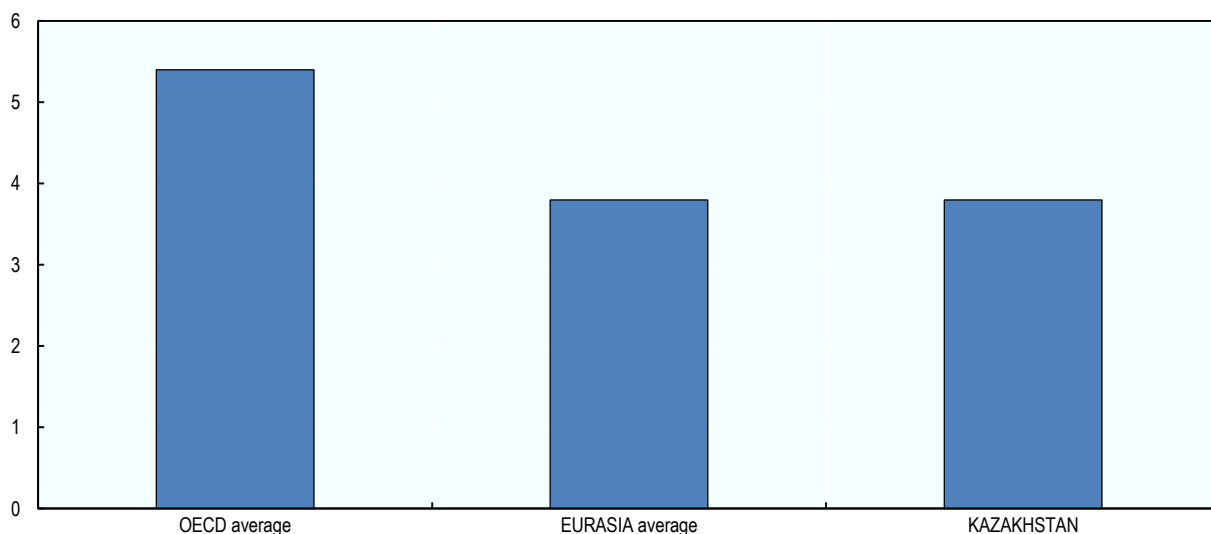
Note: From the list of factors, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

Source: World Economic Forum, Global Competitiveness Index 2017-2018, <http://reports.weforum.org/global-competitiveness-index-2017-2018/countryeconomy-profiles/#economy=KAZ>.

The procurement sector is particularly at risk, with the large share of public resources and the close interaction between public officials and the private sector. Indeed, public procurement is particularly vulnerable to mismanagement, fraud and corruption, which can occur across all phases of the public

procurement cycle. Figure 4.2 details perceptions of how common undocumented payments or bribes are given, with a focus on five activities: (a) imports and exports; (b) public utilities; (c) annual tax payments; (d) awarding of public contracts and licences; and (e) obtaining favourable judicial decisions. With an average score of 1 corresponding to “very common” and 7 corresponding to “never occurs”, Kazakhstan’s average score of 3.8 places it well below the OECD average of 5.4. Moreover, it highlights that undocumented payments and bribes continue to be an issue across key sectors, including procurement.

Figure 4.2. Perceptions of irregular payments and bribes across key sectors



Note: Average score across the five components of the following Executive Opinion Survey question: In your country, how common is it for firms to make undocumented extra payments or bribes connected with (a) imports and exports; (b) public utilities; (c) annual tax payments; (d) awarding of public contracts and licenses; (e) obtaining favourable judicial decisions? In each case, the answer ranges from 1 [very common] to 7 [never occurs]

Source: World Economic Forum, Global Competitiveness Index 2017-2018 <http://reports.weforum.org/global-competitiveness-index-2017-2018/competitiveness-rankings/#series=BRIBEIDX>

Recent, high-level corruption scandals related to the public procurement process have raised government and public attention to corruption issues, and the Government of Kazakhstan is seeking support to address these issues. This chapter identifies a number of areas where the existing integrity strategy for procurement can improve. It does so by addressing: a) the need for a coherent and comprehensive integrity system in procurement, b) the role of risk-based internal control functions, c) the necessity of enhancing civil society’s role in overseeing the procurement process, and d) the need for effective complaints and sanctions. The OECD Recommendation on Public Procurement, particularly principle III), and the OECD Recommendation on Public Integrity provide the framework for analysis.

4.2. Developing a coherent and comprehensive integrity system

4.2.1. Elaborate a procurement-specific integrity strategy

Building a culture of integrity in public procurement requires going beyond reacting to specific cases of corruption, fraud and misuse. To do so, strategic and operational integrity planning is required. An integrity strategy is an essential component of a robust integrity system, and commits the government to feasible, concrete integrity outcomes. Underpinned by a risk-based approach, an integrity strategy sets the strategic

objectives and priorities for the public integrity system. In particular, an integrity strategy identifies the key factors, including human and financial resources, and the core focus areas, to cultivate a culture of integrity.

When used effectively, a strategic approach to integrity can support the government in cultivating a cultural change. This is because applying a strategic approach requires policy makers to think about the integrity challenges that exist across the government, and identify the outcomes needed to effect real change. From here, policy makers can work backwards, identifying the outputs, concrete activities and objectives to help achieve the outcomes (OECD, 2019^[3]). Furthermore, a strategic approach helps countries to develop benchmarks and indicators that support data gathering to assess the level of implementation, performance and overall effectiveness of the integrity system. A strategic approach also serves as a valuable coordination mechanism, as it can be used to assign clear responsibilities to the relevant entities to achieve the identified goals and objectives.

While broad, government-wide integrity strategies help set the objectives for the corruption prevention system as a whole, such approaches do not take into account the specificities of corruption risks in different sectors. A thorough understanding of how a given sector works, its processes and actors, is often required to design effective measures. Sector specific integrity strategies can help policy makers address integrity challenges in core areas, such as procurement. Taking a sector-specific approach also enables policy makers to engage the relevant procurement entities, building on their knowledge and experience to capture the relevant risks to integrity. Moreover, by engaging relevant stakeholders in the development of an integrity strategy for procurement, policy makers can build ownership of the strategy as well as build strategic understanding of the strategy's intended goals (OECD, 2019^[3]).

Kazakhstan's Strategic Plan for the Development of the Republic of Kazakhstan until 2025 includes using preventative measures to both reduce demand and supply of corruption actions (Government of the Republic of Kazakhstan, 2018^[4]). In particular, the Strategic Plan prioritises system-level and preventive measures to address corruption, notably by using tailored measures to address corruption in high-risk areas. The Strategic Plan is premised on the understanding that simplifying, digitalising and reducing contact between public officials and citizens (including business), as well as improving transparency of government services, will help reduce corruption (Shibutov et al., 2018^[2]). The Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025 sets out the six main activities for addressing corruption. These include:

1. Preventing corruption in the civil service
2. Implementing an institution of public control
3. Preventing corruption in the quasi-state and private sectors
4. Preventing corruption in court and law enforcement bodies
5. Creating an acceptable level of anti-corruption culture
6. Developing international cooperation in corruption prevention issues (Government of the Republic of Kazakhstan, 2015^[5]).

At the regional level, Akimats develop their own anti-corruption strategies, based on the 2015-2025 Anti-Corruption Strategy. In addition, the Law on Combatting Corruption, which sets out provisions for managing conflict of interest and assets, implementing the Code of Ethics, applying risk management and control activities (amongst others), guides the integrity actions of the government. The law sets out the parameters by which actions are taken to prevent corruption in public entities, quasi-state bodies and SOEs across Kazakhstan. The Law also introduces instruments to assess the implementation of the anti-corruption policy, including annual corruption prevention reports. The Strategic Plan, central and regional Anti-Corruption Strategies and Law on Combatting Corruption inform the integrity and anti-corruption activities of the Government; however, the government has not detailed a specific integrity strategy for the public procurement sector.

As discussed in Chapter 1, the procurement system in Kazakhstan is decentralised, with different government agencies, quasi-state bodies and SOEs responsible for specific procurement projects. Across these various actors, some have implemented plans specific to integrity in procurement (for example, the Ministry of Health) but it is not clear the extent to which these efforts are widespread or coordinated. There are several coordinating bodies with different responsibilities, and these include the Internal Audit Committee and the Department of Public Procurement Legislation (both within the Ministry of Finance), and the Ministry of National Economy. In terms of integrity and anti-corruption policy, the Agency for Civil Service Affairs and National Bureau on Combatting Corruption (herein the “Agency”) is the institution responsible for corruption prevention and prosecution. One of the key tasks of the Agency is to co-develop ministry-specific plans based on key corruption risks (called “external risk assessments”) and oversee their implementation. This makes the Agency well placed to lead the development of a procurement-specific integrity strategy.

A Memorandum on Cooperation in the field of combatting corruption was signed between the Ministry of Finance and the Agency. In the context of this cooperation agreement and together with procurement experts from the Ministry of Finance, the Ministry of National Economy, as well as the National Chamber of Entrepreneurs (herein “the NCE”), the Agency could elaborate a procurement-specific integrity strategy. This strategy could lay out how the Government of the Republic of Kazakhstan will prevent corruption in public procurement, and could assign objectives around themes related to transparency, corruption risk management and awareness raising and capacity building. The objectives in the strategy should be linked to the appropriate budget, identify realistic goals, and make clear the required inputs to fulfil the goals. Box 4.1 includes an example of the anti-corruption strategy of Austria’s Federal Procurement Agency. A procurement-specific integrity strategy could also be developed at the regional level of each Akimat, and linked to the national one.

Box 4.1. The Anti-Corruption Strategy of the Austrian Federal Procurement Agency

Integrity is at the heart of the Anti-Corruption Strategy developed by the Austrian Federal Procurement Agency (BBG), and embodied by the following actions :

- Set precise organisational procedures (clear definition of roles and structures)
- Integrate anti-corruption measures in the workday life
- Constantly reassess and improve the strategy
- Constantly raise awareness of staff
- Sharpen the focus on the consequences of corruption

The Strategy contains an explicit regulation of the main values and strategies regarding prevention of corruption, clear definition of grey areas (e.g. the difference between customer care and corruption), clear rules on accepting gifts, as well as rules on additional employment. The Strategy also offers the employees a clear view on emergency management.

Source: (BBG, 2016^[6]).

In developing the procurement integrity strategy, the Agency and other entities could draw on the findings of the external risk assessment studies, as they provide useful, sector specific recommendations to government entities. The Government of the RK could consider including in the Law on Combatting Corruption that the findings of these studies inform the updates of the entity-specific integrity policy. The Agency could also consider aggregating the findings from all the ministries to inform a government-wide integrity and anti-corruption strategy. Box 4.2 presents the new anti-corruption strategy of the UK, which includes a sectoral perspective and concrete goals and actions.

Box 4.2. United Kingdom (UK) anti-corruption strategy 2017-2022

At the 2016 Anti-Corruption Summit in London, the UK government pledged to develop a cross-government anti-corruption strategy that laid out a long-term vision of how to tackle corruption, and how the government would implement the commitments made during the Summit. The UK anti-corruption strategy was published in December 2017 and aims to provide a long-term framework to steer the government's actions in preventing corruption. The strategy contains six priorities for Parliament which are as follows:

1. Reduce the insider threat in high-risk domestic sectors, such as borders and ports
2. Strengthen the integrity of the UK as an international financial centre
3. Promote integrity across the public and private sectors
4. Reduce corruption in public procurement and grants
5. Improving the business environment globally
6. Working with other countries to combat corruption

The strategy is guided by four approaches: **Protect** against corruption, by building open and resilient organisations across the public and private sectors; **Prevent** people from engaging in corruption, including strengthening professional integrity; **Pursue** and **punish** the corrupt, strengthening the ability of law enforcement, criminal justice and oversight bodies to investigate, prosecute and sanction wrongdoers, and; **Reduce** the impact of corruption where it takes place, including redress from injustice caused by corruption.

The strategy was developed as a cross-government initiative with a whole-of-society approach, aiming to coordinate government anti-corruption efforts with civil society, the private sector, and law enforcement. To achieve this, the strategy outlines how the government Anti-Corruption Champion will play an active role in engaging stakeholders, and increase coordination with domestic partners modelled on the success of the Joint Money Laundering Intelligence Taskforce and the Joint Fraud Taskforce. The strategy also notes that cooperation will be facilitated with civil society and the private sector by undertaking regular, problem-oriented policy dialogue through both informal and formal means.

Source: HM Government (2017), United Kingdom anti-corruption strategy 2017-2022, <https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022>.

Given the decentralised nature of procurement in Kazakhstan, all ministries, agencies, quasi-state bodies and SOEs could also consider devising entity-specific procurement integrity plans, and link to the government-wide procurement integrity plan. This process will help entities operationalise the objectives set out in the procurement integrity plan, and identify how they can achieve these objectives in their own day-to-day functions. To facilitate this strategic and operational planning at organisational levels, the Agency and the Ministry of Finance could support these entities in developing their own procurement integrity plans through planning workshops. With such support, these entities would be able to reap the synergies between their specific knowledge on the reality of their day-to-day procurement procedures and the integrity and anti-corruption standards of the government. The Agency and the Ministry of Finance could validate the integrity objectives and activities of this planning at entity-level.

4.2.2. Leverage the position of the Ethics Commissioner to coordinate the procurement-specific integrity strategy across ministries

Mainstreaming integrity throughout the government requires establishing clear integrity responsibilities at all levels. While every public official is required to uphold integrity standards, dedicating specific responsibilities for integrity management to a unit or individual(s) ensures coherent and consistent integrity policies across the government. Dedicated integrity actors serve as a contact point for public officials, offering advice and guidance on ad hoc integrity challenges that may arise. Moreover, integrity actors can monitor progress and implementation of the integrity system, feeding into information about the continued relevance of the integrity strategy and identifying areas where gaps may exist.

The Regulation on Ethics Commissioners assigns the role of dedicated integrity actors to Ethics Commissioners. This Regulation outlines the functions of the Ethics Commissioner, which include providing integrity advice and guidance to public officials; conducting training and awareness raising to inform an integrity culture; and reviewing situations where an ethical breach occurred and providing recommendations to management on future prevention. According to the Code of Ethics, at the central level, a public official who holds a managerial position and is recognised and respected by the team should hold the position. At the central level within each ministry, the position is autonomous and the Ethics Commissioner is responsible for coordinating the Ethics Commissioners at the subnational levels. Within the regions however, the Ethics Commissioner role is assigned to a public official in addition to their other tasks.

While vertical mechanisms for coordination between the central and subnational levels exist, it is not clear how Ethics Commissioners coordinate integrity policy horizontally across the ministries. As procurement functions are decentralised in Kazakhstan, the structure for the Ethics Commissioner could ensure coordination of the integrity strategy across the various procurement entities in Kazakhstan. Ethics Commissioners should be part of the committee responsible for creating a procurement-specific integrity strategy, given their expertise on the integrity challenges facing their ministries. The Agency could also consider establishing regular meetings where Ethics Commissioners could meet with each other to exchange good practices and lessons learned. These meetings could include dedicated discussions related to integrity in public procurement, as well as other integrity topics. Box 4.3 provides an overview of the coordination functions that Integrity Officers play in the Austrian federal government.

Box 4.3. Integrity Officers in Austria's Federal Government

In Austria, the Federal Bureau to prevent and fight corruption (Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung, BAK) created the Austrian Integrity Network (Integritätsbeauftragten-Netzwerk) with the purpose to strengthen integrity by firmly anchoring integrity as a fundamental element in public sector.

To this end, the BAK trains civil servants to become experts in the field of integrity and corruption prevention within the framework of the Integrity Network. These integrity officers provide advice and guidance in their entities to strengthen integrity within specific entities. The integrity officers can access further information on compliance, corruption, ethics, integrity and organisational culture. In addition to the Internet platform, the BAK also offers regular follow-up meetings for integrity officers on specific topics such as risk management and ethics and values.

Source: (IBN, n.d.^[7]).

4.2.3. *Revise and simplify the existing Code of Ethics and adapt the Code of Ethics for public procurement officials to guide their behaviour*

A code of ethics provides guidance to public officials regarding the shared values of the organisation, and identifies the forms of behaviour that uphold these values. In contexts where integrity requirements are contained in different legislation and policy documents, a code of ethics can be especially helpful in clarifying the roles and responsibilities of public officials. ^[9]In 2015, following a consultative process with both public officials and citizens, the Government introduced the Code of Ethics for Public Servants of the Republic of Kazakhstan, which applies to all civil servants (OECD, 2017^[8]). The Code establishes the basic requirements for the moral and ethical image of public officials, and lays out the basic standards of behaviour. In total, there are thirty-eight standards of behaviour mentioned, many of which overlap. Written in a legalistic language, the Code of Ethics runs the risk of being difficult to read and understand.

A code of ethics aims to influence behaviour, and when written in a legalistic language, it can impede the desired impact on behavioural change, as it turns the focus towards compliance (OECD, 2018^[9]). Legalistic language, coupled with a lengthy document, can make it difficult for employees to understand the content, thereby diminishing its impact on behaviour. A simple, easy to understand code of ethics is more effective, as it allows public officials to call to mind the required behaviour and appropriate standards they must uphold. In fact, evidence has found that individuals are only able to recall, on average, seven items, plus or minus two (Miller, 1955^[10]). Good practice amongst OECD countries shows that some are taking steps to revise their codes of ethics in line with this principle, in order to support public officials in aligning their conduct with the expected behaviour of the public service (see Box 4.4 for the case of Australia and Denmark). Such an approach can also help move the organisation from a compliance-centred approach to one that is principles-based. Moreover, to ensure applicability to a public official's daily routine, an ethics code is ideally created through a participative process incorporating feedback from those officials that are concerned (OECD, 2018^[11]). Together with relevant employees, the Agency could consider revising the Code of Ethics by refining the number of provisions, and categorising the principles around clear, easy-to-understand values. The guidance contained in Box 4.5 could inform the process.

Box 4.4. Setting clear standards of conduct for public officials

The Australian Public Service (APS) Values

In 2010, the Advisory Group on the Reform of the Australian Government Administration released its report, which recognised the importance of a robust values framework to a high-performing, adaptive public service, and the importance of strategic, values-based leadership in driving performance. The APS values aim to provide a “small[er] set of core values that are meaningful, memorable, and effective in driving change.” The model follows the acronym “I CARE”:

- Impartial
- Committed to service
- Accountable
- Respectful
- Ethical

Syv central pligter – Seven key duties

The Danish Agency for Modernisation (MODST) under the Ministry of Finance issued the “Kodex VII” – a Code of Conduct for Danish civil servants. The Code defines seven central duties: Legality; Truthfulness; Professionalism; Development and co-operation; Responsibility and management; Openness about errors; and Party-political neutrality.

The “Kodex VII” describes the relevance and the implications of each duty for the Danish public sector. Moreover, MODST provides fictional case studies that can be used to practice the application of “Kodex VII”. Potential solutions for the case studies are available to public institutions, but are not published.

Sources: (Ministry of Finance, 2015^[12]; Australian Public Service Commission, 2018^[13]).

Box 4.5. Guidance for drafting Integrity Codes

The following guidelines (Maesschalck & Schram 2006) might increase the quality and relevance of a code that goes along with the following model: it consists of a limited number of core values that are each defined and then further specified in specific rules that might in turn be illustrated with examples:

- **Clear:** Make the text as clear and legible as possible. The code should be clear for all staff members who are expected to apply it.
- **Simple:** Make the text as simple as possible, but not too simple. Integrity is a complicated topic and one should not neglect that in a code. Yet, there is no reason to make things more complicated than necessary.
- **Concrete:** Avoid empty generalisations. Vague statements are not always avoidable, particularly in (values-based) “codes of ethics”. Nevertheless, it is important to try and make the values as concrete as possible, e.g. by specifying them in specific rules and guidelines or by illustrating them with concrete examples.
- **Structured:** Make sure that the code is constructed logically, centred on a number of core values that do not overlap. If the values are thus truly mutually exclusive, it will become easier to identify the tensions between them. These tensions are typical for ethical dilemmas and a code with clearly delineated values thus becomes a very useful tool for dealing with ethical dilemmas or teaching dilemma training sessions.
- **Consistent:** Use concepts in a parsimonious and consistent way. It is not a good idea to use different terms for the same concept within the same code (or in different documents within the same organisation). Likewise, avoid using the same term in different meanings. Decide on the term that is most appropriate and use it consistently throughout the different documents in the same meaning. This will strongly increase the chance that all staff members use the same language, thus allowing the code and related documents to become truly useful tools in training and daily conversation.
- **Linked:** Include sufficient cross-references in the code to other documents, guidelines and codes where staff members can find further details about specific themes (see the abovementioned idea of a code as a “portal” for all relevant integrity-related information).
- **Relevant:** The code should move beyond the obvious and particularly focus on those issues where guidance is needed. The chances for this will increase if the above-mentioned techniques are used in preparation of the code: risk analysis and dilemma analysis.

Source: OECD (2009); Maesschalck, J., & Schram, F. (2006). Meer dan een brochure of affiche: de deontologische code als kernelement van een effectief ambtelijk integriteitsbeleid. *Burger, Bestuur En Beleid*, 3(1), 49-61.

Given the particular risks related to procurement processes, some countries have specific codes tailored to procurement officials. Sector-specific ethics codes identify relevant and concrete examples from an organisation or sector’s specific business activities. These examples are useful for employees to relate to, in turn helping them to understand what their behaviour should look like when confronted with ethical dilemmas.

Previous studies have suggested that Kazakhstan develop a specific code for procurement officials (see for example (OECD, 2017^[8])). The Agency, along with the Ministry of Finance, the Committee for Financial Control and Public Procurement, and the Central Procurement Committee, could consider developing a specific code of ethics for public procurement officials. Similar to the process for revising the general Code of Ethics, the standards of conduct should be defined through a participative process that results in

meaningful and actionable standards for public procurement officials. In developing the code, the relevant counterparts could consider applying the guidance detailed in Box 4.5. An example of a specific code of conduct can be found in Box 4.6.

Box 4.6. Code of conduct for procurement in Canada

The Government of Canada is responsible for maintaining the confidence of the vendor community and the Canadian public in the procurement system, by conducting procurement in an accountable, ethical and transparent manner.

The Code of Conduct for Procurement will aid the Government in fulfilling its commitment to reform procurement, ensuring greater transparency, accountability, and the highest standards of ethical conduct. The Code consolidates the Government's existing legal, regulatory and policy requirements into a concise and transparent statement of the expectations the Government has of its employees and its suppliers.

The Code of Conduct for Procurement provides all those involved in the procurement process – public servants and vendors alike – with a clear statement of mutual expectations to ensure a common basic understanding among all participants in procurement.

The Code reflects the policy of the Government of Canada and is framed by the principles set out in the Financial Administration Act and the Federal Accountability Act. It consolidates the Federal Government's measures on conflict of interest, post-employment measures and anti-corruption as well as other legislative and policy requirements relating specifically to procurement. This Code is intended to summarise existing law by providing a single point of reference to key responsibilities and obligations for both public servants and vendors. In addition, it describes vendor complaints and procedural safeguards.

The Government expects that all those involved in the procurement process will abide by the provisions of this Code.

Source: (Government of Canada, n.d.^[14]).

4.2.4. Expand the conflict of interest rules to address procurement-specific conflicts of interest

Ensuring that conflicts of interests do not compromise the integrity of the public procurement process is key to responsive and effective public purchasing. A conflict of interest arises when a public official's private interests could improperly influence the performance of their official duties (OECD, 2004^[15]). A conflict of interest can be actual, apparent and potential (see Box 4.7). Corruption occurs when a conflict of interest has affected duties (misconduct, abuse of office, etc.) A conflict of interest does not necessarily equal corruption, but is damaging to public trust and must be managed.

Box 4.7. Differentiating between actual, apparent and potential conflict of interest

An **actual conflict of interest** occurs when a public official has a private-capacity interest which could improperly influence the performance of their official duties or responsibilities.

An **apparent conflict of interest** exists when it appears that an official's private interests could improperly influence the performance of their duties but this is not in fact the case. These should also be avoided or managed to minimise the risk to the public institution's reputation (and officials' reputation) for integrity.

A **potential conflict of interest** exists when a public official holds a private interest which would constitute a conflict of interest if the relevant circumstances were to change in the future.

Source: (OECD, 2004^[15]).

In Kazakhstan, the Law on Combatting Corruption, the Law on Civil Service, and the Law on Public Procurement all contain measures related to managing conflict of interest. The Law on Combatting Corruption defines a conflict of interest as a contradiction between the personal interests of a public official and his official duties, where such interest may lead to the improper performance of his duties (article 5(1)). Within the Law on Civil Service, Article 51 contains the conflict-of-interest policy. Under both laws, the disclosure of conflicts of interest is mandatory. When a public official becomes aware of a conflict of interest, they are required to notify their immediate supervisor or manager in writing. The immediate supervisor or manager is then required to take timely action to prevent or resolve the conflict of interest. Policy options to manage conflicts of interest in both laws include transferring the duties of the public official with the conflict of interest to another public official, changing the duties of the public official with the conflict of interest, or taking other measures to eliminate the conflict of interest (OECD, 2017^[8]).

However, neither law identifies the options of divestment or liquidation of the interest of the public official or resignation of the public official from their public office in the event that the conflict cannot be otherwise managed. Furthermore, neither of the laws makes the distinction between real, apparent and perceived conflict of interests. As noted in the OECD Integrity Scan of Kazakhstan, the Government of the RK could therefore consider broadening the options for management of those conflicts, such as divestment, liquidation or resignation. Box 4.8 details each of these options. As conflicts of interest are an inherent part of public life, broadening these options will enable public officials to manage and resolve conflicts of interest more effectively.

Box 4.8. Resolution and management options for conflict of interest situations

Options for positive resolution or management of a conflict of interest can include one or more of the following strategies, as appropriate:

- **Removal (temporary or permanent):** public officials should be required to remove the conflicting private interest if they wish to retain their public position. Options could include temporary removal for the duration of the public official's tenure, for example through the assignment of the conflicting interest to a genuinely "blind trust" arrangement. More permanent removal options could include the divestment or liquidation of the interest by the public official.
- **Recusal or restriction:** where a particular conflict is not likely to recur frequently, it may be appropriate for the public official concerned to maintain their current position but not participate in decision-making on the affected matters, for example by having an affected decision made by an independent third party, or by abstaining from voting on decisions. Particular care must be taken to protect the integrity of the decision-making process where recusal is adopted. Likewise, an option to restrict access by the affected public official to particular information, by prohibiting them from receiving relevant documents and other information relating to their private interest, could be adopted.
- **Transfer or re-arrangement:** the option of transferring a public official to a different assignment or reassigning certain functions of the public official concerned should also be available, where a particular conflict is considered likely to continue, thereby making ad hoc recusal inappropriate.
- **Resignation:** where a serious conflict of interest cannot be resolved in any other way, the public official should be required to resign from either their conflicting private-capacity function or their official position. In the event of resignation of the public official from their public office, the conflict of interest policy (together with the relevant employment law and/or employment contract provisions) should provide the possibility that the official can be terminated in accordance with a defined procedure in such circumstances.

Source: (OECD, 2004^[15]).

Similarly, the Law on Public Procurement contains conflict of interest provisions for suppliers under Article 6. Article 6 prevents suppliers who have close relations with Contracting Authorities (e.g. spouses, close family and relatives by affinity) from participating in specific tenders where their relative is the Contracting Authority or part of the tender commission. Inability to participate also applies to suppliers and their affiliates who provided consulting services, participated in the early stages of a project/tender preparation, or otherwise took part in drafting technical documentation. However, the provisions on conflict of interest do not cover affiliates of potential suppliers such as subsidiaries and joint ventures (unless they were involved in providing technical or economic justification for the tender). Kazakhstan should therefore consider expanding the conflict of interest provisions under Article 6 of the Law on Public Procurement to cover affiliates of potential suppliers.

Currently, public procurement officials manually check whether a member of the Tender Commission has a conflict of interest with any of the suppliers. The intention is to automate the checks to make the process more efficient. This practice is promising, and the Ministry of Finance is encouraged to carry forward with automating the process to ensure comprehensive checks on potential conflicts of interest for all tenders.

4.2.5. Develop procurement-specific integrity training and awareness raising to cultivate a behaviour change

Simply identifying the required behaviour in a code of conduct is not enough to guarantee ethical behaviour. Tailored trainings and guidance for public procurement officials on integrity, including on the code of conduct, conflict of interest, risk management and reporting, could be developed. While some ministries (both central and regional), quasi-state bodies and SOEs have ethics trainings, implementation is ad hoc, and the Ministry of Finance's current procurement trainings do not include modules on integrity in procurement.

Currently, the Agency is developing an "Integrity Agreement" clause to include in the revised the Law "On Combatting Corruption". This clause would require state bodies and those in the quasi-public sector to develop an integrity agreement that identifies the expected integrity behaviours, as well as the relevant sanctions in case of a breach. At-risk public officials, including procurement officials, will be required to sign these agreements. If adopted, the Agency will develop recommendations for state bodies and those in the quasi-public sector to standardise what should be included in the agreements.

Such measures can help raise awareness and cultivate commitment amongst public officials on their integrity responsibilities. To make the commitments meaningful, the Agency could consider developing training modules. Modules could cover the revised Code of Ethics, as well as the procurement-specific code of ethics, managing conflict of interest, and risk management roles and responsibilities (see section 4.3). The training should take place regularly and be tailored to the specific needs of the procurement workforce.

In particular, the modules could contain scenarios that include real conflict-of-interest situations, ethical dilemmas or case studies based on past cases of integrity breaches or corruption. The purpose of these scenarios is to describe in detail situations where the values of a public procurement official could be challenged, to better guide them in the event that they encounter such a situation.

In addition, the Agency could also support the Ministry of Finance and other entities with a procurement function in developing measures that regularly reactivate public officials' commitment to ethical standards. For example, displaying posters that include the core public sector values within procurement offices can remind public officials of their commitments to integrity. Simple behavioural cues, like a mousepad with the word *integrity* on it can help serve as a moral reminder for public officials, and alter actions by establishing a link between previous discussions and trainings on integrity and a sense of moral commitment (OECD, 2018_[11]).

4.2.6. Ensure robust requirements for internal controls, compliance measures and anti-corruption programmes for suppliers.

Suppliers are a critical actor in the public procurement system, where their integrity has a reverberating effect on the overall integrity system of the country. Suppliers that collude, offer bribes, provide fraudulent bids or invoices etc., reduce competitiveness, create negative economic externalities, and undermine government legitimacy and trust in markets. Suppliers are also key partners in ensuring efficient public procurement and a functioning integrity system, and many firms are implementing corporate integrity reforms and reshaping the global integrity landscape (UNODC, 2013_[16]). The public procurement system is a prime area within which the public sector can expect both higher levels of integrity from the private sector, as well as advance efforts to support integrity practices in companies. Such tools range from incentive regimes to mandating business integrity programmes. Indeed, a growing international practice is the requirement for the private sector to have a business integrity programme in place in order to qualify for eligibility in public contracting.

In Kazakhstan, all suppliers who submit a bid via the e-procurement system are required to sign a mandatory declaration, stating that they are not in breach of Article 6 of the Law on Public Procurement (e.g. the conflict of interest provision). In signing the declaration, they also give consent for the contract to be terminated in case of “revealing facts” (specified in clause 19 of article 43 of the Law), as well as the consequences for presenting false information. The declaration however does not include corruption-related offences, nor any provision against bid rigging or supplier collusion. The Ministry of Finance could consider introducing including anti-corruption and anti-competition provisions in the declaration.

The Agency for Civil Service Affairs recently approved the draft national standard entitled “The System of Methods to Combat Bribery: Requirements and Guidelines for Use”. This was developed by the Institute for Standardisation and Certification in Kazakhstan, and is aligned with the ISO 370001: 2016 Anti-Bribery Management Systems. According the Agency, the standards define the basic requirements for business ethics in the private sector. It is not clear whether or how the government intends to incorporate the standards into the existing procurement process, or how it intends to verify the quality of such programmes in companies.

Verification can be a useful tool to gain assurance on the existence and quality of a business integrity programme. Based on a set of pre-defined criteria, a verification process reviews the extent to which business integrity programmes meet the required standards set by the government. A verification process can either look at the suitability of the programme – that is, the extent to which it is designed to meet the desired outcomes, or the operating effectiveness of the programme over a specified period (Transparency International, 2012^[17]). Benefits of a verification process include strengthening the programme by identifying areas for improvement, meeting future pre-qualification requirements, and enhancing the reputation of the company as one which is committed to high integrity standards (Transparency International, 2012^[17]). The Agency for Civil Service Affairs could mandate that state bodies and other quasi-state bodies require verification of the existence and quality of a business ethics programme. The government should not carry out this verification; instead it should be done by an independent, reputable independent third-party reviewer. The government may wish to set guidelines on the components of an effective verification.

The Ministry of Finance, together with the Agency for Civil Service Affairs and the National Chamber for Entrepreneurs (NCE), could also consider developing and carrying out integrity training programmes for suppliers. Modules could include:

- the Code of Ethics and the integrity tools in place for the procurement workforce and how they are implemented;
- identifying and mitigating integrity risks related to public procurement (such as corruption, fraud, collusion, etc.);
- how to identify, report and manage potential conflicts of interest that could undermine the integrity of the procurement process; and
- where and how to report wrongdoing, integrity breaches or mismanagement.

The aim of integrity training programmes is to ensure that suppliers understand the requirements of integrity surrounding the public procurement process in Kazakhstan. Moreover, they help to support capacity building amongst suppliers on preventing corruption within their own entities.

4.3. Integrating effective risk-based internal control in procurement activities

4.3.1. Using fraud and corruption risk management throughout the entire procurement cycle

The public procurement cycle is particularly prone to corruption risks, including bribery, undue influence, capture of public investment projects, and unresolved conflicts of interest (see Table 4.1 below). The Ministry of Finance sets the framework and the standards for the internal control and risk management system for the entire government. The Law “On State Audit and Financial Control” sets out the internal control system. In particular, Article 57 identifies the five components of Kazakhstan’s internal control system, including the control environment, risk assessment, control procedures, information and communication, and monitoring and evaluation of the effectiveness of the internal control system. The law applies to all internal audit and financial control units in public bodies and SOEs, with the exception of the National Bank of the Republic of Kazakhstan. The system is comprised of the Internal Audit Committee (KVGA, which sits within the Ministry of Finance) and internal audit services / units in each of the state entities and local executive bodies at the regional and city level. In addition, the Accounts Committee for Control over the Execution of the Republican Budget is the supreme body of state financial control (e.g. the Supreme Audit Institution).

Table 4.1. Corruption risks associated with the different phases of the public procurement cycle

	Phase	Corruption risks
Risks of the pre-tendering phase	Needs assessment	<ul style="list-style-type: none"> • Lack of adequate needs assessment • Influence of external actors on officials decision making • Informal agreement on contract
	Planning and budgeting	<ul style="list-style-type: none"> • Poor procurement planning • Procurement not aligned with overall investment decision-making process • Failure to budget realistically or deficiency in the budget
	Development of specifications/requirements	<ul style="list-style-type: none"> • Technical specifications are tailored for a specific company • Selection criteria are not objectively defined and are not established in advance • Requests for unnecessary samples of goods and services that can influence purchase information on the project specifications
Risks of the tendering phase	Choice of procurement procedure	<ul style="list-style-type: none"> • Lack of proper justification for the use of non-competitive procedures • Abuse of non-competitive procedures on the basis of legal exceptions: contract splitting, abuse of extreme urgency, non-supported modifications
	Request for proposal/bid	<ul style="list-style-type: none"> • Absence of public notice for the invitation to bid • Evaluation and award criteria are not announced • Procurement information is not disclosed and is not made public
	Bid submission	<ul style="list-style-type: none"> • Lack of competition or cases of collusive bidding (cover bidding, bid suppression, bid rotation, market allocation)
	Bid evaluation	<ul style="list-style-type: none"> • Conflict of interest and corruption in the evaluation process through: <ul style="list-style-type: none"> ○ Familiarity with bidders overtime ○ Personal interests such as gifts or future/additional employment ○ No effective implementation of the ‘four eyes principle’
	Contract award	<ul style="list-style-type: none"> • Vendors fail to disclose accurate cost or pricing data in their price proposals, resulting in an increased contract price (i.e. invoice mark-ups, channel stuffing) • Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, contractual and project authorities) • Lack of access to records on the procedure

Risks of the post-award phase	Contract management/performance	<ul style="list-style-type: none"> • Abuse of the supplier in performing the contract, in particular in relation to its quality, price and timing: <ul style="list-style-type: none"> ○ Substantial change in contract conditions to allow more time and/or higher prices for the bidder ○ Product substitution or substandard work or service not meeting contract specifications ○ Theft of new assets before delivery to end-user or before being recorded ○ Deficient supervision from public officials and/or collusion between contractors and supervising officials ○ Subcontractors and partners chosen in a non-transparent way or not kept accountable
	Order and payment	<ul style="list-style-type: none"> • Deficient separation of financial duties and/or lack of supervision of public officials, leading to: <ul style="list-style-type: none"> ○ False accounting and cost misallocation or cost migration between contracts ○ Late payment of invoices ○ False or duplicate invoicing for goods and services not supplied, and for interim payment in advance entitlement

Source: (OECD, 2009^[18])

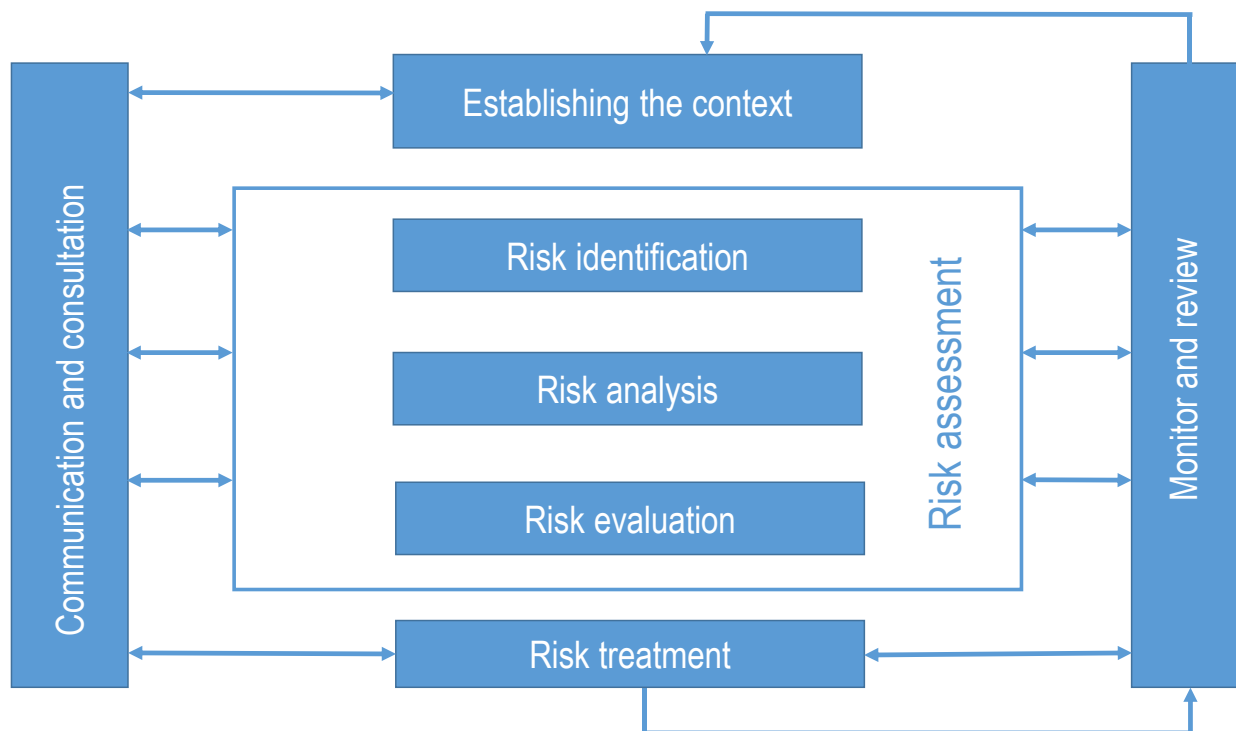
Corruption risks throughout the procurement cycle are a considerable issue in Kazakhstan. Some measures are in place to identify the risks and provide recommendations for their management, most notably through an external corruption risk assessment. Mandated by the Law on Combatting Corruption, the external corruption risk assessment was carried out by an Expert Group consisting of the Agency for Civil Service, the Ministry of Finance, the Accounts Committee for Control over the Execution of the Republican Budget, the General Prosecutor's Office, the NCE, and regional chambers of entrepreneurs. The external risk assessment reviewed the procurement processes vis-à-vis the provisions set out in the Law on Public Procurement and identified a number of areas where corruption risks emerged as a result of loopholes and unclear requirements in the procurement legislation. In particular, the assessment identified corruption risks related to development of specifications/requirements; choice of procurement procedure; bid evaluation and contract award, contract management and performance, and payment issues (Agency for Civil Service Affairs, n.d.). It is worth noting that following an external risk assessment, the head of a department or unit can initiate an internal corruption risk assessment, according to the *Model Guidelines to perform an internal analysis of corruption risks* (Government of the Republic of Kazakhstan, 2016^[19]).

The Agency has also carried out a review of 'high risk' procurements, such as road and building construction contracts, and has reviewed contracts when tender prices are too high. For example, public officials noted that in the event that a price is 30-40 percent above the average tender price of the good or service, the Agency wrote to the Contracting Authority to clarify the issue. In most cases, the Contracting Authorities took steps to reduce the price. Following the review, the Agency published the report online, as required by the Law "On Combatting Corruption". Signed by the President, the report included suggestions on potential improvements to the system. Recommendations included rotating procurement officials when they became too familiar with the suppliers.

While the government has taken steps to implement internal control and risk management functions for public procurement, more is needed to ensure these measures protect the integrity of the public procurement system. Currently, the external risk assessments are formal external reviews that take place upon decision of the President of the RK. Moreover, while some recommendations address these risks, the process is not consistent; the recommendations may be ignored; and the controls are not consistently assigned to any specific entity. Taken together, the features of the external risk assessment process prevent ownership over risk management by key stakeholders, such as contracting authorities and management within the Ministry of Finance and other procurement functions.

To close the gaps and build ownership for managing risks, the Ministry of Finance could implement a systemic, on-going and comprehensive risk management process that covers the entire procurement cycle. Numerous international standards exist for internal control and risk management, such as the International Standards Organisation's (ISO) 31000, *Risk Management: Principles and Guidelines*, which calls for a clear risk assessment process to be established (see Figure 4.3).

Figure 4.3. An international standard for risk management



Source: (ISO, 2009_[20]).

The OECD supported the Tunisian procurement authority, HAICOP, in the development of a strategy on risk management in public procurement (Box 4.9). Indeed, one of the shortcomings of Tunisia's public procurement framework was the lack of systematic risk management procedures and tools: procurement officers used to set up their own risk management actions, although they are not being formalised, communicated or documented.

Box 4.9. Risk Management Strategy in Public procurement in Tunisia

In Tunisia, public procurement represents more than 15% of GDP. The efforts made over the past few years regarding the public procurement system have brought considerable improvements. However, some areas still need to be improved, especially since public procurement is a high-risk area both in terms of integrity as well as in other aspects that may affect the well-functioning of the public procurement system and thus the provision of public services.

Therefore, the High Authority for Public Procurement (HAICOP) with the support of the OECD developed a strategy on risk management in public procurement that was launched in March 2019. This strategy aims at:

1. Strengthening the principle of good governance in public procurement.
2. Improving the efficiency and effectiveness of public procurement
3. Formalising and standardising risk management methodology and tools across Tunisian public entities
4. Optimising the public procurement control system by focusing on high-risk areas.
5. Strengthening risk management capacities in public procurement in Tunisia

In terms of scope, this strategy foresees the implementation of a risk management approach at two levels:

1. At the level of each procurement project or programme. The risk management exercise must be performed for the following contracts:
 - All negotiated contracts
 - Large-volume contracts whose volume represents at least 20% of the total purchases of each public entity.
2. At the level of procedural steps and sub-processes throughout the public procurement cycle (tendering and contract performance)

The implementation of the strategy is supported by different tools including a risk management tool tailored to the strategy, a manual on risk management in public procurement and a testing with five pilots.

The intention of HAICOP is to integrate the risk management approach in the updated regulatory framework. The implementation of this strategy will be carried out in a phased approach to cover all contracting authorities from all levels of governments.

Source: (HAICOP & OECD, 2019^[21]).

The Ministry of Finance could ensure that those who are in the frontline of preventing fraud and corruption (e.g. contracting authorities) as well as external entities (e.g. the NCE, the Accounts Committee, contractors and regulators) are involved in identifying possible risks. Interviews, surveys and focus groups are just one way of gathering input. The desk control process, which identifies the most common abnormalities, can also be used to inform the risk assessment process. In addition to corruption and fraud risks (see Table 4.1), the risk assessment process should also identify strategic and operational risks.

The Ministry of Finance could also ensure that the risk assessment process includes assessing the severity, likelihood and consequences of the risks. The process also involves assigning the appropriate response (or “treatment”) strategies, to either eliminate or minimise the potential impact and likelihood. This includes designing the appropriate control mechanisms to manage the identified risks. Clear

responsibilities for managing the controls should also be assigned. The Ministry of Finance could also consider incorporating the identified risks and controls in a “risk register” that is accessible to the risk managers and capable of being updated throughout the year in order to respond to changing risks.

4.3.2. Provide guidance and tools for conducting risk assessments related to procurement

According to ISO 31000, risk management activities should be documented in order to help improve methods, tools, and overall processes (ISO, 2009_[20]). In addition, OECD's Recommendation of the Council on Public Procurement calls for government entities to not only publicise risk management strategies, but also to raise awareness and knowledge about the integration of risk management into the procurement cycle (ISO, 2009_[20]). It makes the following recommendations for achieving this:

- engaging in communication to strengthen trust between stakeholders and control activities
- organising awareness campaigns and events on the importance of integrating risk management activities into daily business practices
- providing training sessions and workshops to inform relevant public procurement entities about their risks and ways to handle the identified risks,
- circulating periodic messages using various media (e.g. newsletter, promotional posters, brochures, videos, handbook, etc.) to relevant stakeholders on the existing risk management strategies
- disseminating best practices of risk management case studies from leading organisations
- inviting public procurement entities to relevant conferences and seminars on risk management strategies.

To support implementation, the Ministry of Finance could develop training that communicates the value of risk management processes and ensures that public officials have the capacity to participate. Such training will help public officials to own control and risk arrangements in order to close the gap between nominal and actual implementation. Informed public procurement officials who can identify and manage risks across the whole procurement cycle are more likely to identify situations that can undermine institutional objectives. Box 4.10 details the guidance on building risk management capability in entities by the Australian government.

Box 4.10. Building Risk Management Capability in the Australian Government

The Australian Department of Finance developed guidance on building risk management capability in government entities, focused on the following areas:

People capability – A consistent and effective approach to risk management is a result of well skilled, trained and adequately resourced staff. All staff have a role to play in the management of risk. Therefore, it is important that staff at all levels of the entity have clearly articulated and well communicated roles and responsibilities, access to relevant and up-to-date risk information, and the opportunity to build competency. Considerations include:

- Are risk roles and responsibilities explicitly detailed in job descriptions?
- Have you determined the current risk management competency levels and completed a needs analysis to identify learning needs?
- Do induction programmes incorporate an introduction to risk management?
- Is there a learning and development programme that incorporates ongoing risk management training tailored to different roles and levels?

Risk systems and tools –The complexity of risk systems and tools often range from simple spreadsheets to complex risk management software. The availability of data for monitoring, risk registers, and reporting will assist in building risk capability. Considerations include:

- Are your current risk management tools and systems effective in storing the required data to make informed business decisions?
- How effective are your risk systems in providing timely and accurate information for communication to stakeholders?

Managing risk information – Successfully assessing, monitoring and treating risks across the entity depends on the quality, accuracy and availability of risk information. Considerations include:

- Have you identified the data sources that will provide the required information to have a complete view of risk across the entity?
- What is the frequency of collating risk information?
- Do you have readily available risk information accessible to all staff?
- How would you rate the integrity and accuracy of the available data?

Risk management processes – The effective documentation and communication of risk management processes will allow for clear, concise and frequent presentation of risk information to support decision making. Considerations include:

- Are your risk management processes well documented and available?
- Do your risk management processes align to your framework?
- Is there training available, tailored to different audiences, in the use of your risk processes?

Source: Adapted from the (Department of Finance, 2016^[22]).

The Ministry of Finance could also consider developing a risk management guide that identifies the core responsibilities for identifying and managing risks, and provide practical guidance on key activities, such as conducting a risk assessment, developing treatment measures, and assigning responsibility for managing the risks. Additional tools, such as a risk heat map and guidance for assessing the likelihood

and impact of risks, a risk register and a checklist of common corruption and fraud risks inherent to the public procurement process in Kazakhstan could be developed.

4.3.3. Expand the system of desk control to all phases of the procurement cycle

A system of “desk control” is in place at both the national and akimat levels. Carried out by public officials within the KVGA, desk control focuses specifically on preventing favouritism towards a potential brand or supplier. The purpose of the desk control process is to reduce the administrative burden of responding to problems after issuing the contract. The e-procurement system automatically proposes tenders to undergo desk control based on pre-determined criteria across different stages of the procurement process:

1. At the stage of publication of tender bids, all tenders are the object of desk control.
2. At the stage of establishing tender participants, KVGA monitors all procurements beyond a certain threshold (KZT 5 million or KZT 10 million). KVGA does not check the protocols for which all bidders participate. KVGA checks with increased attentions all tenders for which only one bidder participated (suspicion of collusion of CA with supplier).
3. At the final award stage, KVGA uses a filter based on a threshold. For example, if there were more than two bid submissions, but only one is selected to take part in the procedure.

In particular, for public procurement, the KVGA conducts the desk control for each ministry and state body at the central level, while the regional KVGA offices carry out the same process akimats. According to public officials, detected violations are promptly rectified. In doing so, KVGA does not have to impose penalties' on the tender commissions, and does not need to cancel the contract. Since 2016, public officials who make mistakes but correct them immediately are not administratively liable. The process of desk control has therefore reduced the number of violations that fall under administrative liability. In particular, 31.3 thousand violations were caught under the desk control procedure (out of a total of 496.5 thousand procedures) in 2017 and in the first quarter of 2018, 9.8 thousand violations (out of a total of 191.7 thousand procedures) were caught (Ministry of Finance, 2018^[23]).

However, while the desk control system serves as a useful tool for detecting abnormalities in the procurement process, two issues exist. First, the exclusive focus on the bid evaluation process leaves the rest of the procurement cycle unassessed. To that end, the Ministry of Finance could expand the process across the whole procurement cycle.

Second, at the regional level, desk control poses an additional burden on the KVGA regional offices, due to insufficient staffing. Appropriate resources should be assigned to the “desk control” function, to ensure capacity to carry out the process. In doing so, the “desk control” process can become a robust tool for detecting and mitigating abnormalities and preserving the integrity of the entire procurement process.

4.4. Providing opportunities for direct involvement of relevant external stakeholders in the procurement system to increase transparency and integrity

4.4.1. Enhance the integrity of the entire procurement process by enabling independent oversight by civil society

Low levels of transparency and accountability in the public procurement system can compromise the effective use of public resources and funds. Participation – the vehicle by which civil society and citizens play an oversight and monitoring role in public procurement – helps to increase transparency in procurement activities. Given the integrity risks present in procurement operations, it is good practice for governments to involve representatives of civil society, academia or end-users in scrutinising the integrity

of the procurement process. Direct social control mechanisms encourage their involvement as external observers of the entire procurement process or of key decision-making points (OECD, 2018^[24]).

The Agency for Civil Service Affairs could develop an independent monitoring programme, whereby civil society organisations carry out an independent review of the procurement procedures for both goods and services. To qualify for the independent monitoring programme, civil society organisations could be required to complete trainings on monitoring an entire public procurement process. This training could be co-developed by the Ministry of Finance and the Agency for Civil Service Affairs, and administered by the Agency.

To ensure independence, the Agency for Civil Service Affairs should manage this programme, with other government entities, such as the Ministry of Finance, submitting a request to the Agency engage a CSO to carry out the independent monitoring. The CSOs could be recruited at the pre-tendering stage, and review the entire procurement process, submitting their report on the integrity of the procurement process. To institute the independent monitoring role, an article on the function of independent monitoring could be included in the Law on Public Procurement. The article could clearly indicate the additional time a monitoring process will take, and identify and assign the roles and responsibilities for managing the programme to the Agency for Civil Service Affairs. The article could also lay out the qualifications and requirements for recruiting civil society organisations, the contract threshold at which an independent monitoring programme is required (e.g. medium and high value procurements), the drafting and sharing of the independent monitoring report, and the requirement for the respective public entity to respond to the opinion. The article should also clearly indicate that the role of independent monitoring is to review the integrity of the procurement process in order to prevent corruption in public procurement.

4.5. Developing an effective complaint and sanction system, including for suppliers

4.5.1. Advance measures to enhance the complaints management system

Providing clear channels to inform authorities of potential irregularities or corruption, such as through webpage complaint mechanisms, can also enhance the integrity of the procurement process. In accordance with the Law on Public Procurement, a potential supplier has the right to complain against actions (or inactions), decisions by a client, a procuring entity, a single public procurement organisation, commissions, experts, a single public procurement operator, if their actions (inactions), decisions violate the rights and legitimate interests of the potential supplier. The Internal Audit Committee of the Ministry of Finance reviews the complaints. Each participant in public procurement has the right to appeal the decision of the tender (auction) commission. While suppliers have traditionally filed complaints through regular mail, from January 2018 onwards, a complaint module is available in the e-procurement system. This enables suppliers to submit complaints electronically directly through the state e-procurement system. Complaints submitted electronically accounted for 93% of all complaints during the first 6 months of 2018. With the online model, all complaints and decisions are public.

While tenderers can submit complaints at any time, complaints that are submitted 5 days after the tender award announcement suspend the process of concluding the contract until the complaint can be reviewed and a decision taken. The Internal Audit Committee has 10 days to take a decision after a complaint is filed. As a result, the competitive tender can be cancelled, or the complaint rejected. All complaints and decisions taken on them by the Internal Audit Committee are made publicly available on the state e-procurement system. There is an appropriate mechanism to appeal against decisions of the Committee (via common court system).

The steep increase in the number of complaints in recent years suggests that businesses and other stakeholders believe in the efficiency of the current system. According to the Ministry of Finance, around

50 percent of the complaints are upheld. Complaints increased more than fivefold in 2016 (up to 8 359), i.e. the year the Ministry launched the e-procurement system. The introduction of the electronic complaint module at the beginning of 2018 spurred another increase in the number of complaints from suppliers. Indeed, data from the state e-procurement system suggest that suppliers submitted 9 947 complaints during the first 6 months of 2018, i.e. almost two times more than for the whole year of 2017 (9 500). Auditors from Internal Audit find it increasingly challenging to review all complaints, particularly in the Committee's regional branches. Two motives account for the bulk of complaints filed in the first 6 months of 2018: suppliers appealing the rejection of their applications (39%) and suppliers challenging the admission of competitors to participate in a tender (36%).

There is large consensus that 'professional complainers' submit a significant share of complaints, at least since the introduction of the electronic complaint module. Professional complainers are shell companies with no intention of winning and executing a specific public procurement. They submit complaints to prevent competitors from being awarded the contract. As information about suppliers is public, some 'professional complainers' use the complaint mechanism to blackmail other bidders, asking them for money to withdraw their complaint. This puts the procurement at a standstill, hindering the contract from being signed. Moreover, because of very stringent formal requirements, applications from many legitimate suppliers contain irregularities that can be a basis for cancelling the procurement process. This issue is very acute concerning construction works, which account for almost half of the complaints submitted in the first 6 months of 2018.

The Internal Audit Committee reviews a specific public procurement process based on a written or electronic complaint by a tenderer, a request by law enforcement agencies, or based on information from their risk management system. In case it discovers a violation, the Committee issues mandatory orders to the procuring entity to address it, or applies to court to revoke contracts that entered into force. If the contract is not signed, the procurement process is suspended. If the Committee detects elements of a criminal offence, it refers such information to the law enforcement authorities, including to the anticorruption bureau in case of corruption offenses. Otherwise, civil servants responsible for irregularities or violation of the public procurement legislation face administrative liability (administrative sanctions), most often fines.

The reform of public procurement (amendments adopted on 26th December 2018) requires suppliers to submit remarks to tender specifications during the preliminary discussion of technical specifications for them to be able to submit a complaint regarding tender specifications in the post award-phase. This new measure aims at preventing suppliers from submitting frivolous complaints. However, it is paramount that suppliers have an adequate time to identify excessive or biased provisions in technical specifications during the preliminary discussion stage, and submit the corresponding comments. Kazakhstan could extend the period for suppliers to submit comments and requests for clarifications to at least 10 days. Such an extension would be worth considering even without any limitation on complaints after contract award, in order to give more time for a meaningful preliminary discussion of technical specifications. Moreover, five days after the publication of procurement notices is too short to allow for an adequate analysis of technical specifications (and drafting of comment thereof), particularly regarding large and complex purchases such as construction works. Therefore, reshuffling the preliminary discussion of technical specifications is necessary to give more time to suppliers to comment on provisions in technical specifications. Otherwise, the measure makes the complaint system overly restrictive, putting an excessive constraint on suppliers' access to appeals and challenge mechanisms. At the same time, it is important that this system is balanced and achieves the objectives it was designed for. The Ministry of Finance should consider introducing fees as an additional measure to discourage 'professional complainers' from submitting unsubstantiated complaints. As part of future changes to the law, the Ministry of Finance could consider introducing a proportionate fee (to be determined) that would be collected if a bidder would like to log a complaint. This measure is aligned with international best practices and presents an additional hurdle to spurious complaints, making the system more effective; however, its impact on the complaint

mechanism should be closely monitored over time, to avoid creating unnecessary burden or barriers to suppliers.

The Government is also considering setting up a second level of appeal for suppliers to challenge decisions from the Internal Audit Committee. While the Government envisions creating a specialised appeal body within the Ministry of Finance, it could consider the experience of the independent Procurement Ombudsman in Canada. The Ombudsman provides for an independent settlement mechanism of procurement disputes regarding federal government procurement (see Box 4.11).

Box 4.11. The Procurement Ombudsman in Canada

Canada established a procurement Ombudsman in 2008 to increase the effectiveness and transparency of business practices in relation to procurement. The overall objective of the Office of the Procurement Ombudsman is to promote fairness, openness and transparency in federal government procurement. Its mandate and role are as follows:

1. Review departments' practices for acquiring materials and services to assess their fairness, openness and transparency and make any appropriate recommendations.
2. Review complaints respecting the administration of a contract for the acquisition of services by a department or agency, regardless of dollar value, and the acquisition of goods; above a certain threshold.
3. Ensure an alternative dispute resolution process is provided, if all parties to the contract agree to participate.

The Office of the Procurement Ombudsman is a federally constituted independent organisation with a government-wide mandate: It operates horizontally in departments and agencies. Between May 2008 and March 2011, the Procurement Ombudsman handled more than 1 200 inquiries and complaints and conducted 6 investigations into contract award issues and conducted 12 procurement practice reviews which involved 26 different federal government departments and agencies.

Source: (OECD, 2016^[25]).

As noted above, the KVGA can refer information related to potential corrupt activities to the National Bureau on Combatting Corruption. In addition, the website of the National Bureau provides guidance on where to report, how to report, and how the reports are handled.¹ Three reporting channels are available in practice:

1. in writing to a pre-specified address;
2. through the e-government portal *egov.kz*; and
3. through the Anti-Corruption Call Service number 1494.

In the event that the National Bureau receives a complaint related to procurement, they carry out an investigation. According to officials at the National Bureau, they are in the process of establishing an automated system to detect corruption risks.

The dedicated module of the state e-procurement system has made the complaint system more accessible to suppliers and brought adequate transparency to the handling of procurement complaints. Even though the state e-procurement system makes available some basic statistics about complaints, disclosure of more detailed aggregated complaint statistics in a machine-readable format is necessary to ensure an adequate level of transparency and to inform broader public procurement reforms.

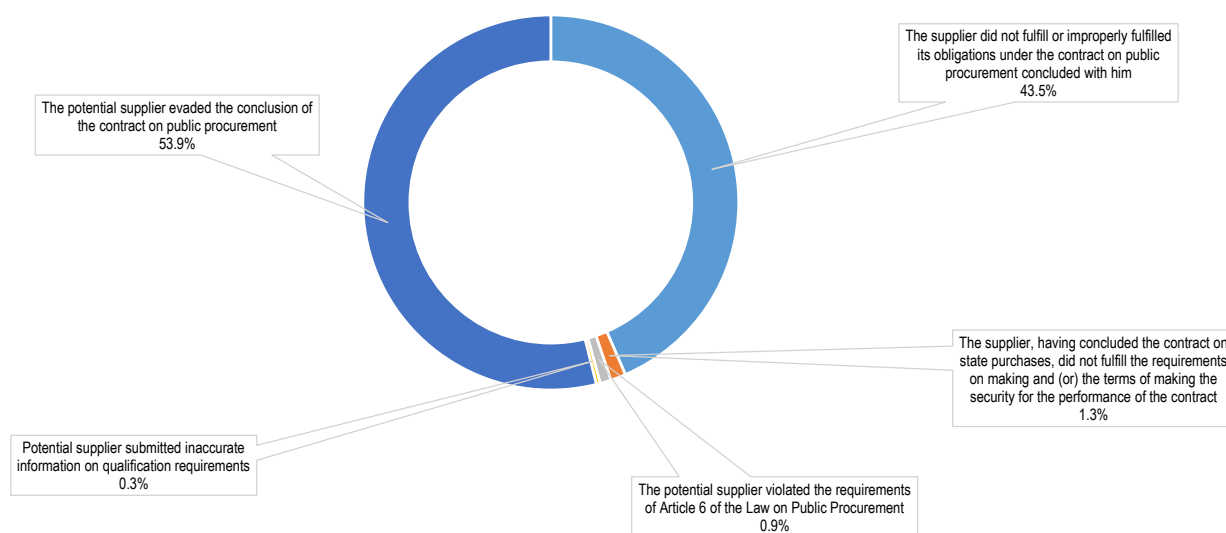
The government should make sure that the staff in regional branches of the Internal Audit Committee is able to cope with the increasing number of complaints, and could consider increasing staff limits as necessary. It is worth noting that, according to the on Internal Audit Committee, the most common violations and irregularities in procurement procedures are technical specification requirements that artificially exclude some suppliers from the bidding process.

4.5.2. Include corruption-related offences in the List of Unreliable Suppliers

The integrity of the public procurement process requires ensuring that safeguards exist to protect public funds from firms or individuals who underperform, mismanage or abuse the public procurement process. A debarment regime or ‘black list’ can help enhance the integrity of the public procurement process, by ensuring that safeguards exist to protect public funds from firms or individuals who abuse the public procurement process. However, in the absence of clear, concise legal and policy guidance to debar a company or individual, debarment regimes act as a conduit to unfairly target firms or restrict access. An effective debarment regime therefore must be based on the rule of law, where it is clear what provisions will lead to debarment, what provisions allow for removal from the list, and how (if any) exceptions will be applied.

As mentioned previously, the Ministry of Finance runs a List of Unreliable Suppliers (“blacklist”). The blacklist includes firms that have either provided fraudulent information in public procurement applications; failed to sign the public contract upon award; or performed poorly on implementation of their contractual duties. Figure 4.4 details the relative frequency of reasons for inclusion on the blacklist. The blacklist prohibits companies and individuals from applying to any public procurement contract for a period of 24 months. A company or individual is placed on the blacklist following requests from Contracting Authorities or court decisions. A blacklisted company or individual can appeal the decision, with the courts cancelling debarment following a successful appeal.

Figure 4.4. The most frequent reason for blacklisting suppliers is evasion of contract conclusion (Frequency of reasons for inclusion on blacklist, by percentage)



Source: (Ministry of Finance of the Republic of Kazakhstan, 2018_[26]).

Amendments adopted on 26th December 2018 introduced an expansion of the suppliers excluded from participating in public procurement. Currently, only suppliers on the List of Unreliable Suppliers under the Public procurement framework are prohibited from participating in public procurement. However, as of 1

January 2020, this prohibition extends to suppliers on the single Blacklist of national holdings and companies, as well as on the blacklist of the list of unreliable suppliers of Sovereign Wealth Fund Samruk-Kazyna (SK).

The Ministry of Finance does not include companies or individuals on the blacklist convicted of corrupt practices. The blacklist could be further enhanced to protect the integrity of the contracting process, with the Ministry of Finance including provisions to debar companies or individuals convicted of corrupt practices. The Ministry of Finance could also consider including a clause in the Law on Public Procurement that informs potential bidders of the debarment system and the offenses that could lead to debarment. In expanding the list of prohibited practices that can result in debarment, the Ministry of Finance should also develop guidance that clearly outlines what provisions lead to debarment, how debarment actions will be taken, the length of debarment, and the process for reinstatement. Box 4.12 details the debarment regime in Canada, which includes clear guidance to bidders and suppliers on debarment proceedings.

Box 4.12. The Government of Canada's Integrity Regime

In 2015, Public Services and Procurement Canada introduced the Integrity Regime to ensure that the government only conducts business with ethical suppliers in Canada and abroad. Run by Public Services and Procurement Canada, the regime applies across government through agreements between Public Services and Procurement Canada and other federal departments and agencies.

The regime applies to (i) goods, services and construction contracts, subcontracts and real property agreements with a transaction value over USD 10 000; and (ii) contracts that are either issued by a federal department or agency listed in schedule I, I.1 or II of the Federal Administration Act or contain provisions of the Ineligibility and Suspension Policy.

Public Services and Procurement Canada determines whether a supplier is ineligible to do business with the government. Some offences lead to an automatic ineligibility, while others lead to a case-by-case review. Generally, it applies to procurement and real property transactions over \$10,000.

Public Services and Procurement Canada clearly communicates and provides guidance on the three components of the regime to both public procurement officers and supplier. The three components are as follows:

- Ineligibility and Suspension Policy, which clearly establishes when and how a supplier may be declared ineligible or suspended from doing business with the government;
- Integrity directives, which provide formal instructions to the federal departments and agencies that follow the policy; and
- Integrity provisions, which consist of the clauses that incorporate the policy into solicitations and the resulting contracts and real property agreements.

The debarment regime consists of a number of offences that could render a supplier ineligible to do business with the government. To further support suppliers in understanding what will or may make them ineligible, the department has prepared a Guide to the Ineligibility and Suspension Policy.

Source: (Public Services and Procurement Canada, 2017^[27]).

Proposals for action

While integrity reforms are ongoing in Kazakhstan, a number of tailored measures are required to protect the public procurement process from corruption, fraud and misuse. The following proposals for action summarise the key reform areas identified above:

- Building a culture of integrity in public procurement requires a clear, tailored integrity strategy and standards. Currently, a tailored integrity strategy for public procurement does not exist. As the Agency for Civil Service Affairs has the mandate to develop ministry-specific plans on anti-corruption, it is well placed to lead the development of a procurement-specific integrity strategy, in cooperation with procurement experts from across the government. All national and regional ministries, agencies, quasi-state bodies and SOEs could consider devising entity-specific procurement integrity plans, based on the government-wide procurement integrity plan. The Ethics Commissioner in each ministry could support coordination of the integrity strategy across the various procurement entities in Kazakhstan.
- In addition to a clear strategy, tailored integrity standards can clarify the expected behaviour and actions to take for public procurement officials. While a general Code of Ethics currently exists for the public service, the Agency for Civil Service Affairs could consider refining the number of provisions, and categorising the principles around clear, easy-to-understand values. This process could be accompanied by a specific exercise to develop a Code of Ethics for public procurement officials, which provides guidance for dealing with the procurement-specific integrity challenges officials will face. To ensure buy-in and support for the Code, the Ministry of Finance, with support from the Agency for Civil Service Affairs, could develop the code.
- While the Law on Public Procurement contains conflict of interest provisions for suppliers under Article 6, the provisions do not cover affiliates of potential suppliers such as subsidiaries and joint ventures (unless they were involved in providing technical or economic justification for the tender).. As these interests could also undermine the integrity of the procurement process, Article 6 could be expanded to cover affiliates of all potential suppliers, not just those involved in providing technical or economic justifications for the tender, including in what regards procurement of infrastructure or construction services. More broadly, the government could consider broadening the options for managing conflict of interest, and include options such as divestment, liquidation and resignation. The Ministry of Finance is also encouraged to carry forward with automating the process to ensure comprehensive checks on potential conflicts of interest for all tenders.
- Effective implementation of integrity standards requires tailored training and guidance for public officials. To make the commitments under the Integrity Agreements meaningful, the Agency could consider developing training modules. Modules could cover the revised Code of Ethics, as well as the procurement-specific code of ethics, managing conflict of interest, and risk management roles and responsibilities. The training should take place regularly and be tailored to the specific needs of the procurement workforce. The Agency could also support the Ministry of Finance and other entities with a procurement function to develop behavioural measures that regularly reactivate public officials' commitment to ethical standards.
- The integrity of suppliers is critical to the overall integrity of the public procurement process. To support companies in implementing of the “System of Methods to Combat Bribery”, the Ministry of Finance and the Agency for Civil Service Affairs could require that companies provide verification of their business ethics programme by a reputable, independent third-party reviewer. The government should avoid conducting any verification themselves. To support

implementation, the Ministry of Finance, together with the Agency for Civil Service Affairs and the NCE, could develop and carry out integrity training programmes for suppliers.

- Fostering effective risk-based internal control is critical for ensuring the integrity of procurement activities. The Ministry of Finance could implement a systemic, on-going and comprehensive risk management process that covers the entire procurement cycle and involves core stakeholders, including contracting authorities. This process should include risk assessment and risk response activities, be integrated into everyday business practices and be updated throughout the year to respond to changing risks. Developing key tools, such as a risk management guide, a risk heat map and a risk register, could support public procurement officials in integrating risk management into their everyday activities. Other control tools, such as the desk control process, could also be enhanced. The Ministry of Finance could expand the desk control process to integrate fraud and corruption risk assessments across the entirety of the procurement cycle. The appropriate resources should be assigned to the “desk control” function, to ensure capacity to carry out the process.
- Measures could be taken to enhance oversight of the public procurement process by civil society organisations. This will require ensuring qualified, civil society organisations have the capacity to carry out an independent review of specific procurement processes. To protect the independence of the reviewers, the Agency of Civil Service Affairs should be responsible for coordinating this programme. Core components of the independent monitoring programme could include training for civil society organisations to carry out the review, as well as including an article detailing the requirements for independent monitoring into the draft Law on Public Procurement.
- Currently, serious constraints such as ‘professional complainers’ and a lack of resources undermine the effectiveness of the complaints mechanism. To address these issues, the Ministry of Finance could extend the period for suppliers to submit comments and requests for clarification to at least 10 days, when the procurement is considered complex. The Ministry of Finance should consider introducing proportionate fees for filing a complaint to dis-incentivise complaints without grounds alongside a system to monitor the results of its usage. A reshuffle of the preliminary discussion of technical specifications is necessary to give more time to suppliers to comment on provisions in technical specifications. As well, the Ministry of Finance should make sure that the staff in regional branches of the Internal Audit Committee are able to cope with the increasing number of complaints, and could consider increasing staff limits as necessary. Finally, while the Ministry of Finance currently collects data on complaints, more could be done to enhance transparency. To that end, the Ministry of Finance could consider disclosing more detailed aggregated complaint statistics in a machine-readable format to ensure an adequate level of transparency and inform broader public procurement reforms.
- To protect public funds from corrupt firms or individuals, the Ministry of Finance could include provisions to debar companies or individuals convicted of corrupt practices. Moreover, to communicate the debarment process to suppliers, the Ministry of Finance should develop guidance that outlines what provisions lead to debarment, how debarment actions will be taken, the length of debarment, and the process for reinstatement. The Ministry of Finance could also consider including a clause in the Law on Public Procurement that informs potential bidders of the debarment system and the offenses that could lead to debarment.

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[16]

Note

¹ For a full assessment on the whistleblower system in Kazakhstan, including recommendations related to the scope of whistleblower protection, please see (OECD, 2017_[8]) and (OECD, 2017_[11]).

5 Strengthening public procurement capacity and enhancing the implementation of strategic procurement in Kazakhstan

This chapter discusses the potential of the Republic of Kazakhstan to strengthen the strategic use of public procurement. The transition of public procurement from an administrative function to a more strategic function is a common challenge for many OECD and non-OECD countries and also affects the Republic of Kazakhstan. A highly skilled and adequately trained public procurement workforce is required for the transition to a strategic use of public procurement. Working towards making public procurement a recognised profession is essential for the development of a highly skilled workforce, as well as a procurement-specific training that goes beyond compliance and legal aspects.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

5.1. Strengthening the use of complementary policy objectives

While efficiency and cost effectiveness are the primary objectives of public procurement, governments, recognising public procurement's relevance and impact, are increasingly using it in a strategic way to pursue broader or complementary policy objectives, thus achieving sustainability and growth. Sustainable procurement means that purchased goods, services and works that are acquired through the government for public service delivery, achieve value for money and generate benefits not only for the government, but also for the environment, society and the economy (Procura+, 2016^[1]). Complementary objectives might include, but are not limited to, promoting sustainable growth, developing SMEs and supporting innovation, addressing climate change, increasing social responsibility and economic resilience. In fact, the vast majority of OECD governments increasingly use procurement as a policy lever to support such objectives (OECD, 2015^[2]).

This chapter will look at the use of strategic procurement in Kazakhstan and identify ways in which the development of strategic procurement from an administrative to a strategic function can be strengthened. As this transformation requires highly skilled civil servants, the chapter will further identify strengths and weaknesses of the public procurement workforce in Kazakhstan and suggest ways of improving capacity and skills of public procurers.

Due to its increasing significance and strategic use, public procurement is highly relevant in the promotion of economic outcomes and sound public governance. OECD countries determine which complementary policy goals to focus on according to their individual national priorities. In almost all OECD countries, environmental considerations are included (OECD, 2017^[3]). The wide use of strategic policies across OECD countries is displayed in Table 5.1. In most countries, policies and strategies are developed at the central level.

Table 5.1. Most OECD countries have developed strategies or policies to support complementary policy objectives in public procurement

	Green public procurement		SMEs		Innovative goods and services	
	2016	2014	2016	2014	2016	2014
Australia	■	●	●	●	●	●
Austria	◆◆	●	◆◆	◆	◆◆	●
Belgium	◆◆	◆◆	●	●	●	●
Canada	◆◆	◆◆	●	●	◆	●
Chile	◆◆	◆◆	◆◆	◆◆	○	●
Czech Republic	".."	".."	".."	".."	".."	".."
Denmark	●	●	●	●	●	●
Estonia	●	○	●	○	●	○
Finland	◆◆	●	◆	◆	◆◆	◆
France	".."	◆◆	".."	◆◆	".."	◆◆
Germany	●	●	●	●	●	●
Greece	◆	◆◆	◆	●	○	○
Hungary	●	◆	●	●	●	●
Iceland	●	●	○	○	○	○
Ireland	●	●	●	●	●	●
Israel	●	".."	●	".."	○	".."
Italy	●	◆	◆	◆	◆	◆
Japan	●	●	●	●	○	●
Korea	●	●	●	●	●	●
Latvia	●	".."	●	".."	◆	".."

Luxembourg	..	◆	..	◆	..	◆
Mexico	●	●	●	●	●	●
Netherlands	◆	◆	◆	◆	◆	◆
New Zealand	◆	◆	◆	◆	◆	◆
Norway	◆	■	◆	◆	◆	◆
Poland	◆	●	●	●	●	●
Portugal	●	●	●	◆	◆	◆
Slovak Republic	◆	○	●	○	○	○
Slovenia	●	◆	●	●	●	●
Spain	●	◆	●	◆	●	◆
Sweden	●	◆	●	●	●	●
Switzerland	..	◆	..	◆	..	◆
Turkey	●	●	●	●	●	●
United Kingdom	●	●	●	●	●	●
United States	..	●	..	●	..	◆
OECD Total						
● Strategies/policies developed at the central level	25	26	24	24	19	22
◆ Internal strategies/policies developed by some procuring entities	11	14	8	12	9	11
■ Rescinded	1	1	0	0	0	0
○ Never developed	0	2	1	3	6	4
.. No information available	6	3	6	3	6	3
Colombia	●	◆	●	●	●	●
Costa Rica	●	●	●	●	○	○
India	○	..	●	..	◆	..
Lithuania	●	..	●	..	●	..
Russia	..	○	..	●	..	○

Note: <http://dx.doi.org/10.1787/888933535240>.

Source: OECD (2016, 2014), Survey on Public Procurement, OECD, Paris; OECD (2017^[3]), *Government at a Glance 2017*, OECD Publishing, Paris, https://doi.org/10.1787/gov_glance-2017-en.

In Kazakhstan, there is a strong potential for increasing the use of complementary policy objectives through public procurement. So far, price remains the predominant award criteria and the country has no overarching governmental strategy for the inclusion of complementary policy objectives. Some considerations are made, but these do not cover the breadth of sustainability considerations in the area of public procurement.

The Law on Public Procurement (hereafter: PPL) includes limited provisions that allow for the inclusion of complementary policy objectives, relating to use of recycled material, supporting employment of persons with disabilities and that of detainees.

The provision on recycled material was introduced with the 2018 revision of the (hereafter: the 2018 amendments). A new clause now requires contracting authorities to prefer goods that were produced using recycled material from waste originating in Kazakhstan. Such preference has to be stated in the tender notice; suppliers have to provide proof of using recycled material (article 21, point 4-1.)

Employment of persons with disabilities and of detainees can be classified as social criteria, as it addresses social concerns. The PPL includes the following provisions relative to the achievement of the above mentioned ends, as inscribed in Article 39 and Article 51 of the PPL:

- the use of direct awards for the purchase of goods from associations of disabled persons, with a number of disabled employees of fifty percent or above,
- the use of direct awards for purchases of penal system institutions¹,

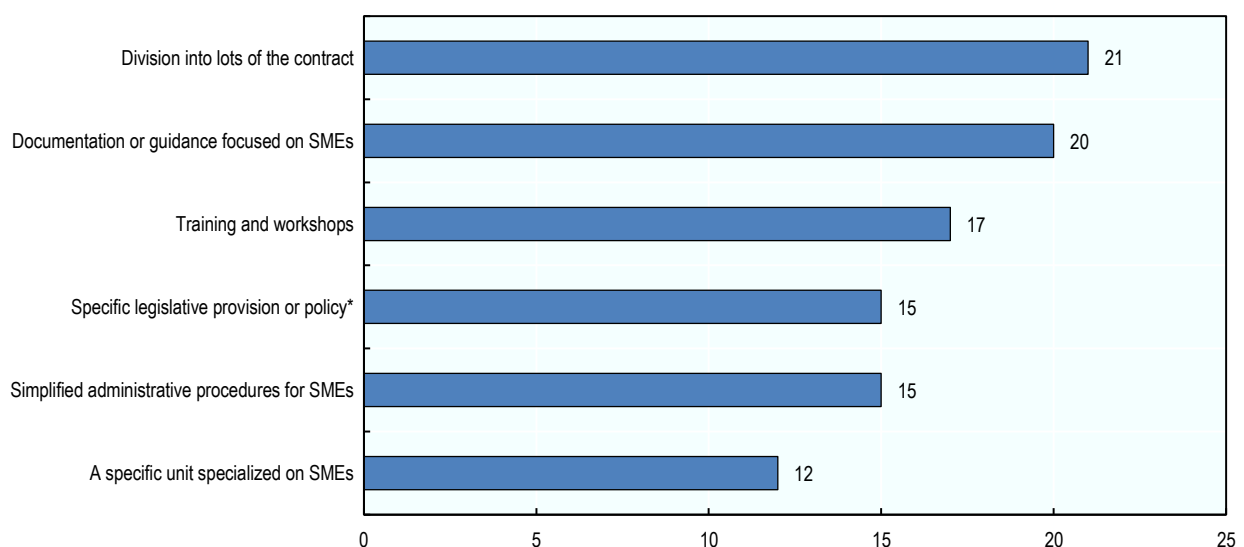
- mandatory purchasing of certain goods, works and services from associations of disabled persons of the Republic of Kazakhstan, mostly items for disabled needs (for example blind aids, special vehicles, etc.)²

Another measure that allows for a limited inclusion of non-price criteria are conditional discounts (see Chapter 2 for additional details.) Conditional discounts are special criteria that affect the price of a bid, reflecting non-price criteria. Conditional discounts are deducted from the price offer as a percentage of the initial price of a bid. Article 21 point 4 of the PPL sets out that in order to determine the best offer, the following criteria are to be included: experience in the market, proof of technical specifications, certified quality management systems according to national norms, environmental certificates that certify the compliance with environmentally friendly product standards. These criteria can be included in the price-calculation, in form of a discount. However, practitioners reported in the interviews during fact finding missions that price remains the predominant criteria.

While many OECD countries have adopted measures to ensure that SMEs have access to public procurement opportunities, SME participation in is not a criterion that is taken into account as a complimentary policy objective by the PPL in Kazakhstan. Stakeholders reported that SME participation in public procurement in Kazakhstan is already sufficiently high. According to the Ministry of Finance, in the first nine months of 2017, SMEs accounted for 72% of public procurement volume. Therefore, policy makers consider that there is no need for a specific policy measure to support the participation of SMEs in public procurement.

The support of SMEs is integrated into procurement policies in most OECD countries. The most widely used approach to support SME access to public contracts is the division of contracts into lots, as displayed in Figure 5.1. Additional measures of support commonly used by OECD countries are practical guidelines, as well as dedicated trainings to support SMEs in public procurement (OECD, 2017^[3]). Central policies are often accompanied by detailed guidance on how to implement them. Specific legislative provisions are also employed to take considerations such as energy efficiency, environmental considerations or life-cycle costs in procurement.

Figure 5.1. Division into lots is the most common approach to support participation of SMEs in public procurement in OECD countries



Note: *e.g. set-aside, bid-preferences

Source: OECD (2017^[3]), *Government at a Glance 2017*, OECD Publishing, Paris, https://doi.org/10.1787/gov_glance-2017-en.

To encourage the integration of complementary policy objectives, the OECD Recommendations of the Council on Public Procurement suggest the development of an overall strategy on the inclusion of secondary (complementary) policy objectives, further detailed in Box 5.1.

Box 5.1. Recommendations of the Council on Public Procurement - Balance

Principle 4 – **Balancing** the use of public procurement to pursue secondary policy objectives against its primary objective

- i) **Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities**, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered.
- ii) **Develop an appropriate strategy for the integration of secondary policy objectives in public procurement systems**. For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established as the basis for the development of action plans or guidelines for implementation.
- iii) **Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives**. The results of any use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones to provide policy makers with necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy objective target outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the public procurement system should be periodically assessed to address potential objective overload.

Source: <http://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf>.

As reflected in the Recommendation in the principle on “Balance”, an appropriate strategy should be developed to determine which complementary policy objectives are to be pursued and how they can be integrated. To ensure that complementary policy objectives are taken into consideration, many OECD countries employ monitoring mechanisms and set quantified targets for the objectives. As reflected by the title of this principle (“balance”), part of a sustainable procurement strategy is to balance the different impacts of sustainable procurement: 1) economic impact, 2) environmental impacts, and 3) social impacts. A common misconception in this context is that pursuing one aspect will result in negative outcomes in another, for example that improving the environmental footprint of a purchase will result in higher costs. However, practical application in many OECD countries and beyond have demonstrated that a win-win-scenario can often be the more likely outcome. A recent example is a procurement project from the UK, where light bulbs in the London Underground were replaced to more environmentally friendly bulbs, while at the same time achieving cost savings of 25% (see Box 5.2).

Box 5.2. Realising cost savings while procuring energy-efficient lighting for the London Underground

Transport for London (TfL) sought to update the lighting system in the London Underground in 2015 as part of a wider push to reduce London's CO2 footprint. As part of this effort, TfL also identified the high maintenance expenses of the traditional lightning as a target for cost savings.

The procurement project was able to combine both goals – economy and environmental friendliness – successfully. In fact, the process proved so successful that has been expanded to other procurement needs.

The management of the procurement process included the following success factors:

- Early market engagement strategy with three effects: 1) allowing procurers to acquire the necessary technical knowledge to draft performance-based technical specifications, 2) sparking interest for innovation in the market, 3) increasing competition and with that improving value for money.
- Examining costs of the whole lifecycle of the product, including 1) how these Whole Lifecycle Costs (WLC) differ for the same product installed in different location, 2) a range of different costs beyond unit price, e.g. maintenance, energy use, installation, etc.

An analysis of options according to these two aspects revealed that:

1. the biggest savings were not from unit costs or costs of materials, but rather from elements along the lifecycle of a product, such as maintenance.
2. energy-efficient lighting options offered as much as 50% savings compared to the commonly installed (non-energy-efficient) option

Source: Procura+ (n.d.), Innovative lighting procurement for London's Underground network, http://www.procuraplus.org/fileadmin/user_upload/Procura_case_studies/Procuraplus_case_study_Transport_for_London.pdf.

To use public procurement as a means to achieve strategic objectives, it is crucial to define the ends that shall be achieved, and how these should be balanced. Kazakhstan currently has no overarching strategy that specifies these objectives. Systematising strategic objectives can be a first step to understanding and defining strategic priorities.

The inclusion of complementary policy objectives is also related to the capacity of the public procurement workforce. If contracting authorities are understaffed, procurement officials have less time to consider additional policy objectives. To go beyond procurement as an administrative function, public servants also need to be sufficiently skilled. The strategic use of public procurement is more time-consuming than the administrative use of public procurement, as it necessitates the capacity to identify and analyse strategic aspects. Kazakhstan's civil servants, however, report that they frequently work overtime (ACSH, 2018^[4]). Increasing the capacity of public servants is important to allow for the use of public procurement as a strategic tool.

The following part of the chapter will examine the public procurement workforce in Kazakhstan in more detail and how the workforce can be professionalised to meet the needs of a procurement function that goes beyond administrative work.

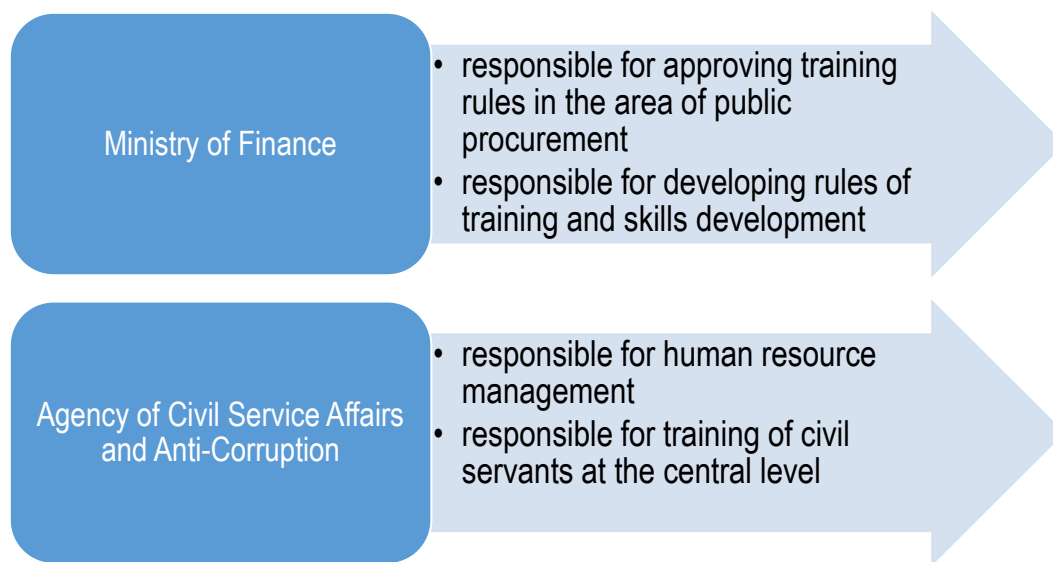
5.2. Enhancing capacity development in the public procurement workforce in Kazakhstan

To integrate strategic concerns into public procurement successfully, it is not sufficient to include complementary policy objectives into the legislation. The strategic use of public procurement requires procurers to take strategic decisions as part of their working routine. Therefore, a skilled public procurement workforce is essential to ensure the efficient and effective use of public resources in public procurement. As countries place increasing demands on public procurement, the role of the procurers becomes all the more important. To prepare procurement professionals for this task, capacity development is an essential element for Kazakhstan to use public procurement in a more strategic way. Developing a skill set of public procurers allows for targeted training and HR management.

5.2.1. Understanding the institutional framework of capacity building

Kazakhstan has a solid institutional framework of capacity building in place. The two main bodies responsible for capacity building and training of civil servants are the Ministry of Finance and the Agency for Civil Service Affairs and Anti-Corruption, as displayed in Figure 5.2. The Agency for Civil Service Affairs and Anti-Corruption is directly subordinated to the President of the Republic of Kazakhstan (OECD, 2018^[5]).

Figure 5.2. Two governmental bodies have oversight functions in capacity building in Kazakhstan



Source: OECD Secretariat.

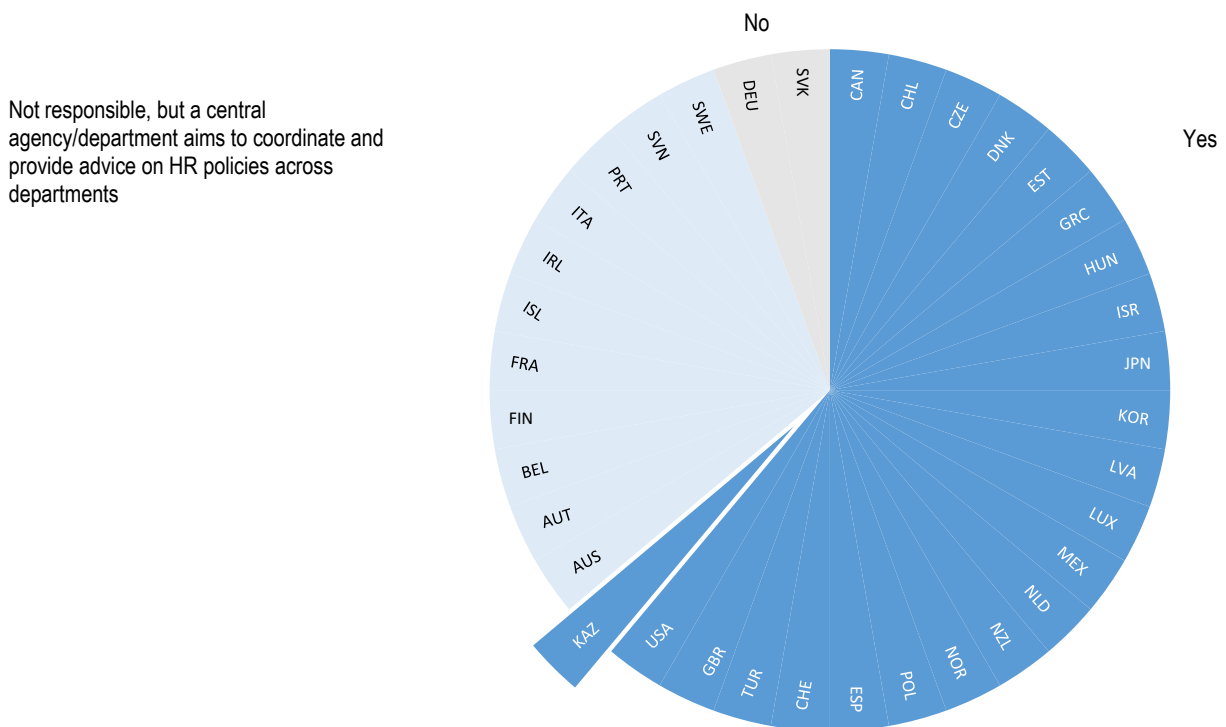
The Agency for Civil Service Affairs and Anti-Corruption is responsible for a range of activities around capacity that include (OECD, 2018^[5]):

- providing leadership and guidance on human resource management;
- developing and implementing the HR strategy;
- providing advice on the legal framework in this area;
- transmitting public service values;
- standardising recruitment,
- managing employment and defining skills profiles;
- providing training;
- and identifying performance management indicators.

The same structure is prevalent in most OECD countries, as displayed in Figure 5.3 below.

Figure 5.3. Most OECD countries have a central human resource agency

Responses of 35 OECD countries and Kazakhstan to Survey Q5: Is there a central agency/department/unit in charge of human resources at central/national/federal government level?



Source: OECD (2016a), “Survey on Strategic Human Resources Management in Central/Federal Governments of OECD Countries”, OECD, Paris.

The law in Kazakhstan establishes clear responsibilities with respect to the responsibility for capacity development in public procurement. The Ministry of Finance is the authorised body regulating the public procurement system and it is equally responsible for developing the rules of training and skills development. According to the PPL, the role of the Ministry of Finance is to approve rules for retraining and advanced training of employees engaged in public procurement (article 16, point 8). The 2018 revision

expanded the explicit responsibilities of the Ministry of Finance on training, stating that the Ministry of Finance develops and approves guidance (article 16, 11-2).

5.2.2. Understanding capacities in the public procurement workforce across governmental bodies

Capacity of the public procurement workforce has two aspects to it: the capabilities of public procurers and the amount of public officials that work on public procurement. Both aspects provide insights on the structure of the public procurement workforce.

The overall number of civil servants in Kazakhstan amounts to 98 499, according to the Monitoring Report of the Agency for Public Service and Anti-Corruption released in 2018 (Agency for Public Service and Anti-Corruption, 2018^[6]).

Kazakhstan has different categories of civil servants, Corps A, Corps B and political staff. The differentiation between Corps A and Corps B has been introduced by the amendments of the 1999 Civil Service Law that came into force in 2013. Corps A consists of civil servants with a certain level of seniority in leadership positions. Corps B includes middle managers and other lower-level staff. Political staff are defined as civil servants that have been elected into their position (Civil Service Law Article 1).

The monitoring report of Kazakhstan's Agency for Public Service and Anti-Corruption takes stock of the number of civil servants employed in the different staff categories, as displayed in Table 5.2. (Agency for Public Service and Anti-Corruption, 2018^[6]). In total, Kazakhstan's civil service employs almost 100 000 persons; the vast majority are staff in Corps B (almost 98 000). In comparison to 2017, the number of Corps A staff has decreased by more than one third, from 519 to 279 civil servants, while the number of Corps B staff remained largely the same. The decrease in staff number has been stronger for central level entities, from 207 to 63 civil servants, than for local state bodies, from 296 to 216 civil servants (Agency for Public Service and Anti-Corruption, 2017^[7]). The Monitoring Report does not provide information on the extent to which the capacity in different staff categories is adequate, nor does it explain why the number of staff in certain groups of civil servants has been increased or decreased (Agency for Public Service and Anti-Corruption, 2018^[6]).

Table 5.2. The number of civil service employees in Kazakhstan has decreased at senior levels

	2017	2018
Total number of civil servants	98 272	98 499
• Political civil servants	433	436
• Corps A	519	279
• Corps B	97 753	97 784
Civil servants in central state organs	52 616	52 409
Civil servants in central entities	10 059	10 233
• Political civil servants	326	326
• Corps A	207	63
• Corps B	9 526	9 844
• Corps A (territorial subdivision)	16	*
• Corps B (territorial subdivision)	42 541	42 176
Local state bodies	46 089	46 090
• Political civil servants	107	110
• Corps A	296	216
• Corps B	45 686	45 764

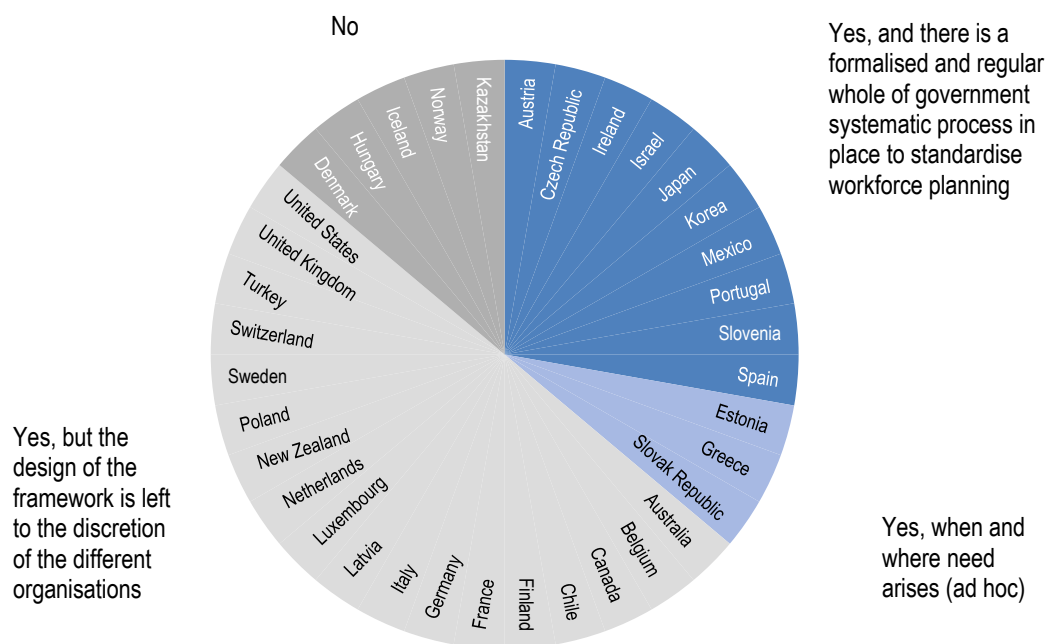
Note: * not mentioned in Monitoring Report.

Source: (Agency for Public Service and Anti-Corruption, 2017^[7]) (Agency for Public Service and Anti-Corruption, 2018^[6]).

Most OECD countries have an HR planning scheme in place to ensure the workforce has an adequate capacity to deliver the necessary services. Kazakhstan is one of the countries that does not have regular workforce planning processes in place, as displayed in Figure 5.4. Workforce planning can help to anticipate future developments and to react to changing needs of the public service in a cost-efficient manner (OECD, 2018^[5]).

Figure 5.4. Workforce planning is conducted in most OECD countries

Responses of 35 OECD countries and Kazakhstan to Survey Q27: Are regular workforce planning processes in place to make sure that government has the adequate workforce to deliver services (e.g. annual action plan to implement vision of it exists)?



Note: Slovak Republic: a new Civil Service Law entered into force on 1st June 2017, introducing major changes in existing human resources management practices. For this reason, data may no longer reflect the current situation in the country.

Source: OECD (2016), "Survey on Strategic Human Resources Management in Central/Federal Governments of OECD Countries", OECD, Paris.

The Assessment of Human Resource Management Performance in Government Bodies of the Kazakhstan of the Regional Hub of Civil Service in Astana (ACSH) and the United Nations Development Programme (UNDP) suggests that capacity with respect to the amount of civil servants is an issue in the public administration of Kazakhstan. The assessment showed that in 2015 the amount of excessive hours Kazakhstan's civil servants worked was on average one hour and 16 minutes more than stipulated in their contracts, as displayed in Table 5.3 (ACSH, 2017^[8]). Systematic overtime can be a sign of insufficient capacity, or it can point to inefficient workforce planning and management (ACSH, 2017^[8]).

Table 5.3. Civil servants at the central government on average have excessive work hours

	Minutes per employee per day
Average in central government bodies	76
Minimum in central government bodies	7
Maximum in central government bodies	158

Source: (ACSH, 2017^[8]).

In-depth interviews with public servants carried out by the Astana Civil Service Hub reveal the importance of well-managed human resource planning. Excessive working hours were the third most mentioned obstacle to motivation described by respondents (ACSH, 2018^[4]).

As official data on the public procurement workforce are not available, Table 5.4 provides staff numbers based on the interviews conducted with civil servants. The amount of civil servants that work on public procurement ranges in the different bodies ranges from one to 12.

Table 5.4. Estimated public procurement workforce in Kazakhstan

	Number of employees working on procurement
<u>State bodies</u>	
Ministry of Finance	?
Ministry of Internal Affairs	12
Ministry of Development	5
Ministry of Culture and Sports	1
Ministry of Education	3
Ministry of Health	3
Subordinate Institution of the Ministry of Health, Procurement of Drugs	4
<u>Agencies</u>	
Committee on Public Procurement	43
Committee on Regulation of Natural Monopolies and Protection of Competition	40-50
Internal State Audit Committee	*
National Bureau on Combating Corruption	?
<u>Regions</u>	
East Kazakhstan Oblast	5
Karaganda Oblast	9
Astana City	5
<u>Other entities:</u>	
National Chamber of Entrepreneurs	5

Note: Numbers are taken from interview responses.

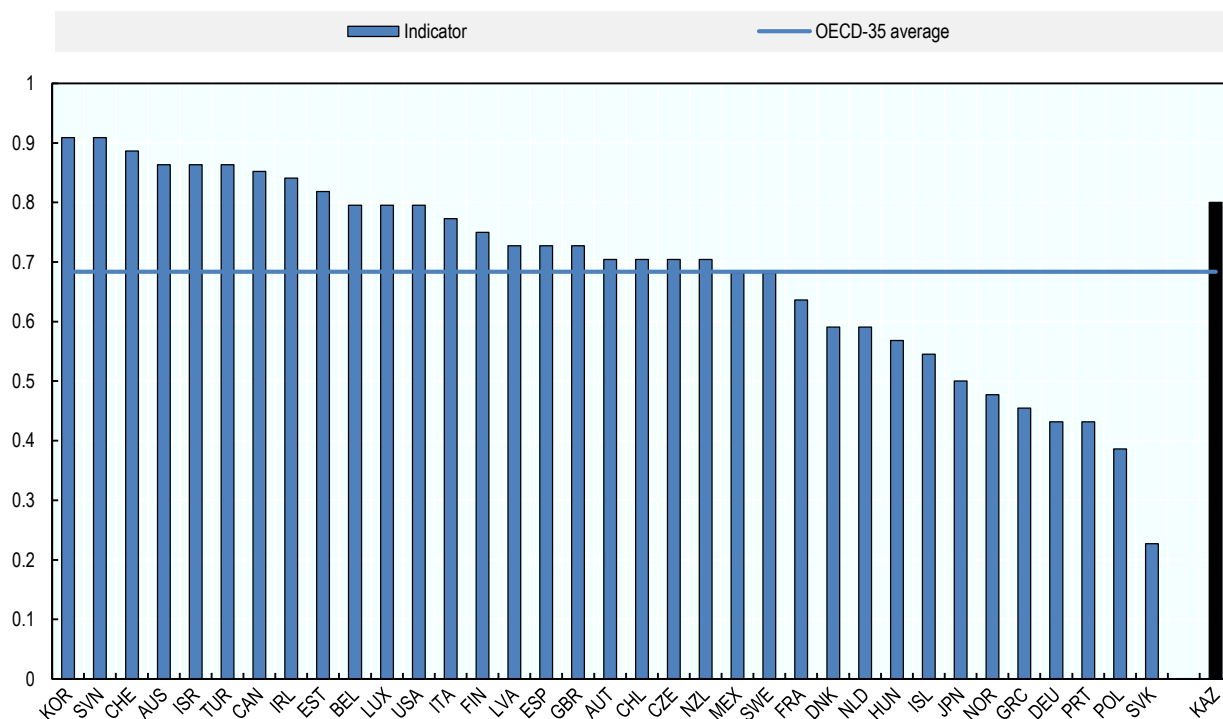
*no staff member works exclusively on procurement, accountants work also on procurement.

Source: Interview responses.

The latest revision to the PPL increased the centralisation of public procurement and gave more responsibility to all single organisers, including to Akimats (local administrations) in the regions. While the Government Procurement Committee of the Ministry of Finance became the single organiser at national level, the procurement departments of Akimats shall perform this role at regional level. If the role of Akimats will be strengthened, the pressure on the procurement workforce will increase. Independent of this particular law, respondents from Akimats mentioned in OECD interviews that regular amendments of the public procurement legislation increase their workload as they have to adapt their practices to these frequent amendments.

Conducting a detailed needs assessment of the public procurement workforce could help to identify where public procurers are in need of increased capacity. Kazakhstan is well above the OECD average with respect to the collection of administrative data, as displayed in Figure 5.5. These data provide a strong potential for further analysis of procurement capacity.

Figure 5.5. The collection of administrative data at central level in Kazakhstan is above the OECD average in 2016



Note: The index on the collection and availability of administrative HR data measures the existence of the following administrative data records at the central/federal level: number of employees; level; function; age; gender; disabilities; other minority status; level of education; length of service; languages spoken; type of contract; union membership; part-time work; other flexible working arrangements; total sick days used; training days used; special leave used; mobility within the civil service; staff turnover; retirements; resignations; and dismissals. The index ranges from 0 (low level of data collection at central level) to 1 (high level of data collection at central level). Missing data for countries were estimated by mean replacement.

Slovak Republic: a new Civil Service Law entered into force on 1st June 2017, introducing major changes in existing human resources management practices. For this reason, data may no longer reflect the current situation in the country.

Source: OECD (2016), "Survey on Strategic Human Resources Management in Central/Federal Governments of OECD Countries", OECD, Paris.

Additional data could also help to draw a more accurate picture of the strengths and weaknesses of the procurement workforce.

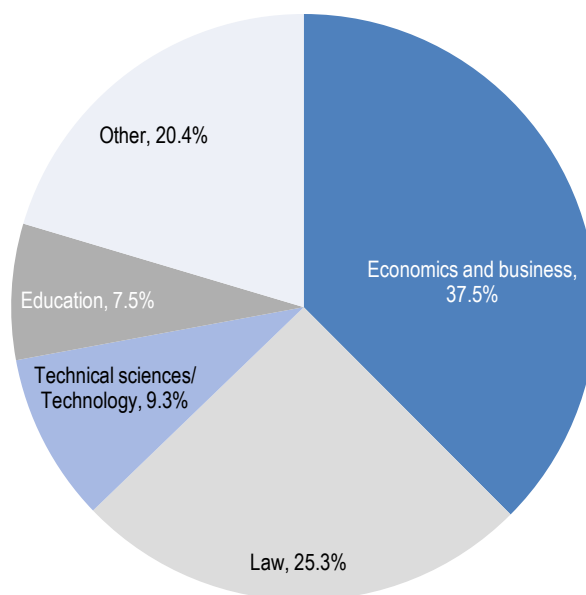
5.2.3. Strengths and weaknesses of the public procurement workforce

The development of a capacity development scheme or a training strategy is most effective when adapted to the training needs. Identifying strengths and weaknesses of the public procurement workforce can be a useful first step to understand in which areas capacity building is needed. In Kazakhstan, potential for increasing capacity of the public procurement workforce exists at central and regional level. The comparatively large amount of administrative data collected in Kazakhstan provides opportunities for a thorough analysis.

To adapt existing training and capacity building measures to the needs of the public procurement workforce, identifying strengths and weaknesses can shed light on priority areas and less important aspects.

Civil servants in Kazakhstan have diverse educational backgrounds. As public procurement requires different skills, diverse backgrounds can be an advantage. Most civil servants with a higher education degree have studied economics or business (37.5%) or Law (25.3%), as displayed in Figure 5.6. Other common fields of studies are Technical Sciences and Technology (9.3%) or Education (7.5%). While there are no data available on public procurement, in the interviews with procurers, most reported to have a similar educational background. The most common fields of studies were also economics, business and law. This diversity of educational backgrounds can be a strength as it covers a large number of different skill sets that are required in public procurement.

Figure 5.6. Civil servants in Kazakhstan are from diverse educational backgrounds



Note: Percentages are out of a total of 91.8% of civil servants with a higher education degree.

Source: (Agency for Public Service and Anti-Corruption, 2018^[6]).

Another strength is the availability of administrative data. Kazakhstan is well above OECD average with respect to collection of administrative data at central level as displayed in Figure 5.5. These data can serve to inform training plans and to assess capacity needs (OECD, 2018^[5]). Judging from the information freely available, administrative data are not used to the extent possible to advance training schemes, capacity development or HR planning.

There are equally a number of weaknesses that provide opportunities for improvement. With respect to education, there is no particular career path for public procurers. The public procurement function is not regarded as a profession and there are no specifically dedicated university programmes on public procurement in Kazakhstan.

Another weakness is that promotions are not perceived as merit-based and the perception has evolved towards a more negative perception over the last years. The Assessment of Human Resource Management Performance in Government Bodies of Kazakhstan of the ACSH and UNDP shows a downward trend in promotion of employees (ACSH, 2017^[8]). While in 2012 the promotion indicator was still at 69%, it decreased to 38% in 2015 (ACSH, 2017^[8]). Additionally, many public servants mentioned in a survey carried out by the Astana Civil Service Hub that they feel that promotions are not merit-based. The respondents raise that to sustain long-term motivation and ensure an inflow of talented graduates to

the public sector it is important to conduct serious performance appraisals and transparently communicate their use (ACSH, 2018^[4]).

According to stakeholders, procurers with up-to-date, relevant and specialised technical skills are few. Suppliers reported that they detected errors in technical specifications that are interpreted as the result of insufficient technical knowledge. This perspective is supported by the high number of procurement processes that see an amended of the procurement documents following comments from suppliers. According to stakeholders, contracting authorities have been relying on external expertise in drafting specifications.

Additionally, civil servants in general and public procurers in particular describe excessive work hours as an obstacle. Civil servants also deplore that training opportunities are not sufficiently available or do not cover the training needs (ACSH, 2018^[4]).

Identifying strengths and weaknesses can be a useful exercise to develop tailored capacity building measures. For instance, Kazakhstan could prepare an analysis of skills gaps and a matching training needs analysis. The results of these exercises could be used in designing, developing and delivering professionalisation strategies, with an adequate range of measures suitable for Contracting Authorities' staff and procurement officers.

5.2.4. Strengthening existing training and capacity building measures

Adequate training is crucial to equip procurement professionals with the multidisciplinary skills necessary to fulfil their tasks. In Kazakhstan, regular training is compulsory for public servants. The Ministry of Finance, through its subordinate organisation "Centre for Electronic Commerce", provides trainings to civil servants from Contracting Authorities. These trainings usually cover legal provisions as well as practical instructions on how to use the e-procurement system. However, public servants do not feel sufficiently trained to carry out the public procurement function. The coverage of annual trainings sessions from the "Centre for Electronic commerce" appears very modest compared to potential needs (23 194 procuring entities) (OECD, 2017^[10]).

In Kazakhstan, training is compulsory for Corps B civil servants once every three years. Unless civil servants receive an unsatisfactory performance assessment. In this case, they have to complete additional training hours. On average, civil servants attend on average one to three trainings a year (OECD, 2018^[5]). The Ministry of Finance established rules for advanced training of public procurement officials per ministerial order (Order № 697 adopted on 28 December 2015)³. These rules include the following provisions:

- Training and professional development of public procurement officials is carried out by educational institutions.
- Educational organisations develop and approve training programs for retraining and professional development of specialists.
- The curriculum needs to include the following elements:
 - Development and approval of tender documentation, technical specifications and other documentation used in the public procurement process.
 - A practical course on reviewing requests from individuals and legal entities concerning the clarification of specific provisions of public procurement legislation.
 - A practical course on the main the main aspects of compliance audit in the field of public procurement.
- At least 50% of the total number of training in the curriculum should be dedicated to the practice of organising and conducting public procurement, involving practitioners that are involved in the

procurement process as well as public servants of governmental agencies that oversee procurement procedures.

- Educational organisations need to attract specialists from state bodies, academia and knowledgeable individuals with at least two years of experience in public procurement.

The Rules apply to public entities and agencies as well as other organisations with a public share of 50% or more. The provisions are quite unspecific in some areas. For example, they do not specify which institutions would qualify as “educational institutions” and how “specialists” are defined. Further clarifying these elements in a training strategy would be beneficial for the law to be implemented in the way it was intended.

The rules include details about the training, such as the entity that carries out the training, elements that are to be included in the curriculum and the provider of the training. The case of the UK illustrates a good practice in this area, choosing a collaborative approach to curriculum development, as further detailed in Box 5.3. To ensure that the perspectives of different stakeholders in the procurement process are reflected in the procurement training, the UK civil service organised informal network meetings involving different departments.

Box 5.3. Development of curricula in UK public procurement capacity building

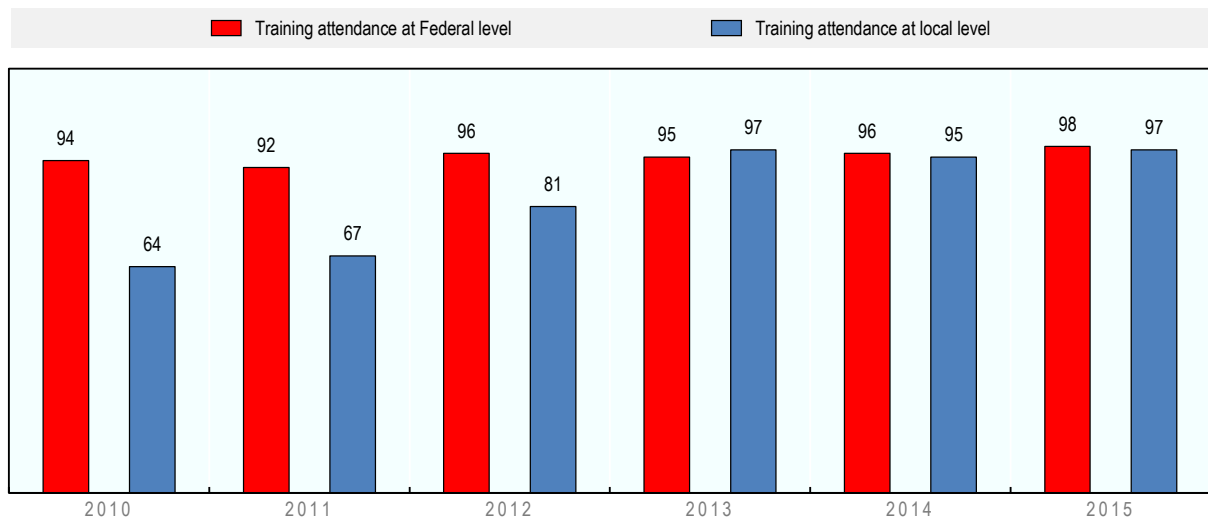
As part of the civil service reform, civil servants are invited to join one of the 25 professional (informal) networks, including one on procurement. The networks are led by the respective head of profession. According to the UK civil service website, the procurement profession’s network is focussing on the following areas:

- increase in the procurement volume managed centrally
- sustainable savings through corporate social responsibility
- efficiency (notably in processes)
- access by SMEs
- increased professionalism
- technology to support procurement

The network also has a say in developing the curriculum for public procurers, aiming at increasing the professionalism of procurers throughout the administration. The curriculum is being developed in phases, being adapted as the training needs change. Training opportunities include formal training provided by Crown Commercial Services, as well as informal arrangements such as on-the-job training, coaching or mentoring. .

Source: UK civil service website on training and development: www.gov.uk/guidance/training-and-development-opportunities-in-the-civil-service and www.gov.uk/government/organisations/civil-service-procurement-profession/about (accessed on 1 February 2016).

Since 2010 the number of procurement professionals attending the trainings has increased, according to the Assessment of Human Resource Management Performance in Government Bodies of Kazakhstan found an increase in provided training (ACSH, 2017^[8]). This applies both to government employees on the local and on the federal level, as displayed in Figure 5.7.

Figure 5.7. Training attendance at regional and central level

Note: coverage of government employees by professional development seminars, % of total; blue: training attendance at local level; red: training attendance at federal level.

Source: (ACSH, 2017^[8]).

Training of civil servants in general is usually carried out by Kazakhstan’s main training institution, the “Academy of Public Administration under the President of the Republic of Kazakhstan” (APA). The APA also has the regional branches. The Academy of Public Administration under the President of the Republic of Kazakhstan (APA) was created in 2005 by merging three central training institutions: the Academy of Civil Service, the Academy of Diplomacy and the Academy of the Supreme Court (Suleimenova, 2016^[11]). Additionally, Regional Training Centres (RTCs) were established to provide training in the regions (Suleimenova, 2016^[11]). Other institutions that provide additional training for civil servants are for example the Nazarbayev University and the Regional Hub of Civil Service in Astana or foreign academic institutions. In addition, civil servants with more than two years of service are entitled to a special quota in “Bolashak” scholarship competitions, which provide access to top foreign universities (OECD, 2018^[5]).

Current trainings focus strongly on compliance with the law. The underlying assumption appears to be that procurers use the law as a guideline for their work. However, with increasing complexity of the public procurement function, public procurers need to be trained to go beyond administrative tasks. The Ministry of Finance (Centre for electronic commerce) provides practice-oriented training on the e-procurement platform where procurers learn how to use the platform. It would be beneficial to extend this type of training to other areas of public procurement.

Several procurers from different Akimats reported in OECD interviews that the training provided by the Ministry of Finance is not sufficient for procurers to be adequately trained to carry out procurement. Others mentioned that in addition to the seminars in their administrative region (“oblast”) that take place once or twice a year, they hire consulting companies to give seminars. However, these additional seminars are costly for the Akimats. Respondents also criticised that seminars mainly focus on e-procurement and legal aspects.

Another aspect that was brought up in the interviews with procurement professionals was the pressure that is put on public officials through regular testing. With the continuous recognition of public procurement as a strategic function, increasing demands are being made at public procurers. For public procurers to fulfil this strategic procurement function, assessments and training concepts should move away from

compliance and encourage individual responsibility. A particular challenge of the procurement task is that it requires civil servants in this function to be equipped with skills from different disciplines, as highlighted in the OECD Recommendations of the Council on Public Procurement in Box 5.4.

Box 5.4. Recommendations of the Council on Public Procurement - Capacity

Principle 9 – Developing a procurement workforce with the capacity to deliver value for money

i) **Ensure that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools**, for example, sufficient staff in terms of numbers and skills, recognition of public procurement as a specific profession, certification and regular trainings, integrity standards for public procurement officials and the existence of a unit or team analysing public procurement information and monitoring the performance of the public procurement system.

ii) **Provide attractive, competitive and merit-based career options for procurement officials**, through the provision of clear means of advancement, protection from political interference in the procurement process and the promotion of national and international good practices in career development to enhance the performance of the procurement workforce.

iii) **Promote collaborative approaches with knowledge centres such as universities, think tanks or policy centres to improve skills and competences of the procurement workforce**. The expertise and pedagogical experience of knowledge centres should be enlisted as a valuable means of expanding procurement knowledge and upholding a two-way channel between theory and practice, capable of boosting application of innovation to public procurement systems.

Source: (OECD, 2015^[12]).

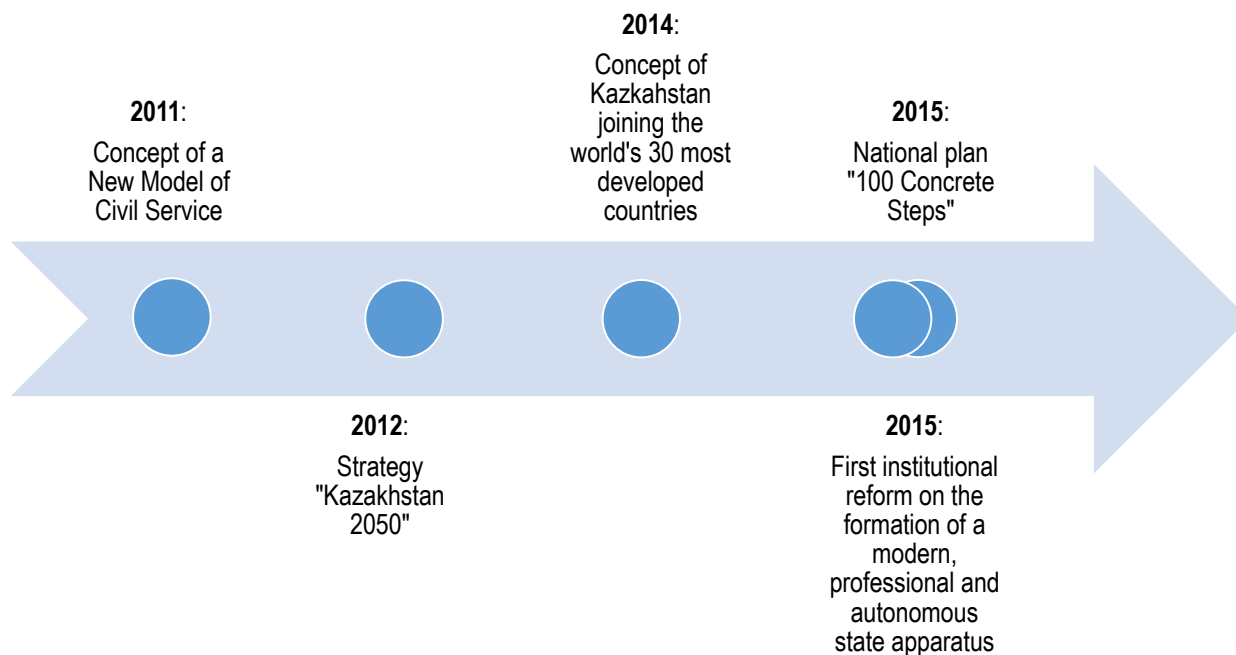
On a political level the capacity development of civil servants is translated in overarching strategies.

5.3. Professionalising the public procurement workforce to achieve strategic objectives through public procurement

5.3.1. Adopting procurement-specific strategies and action plans

In Kazakhstan, as in the majority of OECD countries, strategic documents are developed that pertain to various issues and provide a long-term vision for the civil service, as displayed in Figure 5.8 (OECD, 2018^[5]). While capacity building in the civil service has often been raised as a priority issue, procurement-specific elements are yet to be formulated.

Figure 5.8. Kazakhstan has a number of documents providing strategic policy direction



Source: (OECD, 2018^[5]).

The address of the president in which he announced Strategy 2050 exemplifies this focus on capacity building in the civil service. The strategy states: "From now on every public servant has to demonstrate clear progression in their career through the development of skills and experience that allow as them to increase their professional level" (N. Nazarbayev, 2012^[13]). A professional state apparatus is mentioned throughout the different strategies as one of the principal factors for further advancing state capacity and developing Kazakhstan's democracy.

The Strategy 2050 announced in 2012 provides guidelines for policy making in the Republic of Kazakhstan. The strategy mentions an effective civil service as a key condition for successful implementation of the strategy (N. Nazarbayev, 2012^[13]). After his re-election in 2015, the President formulated an additional strategy that sets out 100 concrete steps that he called "Plan of the Nation". The plan is supposed to lead the way to the implementation of the 2050 Strategy that would transform Kazakhstan into a strengthened and consolidated nation. Notable about this plan in the context of civil service reform is that the first 15 steps listed in the "Plan of the Nation" focus on professionalisation (Kazakhstan Institute for Strategic Studies under the President of the Republic of Kazakhstan, n.d.^[14]).

Moreover, the Ministry of Finance of the Republic of Kazakhstan has published a Strategic Plan for 2017-2021. The plan references public procurement, but strategic elements are limited. The section on government procurement in this Strategic Plan references the PPL and describes the changes that result from recent amendments (Министра финансов Республики Казахстан, 2017^[15]). In the introductory part, the strategic plan describes the overall vision of Kazakhstan to become one of the 30 most developed countries in the world. However, it does not provide a concrete roadmap for the different policy areas, such as procurement (Министра финансов Республики Казахстан, 2017^[15]).

To translate these overarching strategic goals into the area of public procurement requires an additional step, taking also into account that the capacity is key to unlocking gains from strategic public procurement. Many use a dedicated capacity strategy for public procurement that is specifically geared towards implementing the goals set by policies and strategies.

To make these strategies accessible for practitioners, translating them into concrete guidelines can be a useful addition to the overall strategy. An example of where concrete guidelines have been developed is Ireland. As further explained in Box 5.5, these guidelines promote the application of good practices and help practitioners apply public procurement rules consistently.

Box 5.5. Development of procurement guidelines in Ireland

One of the primary objectives of establishing the Office of Government Procurement (OGP) in Ireland was to improve the professionalism of the staff involved in procurement. The Irish state spends approximately EUR 8.5 billion every year on goods and services. In this context, it is essential that the public service operates in a co-ordinated and efficient way. Procurement is a key element of the government's public service reform.

The OGP is currently finalising national guidelines for goods and services of low and high value in public procurement tendering competitions. These guidelines will be published as a dynamic document. This means that they will be available electronically. The document will contain links to relevant information, as well as policy and template documents.

The purpose of these guidelines is to promote best practices and consistency of application of the public procurement rules in relation to the purchase of goods and services. The guidelines have been written in plain language with the goal of providing a clear description of the rules. The guidelines form part of the OGP National Procurement Policy Framework, which consists of five branches:

- legislation (directives, regulations);
- government policy (circulars, etc.);
- general guidelines;
- the Capital Works Management Framework;
- detailed technical guidelines, template documents and notes that are issued periodically.

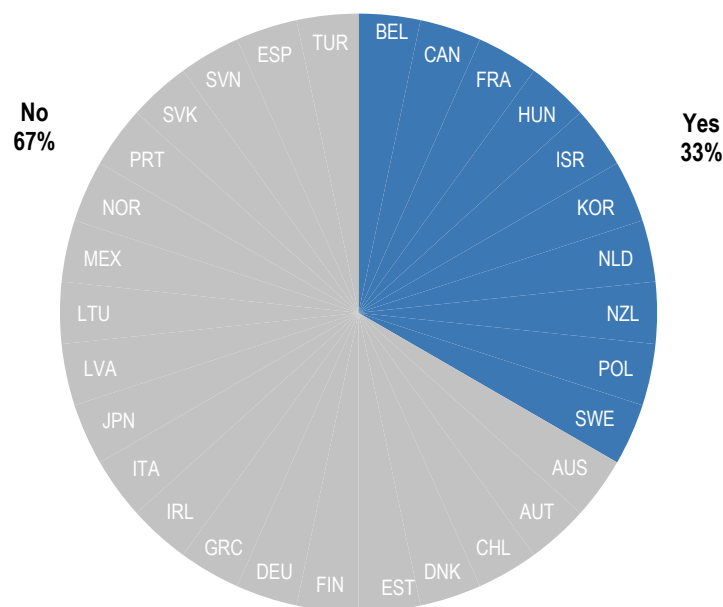
Source: Information provided by Office of Government Procurement (OGP).

Training public procurement professionals and developing their skills is one side of capacity development. Attracting high-skilled professionals is another element necessary to develop human resource capacity.

5.3.2. Attracting high-skilled professionals

Attractive career opportunities in public procurement are needed to attract qualified professionals. Recognising public procurement as a profession can help to raise interest among professionals and create career prospects. Currently, public procurement is not perceived as a profession in Kazakhstan. In a third of OECD countries, public procurement is now regarded as a profession, as displayed in Figure 5.9.

Figure 5.9. In a third of OECD countries procurement is recognised as a profession



Source: 2018 OECD Survey on the Implementation of the 2015 OECD Recommendations on Public Procurement.

As described in Figure 5.9, in many OECD countries and in Kazakhstan, public procurement is not recognised as a profession, so it can be regarded as an administrative function and not as a strategic function. Recognising public procurement as a strategic function provides a number of opportunities. With respect to capacity development, it requires defining a specific job profile, qualifications, hierarchies and other aspects that are explicit to a profession. Currently, procurers have a variety of different educational backgrounds, as detailed in paragraph 5.2.3. Defining a clear skill set for procurers can facilitate recruitment and capacity development and give the profession more visibility.

To make a career in public procurement attractive, it is also important to allow for merit-based career progression. As explained in section 5.2.3, civil servants do not feel that career progression is merit-based (ACSH, 2018^[4]). In-depth interviews with public servants carried out by the Astana Civil Service Hub revealed that limited benefits and career progression are the two most prominent obstacles limiting the motivation of civil servants in Kazakhstan (ACSH, 2018^[4]). To regain trust of employees, appointments and promotions have to be competitive and based on performance. To make performance comparable, performance evaluations on a regular and consistent basis should be considered. In addition, incentives for career progression need to be developed that encourage procurement professionals to pursue a career in public procurement. Career progression can consist of both vertical and horizontal mobility.

The remuneration of civil servants in Kazakhstan is based on a uniform state policy and a broadly comparable framework for pay across the national government (OECD, 2018^[5]). As mentioned above, limited benefits are, along with limited career progression, the most important obstacles to motivation for public servants (ACSH, 2018^[4]). The survey respondents deplore that the pay is not in accordance with the workload, responsibilities and limitations (ACSH, 2018^[4]). In order to ensure motivation of civil servants, it is essential to provide adequate salaries that are traceable in a transparent pay system. In addition, incentives for career progression need to be developed.

The results of the survey also show that beyond promotion and salary increases, there are additional factors that encourage motivation. The results show that primary and secondary benefits are important for public servants' motivation. Fairer working conditions and more individually tailored performance and training schemes are regarded as potential drivers of better performance. Kazakhstan's civil service is

characterised by a hierarchical structure and it faces internal and external public sector reform pressures (ACSH, 2018^[4]). There is only limited delegation of human resource management practices to line ministries, is below the OECD average (OECD, 2018^[5]). Delegating HRM issues to a stronger extent to line ministries might allow for more tailored solutions.

Certification of skills of the public procurement workforce can be an efficient way of contributing to the professionalisation of the public procurement workforce. In Kazakhstan, sovereign wealth fund Samruk-Kazyna, equipped with a dedicated public procurement system, has been working towards introducing a certification framework (see chapter 6). The rules for advanced training of civil servants (Government Decree № 125 adopted on 15 March 2018) sets out that civil servants from corps B (i.e. as detailed above, the vast majority of civil servants) go through advanced training at least once every three years. This advanced training should match the functional occupation of the civil servant and comprise from 8 to 80 hours. Implementing a certification of skills could help to ensure professional capacities. A certification framework for public procurers has been implemented in the United States, as described in Box 5.6.

Box 5.6. Certification of capabilities for procurement in the United States

The American Purchasing Society (APS) is a professional association of buyers and purchasing managers. The APS was the first organisation to establish a nationally recognised certification for buyers and purchasing professionals. APS offers three different certification programmes:

1. the Certified Purchasing Professional Programme is directed at professionals who have demonstrated the skills to successfully implement improved purchasing and supply chain practices as a part of a business solution in an organisation;
2. the Certified Professional Purchasing Manager Programme is aimed at those in managerial positions and those who have managerial experience;
3. the Certified Professional Purchasing Consultant Programme is aimed at certified purchasing professionals who either consult or teach purchasing to people outside their own employer.

Source: (OECD, 2013^[16]), *Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264197305-en>.

Additionally, a certification of skills would go beyond simple testing of knowledge on legislation and integrate more practice-oriented elements, on-the-job training and continued training. As highlighted in the case of the UK in Box 5.7, strengthening the profile of public procurement professionals can serve to raise standards and encourage capacity development.

Box 5.7. Community of procurement professionals in the UK

The Government Procurement Service (GPS) has defined a strategy to “Build the Procurement Profession in Government”. Although GPS does not certify procurement professionals, it intends to build a “community of procurement professionals” distinguished by core competencies that include: an understanding of commercial drivers such as profits, margins, shareholders, cost models, total costs of acquisitions and whole-life costs together with knowledge and understanding of procurement and contract law.

Procurement professionals are encouraged to maintain their professional development on a continuous basis. Being a GPS member helps raising the profile of procurement as a profession, and presenting it as an attractive career option; contributes to increase capacity in the profession via entry schemes, creating skills frameworks to help raise standards; and supports the development of skills and capability.

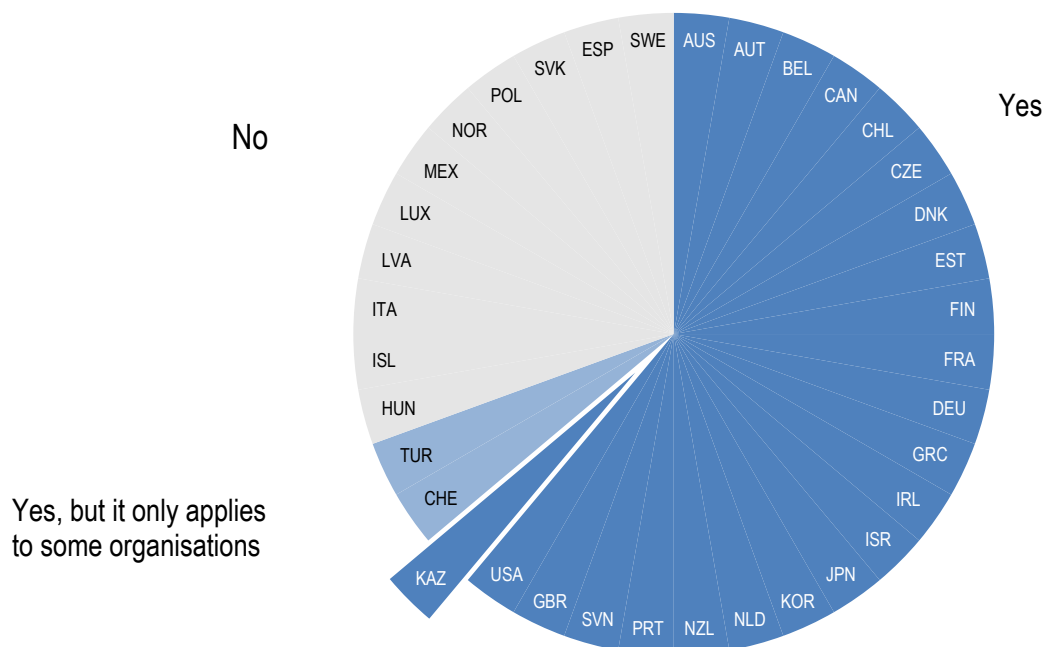
Source: (OECD, 2013^[16]), *Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264197305-en>.

5.3.3. Developing a framework for professionalising public procurement

To increase capacity of the civil service, adequate training needs to be provided. This can only be provided if there is a common understanding of what the procurement profession is and which skills public procurers need to fulfil a strategic function.

Kazakhstan has a competency framework for Corps A public servants in place. A competency framework serves to define skill profiles of certain groups of public officials. Most OECD countries have developed a centrally defined skills profile for senior public officials (see Figure 5.10) as it may facilitate mobility of senior civil servants across different areas of government (OECD, 2018^[5]).

Figure 5.10. Most OECD countries have a centrally defined skills profile for senior managers



Note: Slovak Republic: a new Civil Service Law entered into force on 1st June 2017, introducing major changes in existing human resources management practices. For this reason, data may no longer reflect the current situation in the country.

Source: OECD (2016a), "Survey on Strategic Human Resources Management in Central/Federal Governments of OECD Countries", OECD, Paris.

To establish public procurement as a profession, it would be beneficial to develop a capacity strategy for public procurement that systematises the skills that are required of public procurers in a framework. Such capacity strategy and guidelines could be based on the outcomes of the "skill gap inventory", so that they address current weaknesses of the public procurement workforce.

A competency framework for public procurement can also be an effective way to systematise public procurement skills and set standards for the public procurement workforce. The example of the Scottish procurement competency framework, further described in Box 5.8, shows which types of competencies can be taken into account in the development of a competency framework. The Scottish framework includes thirteen competencies that public procurers should have. This can provide a clearer understanding of the expectations of employees in public procurement. It can also help to identify which officials need training and further development (Scottish Government, n.d.^[17]).

Box 5.8. The Scottish procurement competency framework

The procurement competency framework of the Scottish government identifies the skills and competency levels required by all staff involved in the procurement process. It has been developed by the cross-sectoral people and skills working group to support the delivery of the recommendations in the Review of Public Procurement in Scotland (2006) which related specifically to people and skills. The framework is intended to compliment, not replace, existing personal development tools in organisations.

The framework identifies thirteen key competencies candidates should have:

1. **Procurement process:** has the sufficient knowledge and understanding in sourcing and tendering methods to carry out duties associated with role.
2. **Negotiation:** has the ability to negotiate within the scope of the role.
3. **Strategy development and market analysis:** has the strategy development and market analysis skills necessary to carry out duties associated with role.
4. **Financial:** has the financial knowledge and understanding needed to carry out duties associated with the role – elements include appraisal of suppliers' financial positions, total costing and the compliance frameworks that exist for public sector finance and procurement.
5. **Legal:** has sufficient understanding of legislative frameworks relating specifically to procurement to carry out duties associated with the role.
6. **Results focus:** is aware of how personal and team objectives contribute to the success of the organization, and continually demonstrate commitment to achieving these.
7. **Systems capability:** has the knowledge and understanding of systems and processes utilised in the procurement of goods and services. Specific system competencies may be localised to specific systems.
8. **Inventory, logistics and supply chain:** has the knowledge and understanding of materials management solutions to carry out duties associated with role. Elements include inventory, logistics, warehouse management, etc. Knowledge and understanding of supply chain management techniques is also important, and is not restricted to organisations holding stock.
9. **Organisational awareness:** clearly understands roles and responsibilities, how procurement should be organised and which units within the organisation are in charge of it.
10. **Self-management:** responds quickly and flexibly when required, supporting others while striving to improve skill application in line with organisational requirements.
11. **Leadership:** contributes to the achievement of team goals by providing support, encouragement and clear direction when appropriate.
12. **Communication:** openly shares relevant information and communicates in an effective and timely manner using a variety of means.
13. **Relationship management:** identifies different types of customers and stakeholders and formulates strategy for managing relationships.

Source: (OECD, 2013^[16]), *Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico*, OECD Publishing, Paris.

Inspiration on further initiatives to professionalise and empower the public procurement workforce can be taken from a number of actions that have been taken in New Zealand. Some of these initiatives develop a standard role of procurers, including public procurers in project teams and benchmarking the performance of public procurers against the private sector, as further detailed in Box 5.9.

Box 5.9. Key initiatives to professionalise and empower public procurement workforce in New Zealand

Key initiatives New Zealand has adopted in order to professionalise and empower its public procurement workforce include:

- Developing a model to assess the capability of procurement in agencies.
- Assessing agency procurement capability on site, and providing action plans for development.
- Requiring agencies that are not targeted for onsite assessment complete a self-assessment using measures described in the procurement capability model.
- Developing standard role competency requirements for procurers, and implementing these requirements in government agencies.
- Benchmarking key agency performance against the private sector.
- Increasing hiring of skilled and qualified procurement professionals to fill the skills gap.
- Ensuring government procurement salaries reflect market norms.
- Contracting agencies to allocate resources to reform procurement practice.
- Identifying opportunities for procurement in shared service centres.
- Including procurement professionals in works project teams.
- Establishing a small team of strategic procurement experts (also known as a commercial pool) to support high risk and high value projects across the government.
- Allocating resources to support public-private partnership projects.
- Determining procurement training needs and source providers.
- Mandating that agencies use tools provided to assess procurement capability and capacity.
- Mandating that agencies ensure that procurement staff are trained in order to fill identified skill gaps.
- Providing e-learning to support procurers to gain a professional procurement qualification.
- Targeting key procurement personnel within agencies to fast track their professional procurement education.
- Developing and launching career development plans for procurement personnel.
- Developing a New Zealand procurement academy.
- Encouraging and subsidising public sector procurement professionals in gaining recognised procurement qualifications.
- Launching a graduate programme in procurement.
- Facilitating temporary transfers and career progression planning between agencies for procurement professionals.
- Establishing and facilitating a procurement leaders group (for officials aged under 35 years) to cultivate future procurement leaders.
- Developing the course “Demystifying Procurement”, a two-day introductory course to procurement in a public sector context or alternatively for learning online.

Source: (OECD, 2016^[18]), *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Publishing, Paris.

These initiatives can provide inspiration for capacity development in Kazakhstan’s public procurement workforce and for establishing public procurement as a strategic function.

The above-mentioned analysis leads to the following proposals for action.

Proposals for action

Kazakhstan has a strong potential to increase the strategic use of public procurement. Recognising the possibility of achieving strategic objectives through public procurement should be a first step towards a more systematised inclusion of broader outcomes for other policy objectives in the public procurement system.

To develop a strategic use of public procurement, Kazakhstan should seek to increase the capacity and skills of its public procurement workforce. Developing a strategy for public procurement workforce development can help to systematise capacity development. Recognising public procurement as a profession can equally help to facilitate the recruitment of high-skilled professionals and adapt training and skills development to the requirements of the job.

Strengthening public procurement capacity and capability

- To ensure adequate implementation of the ongoing efforts to improve the public procurement system, Kazakhstan could strengthen the capacity of the public procurement workforce in all dimensions, i.e. the staff working on policy and methodological questions related to procurement and those conducting procurements. This entails increasing the number of staff fully dedicated to public procurement activities, especially in the Ministry of Finance, but also in single organisers and contracting authorities, as well as increasing the public procurement knowledge and skills of the staff. To identify the needed number of staff and their skills, Kazakhstan could conduct a detailed needs assessment with the help of the available administrative data and strengthening capacities and capabilities accordingly.

Encouraging the use of strategic objectives in public procurement

- Kazakhstan should systematise the use of complementary policy objectives by developing a strategy for public procurement that details which strategic objectives the government wants to achieve through public procurement. Translating this strategy into practice-oriented guidelines for public procurers can facilitate the implementation.
- Once a strategy for strategic procurement is established, Kazakhstan should address the issue of excessive workload of public procurers. Increasing capacity of public procurers is needed to allow sufficient time to consider strategic objectives.

Increasing training opportunities

- Currently, the specific needs of public procurers are not adequately reflected in the training programmes for public servants. Kazakhstan could prepare capacity strategy based on an analysis of needs (“skills gap”). A concrete action plan could be part of this strategy, detailing opportunities for developing skills in line with procurers’ needs.
- For Kazakhstan’s public procurement professionals to meet the needs of an increasingly complex and demanding procurement function, training concepts should move away from compliance towards encouraging individual responsibility. This would allow procurers to take an active part in strategic purchasing decisions. Contracting authorities in particular could focus on developing the skills and knowledge of their procurers, ensuring that they possess up-to-date, relevant and specialised knowledge on specific categories in relation to both the development and evaluation of technical specifications in the area of focus for the contracting authority.
- To develop a high-skilled public procurement workforce, the public procurement profession needs to attract high-skilled professionals. To retain a qualified workforce it would be beneficial for Kazakhstan to establish public procurement as a profession and move it towards a strategic function.

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Notes

¹Article 39, Section 29 and 54

² Article 51

³ <http://adilet.zan.kz/rus/docs/V1500012667>

6 Public Procurement Procedures for State-owned Enterprises in Kazakhstan

SOEs represent the largest part of the public procurement market in Kazakhstan. Therefore, it is important to analyse their activities to understand the full picture of public procurement in country. Many rules are similar to the national procurement system. However, their distinct nature has given some the power to develop different approaches to procurement and spearhead in some areas. Globally, however, the general challenges of Kazakhstan's procurement system persist also in the area of SOE procurement, such as a high share of direct awards or limited access from foreign suppliers.

Benchmarked against other countries, including OECD countries, Kazakhstan shows a relatively high degree of state involvement in its economy. In fact, a previous OECD report found that the Government dominates the economy through the state-owned holding companies. The Government has a strong representation in the management of the holding companies and the subsidiary SOEs, so that the Government's interests are well-represented in the SOEs' management. (OECD, 2017^[1]) This means that public procurement is most likely affected by this strong governmental influence as well, affecting competition, access and integrity predominantly.

This chapter analyses the procurement conducted by the state-owned enterprises (SOEs) in Kazakhstan. According to international best practice, SOEs should follow rigorous rules for public procurement, just like all public institutions. In fact, in many countries, SOEs are tasked with delivering a large share of public services, using public funds. Kazakhstan is no exception, and indeed SOEs account for a large share of public procurement as this chapter demonstrates. The OECD Recommendation on Public Procurement is applicable to SOEs in its entirety, as stated in the preamble (see Box 6.1 below).

Box 6.1. OECD Recommendation on Public Procurement – Preamble

XV. INVITES Adherents to disseminate this Recommendation at all levels of government, and to consider the implementation of this Recommendation in other relevant contexts, such as procurement by state-owned enterprises or procurement conducted under aid arrangements.

Source: (OECD, 2015^[2]).

This chapter analyses the procurement conducted by a sector that is not covered entirely by the general public procurement law in Kazakhstan, but that nevertheless represents an important share of the overall procurement conducted with state assets in Kazakhstan. It focuses on three topics: First, it gives a brief overview of SOEs in Kazakhstan. Second, the chapter looks at the structure of public procurement by SOEs based on quantitative information (to the extent available.) A third section discusses procurement rules and how SOEs have implemented public procurement.

6.1. Importance and relevance of SOEs and their procurement in Kazakhstan

6.1.1. Definition of SOEs in international best practice as well as in Kazakhstan – and the main groups of SOEs.

Definitions of what is considered an SOE and what is not differ from country to country. For the purposes of this review, we use the definition provided in the OECD Guidelines on Corporate Governance of State-Owned Enterprises (2015), see Box 6.2.

Box 6.2. Definition of State-Owned Enterprises

“[A]ny corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature.”

Source: (OECD, 2015^[3]).

According to previous OECD reports, SOEs that engage in business or other economic activity in Kazakhstan are either joint stock companies (JSCs) or limited liability partnerships (LLPs). A 2017 OECD report noted that Kazakhstan has 6 948 SOEs, including 679 JSCs and LLPs. The remainder of the companies were classified as state enterprises under the right of economic management (1 258 entities) or operational management (5 011 entities). Roughly 1 000 entities with more than 250 employees were categorised as large entities. SOEs cover all business and industry sectors, especially oil and gas, energy, mining, transport and information and communications. In 2014, SOEs accounted for a gross value added of 7.85% of GDP. (OECD, 2017^[1])

Three holdings (joint stock companies, JSC) account for most SOEs in Kazakhstan and will be briefly introduced:

1. JSC Samruk-Kazyna
2. JSC Baiterek
3. KazAgro

JSC Samruk-Kazyna (Samruk-Kazyna)

Sovereign Wealth Fund Samruk-Kazyna is the most important national managing holding in Kazakhstan. Organised under the legal framework for joint stock companies, Samruk-Kazyna is established by a separate law: Law on Sovereign Wealth Fund 550/2012, which states its structure and purpose: “to increase the national wealth of the republic of Kazakhstan by increasing the long-term value of the organisations included into the group of Samruk-Kazyna and by effective management of assets belonging to the group of the Fund”. According to the annual report 2017, the Samruk-Kazyna Fund group is comprised of 358 companies, among them the largest SOEs in Kazakhstan, including:

- KazMunaiGas (petroleum exploration company)
- Kazatomprom (exporter of radioactive metals)
- Kazakhstan Temir Zholy (railway)
- Air Astana (airline)

Overall, 312 400 persons are employed by Samruk-Kazyna and its subsidiaries. Samruk-Kazyna’s consolidated revenue accounted for KZT 5.1 trillion (approx. EUR 12 billion) or roughly 8% of Kazakhstan’s GDP in 2017. This is down from an over 13% share in GDP in 2014. (Samruk-Kazyna JSC, 2018^[4]) (OECD, 2017^[1])

JSC Baiterek National Management Holding (Baiterek)

Baiterek aims at promoting sustainable economic development in line with Kazakhstan's 2050 strategy. The Baiterek holding has 11 subsidiaries with varying structures, including financial institutions, development institutions and others. In 2017, Baiterek employed 2 885 persons. The holding reported a net profit of KZT 44 billion in 2017. The group owns assets valued at KZT 4.4 trillion in 2017. As with Samruk-Kazyna, the board of Baiterek consists of high-level politicians. It also includes international board members. (OECD, 2017^[1]) (Baiterek National Managing Holding JSC, 2018^[5])

JSC National Management Holding KazAgro (KazAgro)

KazAgro is implementing Kazakhstan's policy "on stimulating industrial development of [the] agro-industrial complex" (KazAgro, n.d.^[6]). KazAgro has numerous subsidiaries, including financing institutions Kazagrofinance and AAC Agrarian Credit Corporation. Another subsidiary, Kazagromarketing, provides marketing support to agricultural producers. The Ministry of Agriculture holds ownership rights of KazAgro shares, after they have been delegated. The chairman of the board is the Minister of Agriculture. In 2017, KazAgro provided approximately 22 000 loans worth roughly KZT 246 billion (EUR 579 million). (Kazagro, 2018^[7]) (OECD, 2017^[1])

According to the Law on State Property, the Ministry of Economy (Department of State Assets Management Policy) oversees SOEs, together with the relevant line ministry – in this case the Ministry of Finance (OECD, 2017^[1]). According to the law, the Ministry of National Economy, the Committee of State Property as well as the line ministry, have to be represented in the boards of the national managing holdings. (OECD, 2017^[1]) However, the Samruk-Kazyna law also stipulates that the Government is not allowed to interfere in the operations of Samruk-Kazyna. (OECD, 2017^[1])

All three national managing holdings, Samruk-Kazyna, Baiterek and KazAgro are led by a board of directors. In all three cases, the directors of the board are high-level politicians that currently serve in high-level functions – such as ministers, prime minister or deputy prime minister – or have done so in the past. In addition, the boards of directors often includes experienced international managers or politicians (such as Germans Thomas Mirow, Klaus Mangold, and Singaporean Philip Yeo). (Baiterek, n.d.^[8])

Albeit the Government's push for privatisation (see also section 6.3.2 below), SOEs still account for a large proportion of Kazakhstan's economy, 30% to 40% of GDP according to some estimates (OECD, 2017^[9]). Many subsidiaries operate almost like commercial enterprises. Most of Kazakhstan's most crucial public services, such as in the area of healthcare, are delivered by SOEs that are subsidiaries of the three large holdings described above. Therefore, a close analysis of the procurement by SOEs in Kazakhstan can provide valuable insight into improving public service delivery. Box 6.3 below provides an illustration of the weight of SOEs in Kazakhstan's public service delivery, by detailing the procurement of medical items through the SOE SK Pharmacia LLP.

Box 6.3. SK Pharmacia LLP

The importance and far reach of procurement through SOEs is illustrated by SK Pharmacia LLP (SK Pharmacia), which is an SOE in charge of procurement for health equipment and medicines (i.e., it is a “single buyer”). The purpose of SK Pharmacia is to maintain unified prices of medical equipment and drugs throughout Kazakhstan by centrally procuring them. 1 115 in-patient and 400 out-patient hospitals under the universal healthcare scheme are retrieving their drugs from SK Pharmacia (by obligation). SK Pharmacia finances its activities by charging a 5 to 7% margin.

Government Order Number 631 lists all 1 167 items to be procured by SK Pharmacia (List of medicines and medical equipment to be procured by the single buyer: 1 167 drugs and medical equipment items). For the procurement of health items, a specific set of rules applies (Special Rules of drug procurement, *Особые правила закупки лекарственных средств*) which are different from the Law on Government Procurement.

SK Pharmacia publishes procurement plans and purchases set amounts of drugs or equipment per year, for set prices. This has advantages and disadvantages: it prevents price increases, but also does not allow to capture falling prices. The fact that SK Pharmacia has to purchase a set amount per year means that reactions to developments in the public health field are difficult.

Source: stakeholder interviews.

6.2. Weight and structure of public procurement by SOEs

SOEs are not only a major factor in Kazakhstan’s economy, they also account for a large share of public procurement. There is some controversy in determining whether the entirety of procurement by the above-mentioned SOEs Samruk-Kazyna, Baiterek and KazAgro count as public procurement. For example, the treaty for the Eurasian Economic Union would not consider the procurement of SOEs part of public procurement and the Enhanced Partnership and Cooperation Agreement (EPCA) does not apply to Samruk-Kazyna. In fact, some branches of the SOEs operate more like commercial enterprises rather than public institutions.

This section analyses the size and structure of procurement spending by Samruk-Kazyna, Baiterek and KazAgro to the extent available. In total, these companies procured goods, works and services roughly worth KZT 4.2 trillion in 2016 (latest year available for all three companies). For comparison, procurement under the general government procurement framework on national and local levels in Kazakhstan accounted for approximately KZT 1.3 trillion in 2016. Samruk-Kazyna accounts for 98% of the spending by these three SOEs; KazAgro for 1.6% and the remaining 0.4% are accounted for by Baiterek. In 2016, procurement by companies under the Samruk-Kazyna holding accounted for KZT 4.1 trillion (EUR 11.7 billion). Baiterek procured KZT 1.8 billion (EUR 4.7 million) and KazAgro KZT 66.9 billion (EUR 167 million) (see Table 6.1).

Table 6.1. Total procurement spending by Samruk-Kazyna, Baiterek and KazAgro

	2014 Value in mln KZT	2015 Value in mln KZT	2016 Value in mln KZT
Samruk-Kazyna	3 870 073	3 486 110	4 121 927
Baiterek	1 577	1 831	1 880
KazAgro	62 050	57 050	66 956

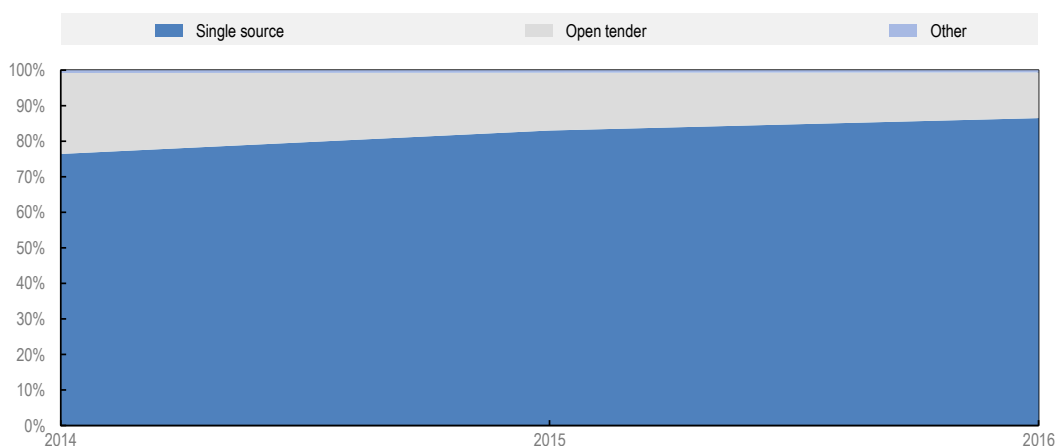
Note: Latest available years for Samruk-Kazyna.

Source: Information provided by Baiterek, KazAgro; as well as Samruk-Kazyna in (OECD, 2017_[10]).

6.2.1. High share of direct awards (single source procurement)

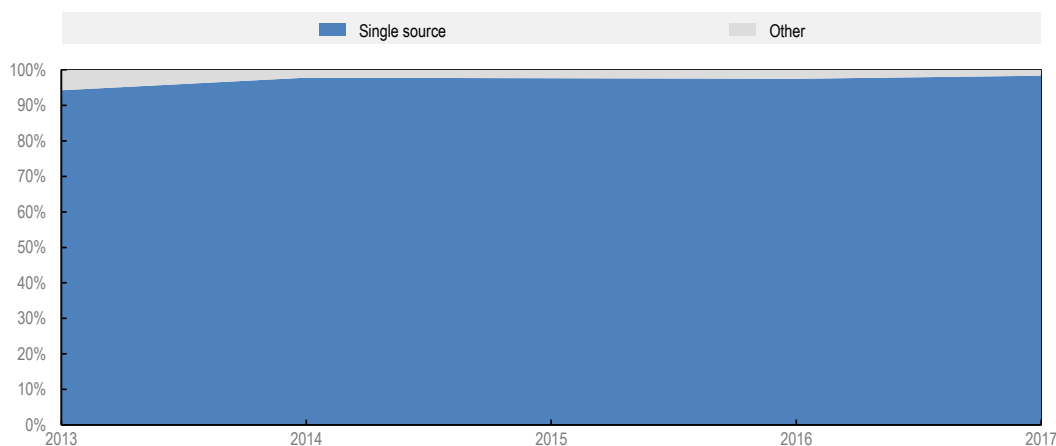
All three SOEs, similar to the government procurement sector, have high levels of direct awards (also called single source procurement based on the legal term in Russian.) Samruk-Kazyna has the lowest share of direct awards with 86.5% of the entire procurement volume (2016). Baiterek follows closely with just under 88 % (2017). KazAgro procures over 98% through direct awards (2017). All these shares are higher than the general state sector (OECD, 2017_[10]).

For all three companies, the trend indicates an increasing use of direct awards as the preferred procurement method, and a lower use of open tenders. Figure 6.1, Figure 6.2, and Figure 6.3 illustrate the increasing proportion of direct awards procurements in recent years for the three different holdings.

Figure 6.1. Samruk-Kazyna: shares of procurement methods, 2014-2016

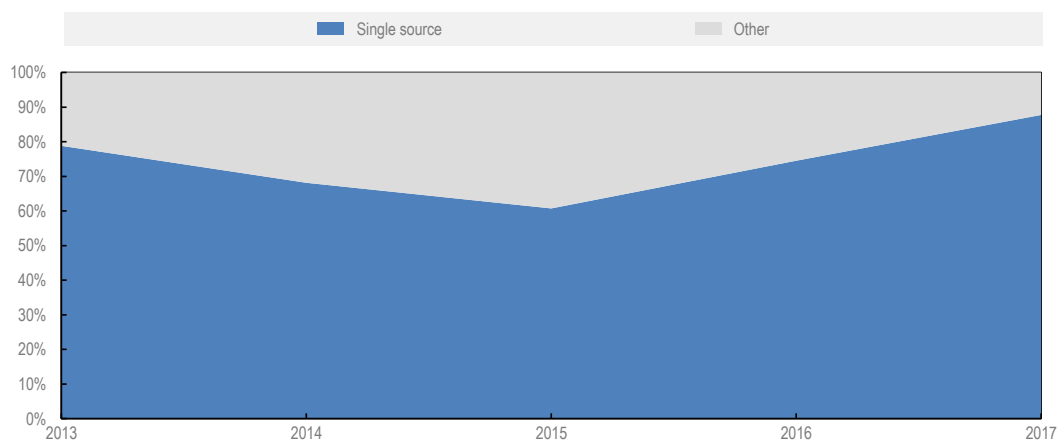
Note: Latest available years.

Source: Data provided by Samruk-Kazyna in (OECD, 2017_[10]).

Figure 6.2. KazAgro: shares of procurement methods, 2013-2017

Note: Latest available years.

Source: Data provided by KazAgro.

Figure 6.3. Baiterek: shares of procurement methods, 2013-2017

Note: Latest available years.

Source: Data provided by Baiterek.

In the case of Samruk-Kazyna, approximately 20% of direct awards are related to a failed open tender, according to stakeholders. If only one responsive bid has been received in an open tender procedure (i.e., an insufficient number of bidders complied with the technical specifications), contracting authorities can opt for direct awards and award the contract to the supplier that complied with the technical specifications. The remaining 80% of direct awards in Samruk-Kazyna are justified by referring to a list of exceptions. The rules for Samruk-Kazyna list 56 exceptions for cases in which SOEs under Samruk-Kazyna can procure directly. These exceptions seem to be in line with exceptions provided for the state sector. Baiterek and KazAgro follow a similar list.

The list of exceptions and its frequent use is problematic, as firstly, they seem to be used as the rule, rather than as an exception, and secondly, the exceptions are so wide that almost any scenario can be made to fit in the list of exceptional circumstances. This makes not only for restricted competition (see section 6.3.3 on competition challenges), but also provides opportunities for corruption and bid-rigging.

Samruk-Kazyna has used all five procurement methods (open tender, centralised energy trading, request for quotes, single source procurements using direct awards, and exchange of commodities) regularly in the last years, albeit to procure relatively small volumes. Baiterek has only used open tender and direct awards as methods; KazAgro has also used request for quotes. A detailed breakdown per categories for the three SOEs is provided in Table 6.2, Table 6.3, and Table 6.4.

Table 6.2. Public procurement by Samruk-Kazyna

	2014 Value in mln KZT	2015 Value in mln KZT	2016 Value in mln KZT
Open tender	881 239	565 783	531 206
Centralised energy trading	1 262	2 775	2 432
Request for quotes	25 697	20 080	21 318
Direct award	2 958 187	2 895 287	3 566 823
Exchange of commodities	3 688	2 168	147

Note: Latest available years.

Source: Information provided by Samruk-Kazyna in (OECD, 2017₍₁₀₎).

Table 6.3. Public procurement by Baiterek

Item	2015 Value in mln KZT	2016 Value in mln KZT	2017 Value in mln KZT
Open tender	719	478	155
Direct award	1 113	1 401	1 110

Note: Last three available years.

Source: Information provided by Baiterek.

Table 6.4. Public procurement by KazAgro

Item	2015 Value in mln KZT	2016 Value in mln KZT	2017 Value in mln KZT
Tender	742	1 000	1 225
Auction	8	0	0
Request for quotes	603	658	676
Direct award	55 697	65 297	112 872

Note: Last three available years.

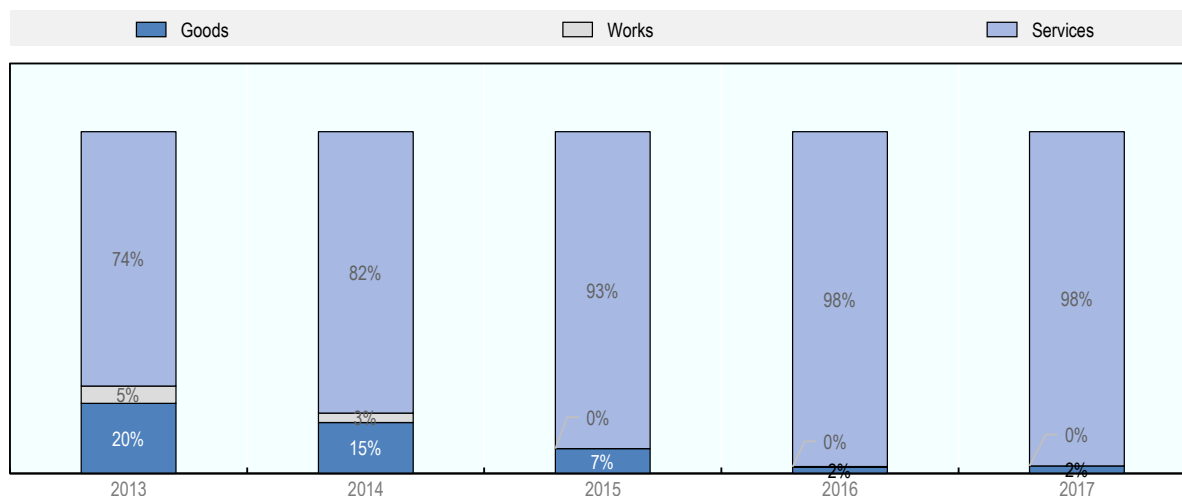
Source: Information provided by KazAgro.

Both KazAgro and Baiterek procure almost exclusively services; over 90% for both companies. The distribution is different on the level of the subsidiaries, depending on the area of operation. No information on the distribution of categories was available for Samruk-Kazyna. As further levels of disaggregation of the overall procurement procedures were not provided, limited insight into the reasons for this high share or the consequences can be gained. The nature of the companies might require a high share of procurement of services, e.g. as services are leased from the subsidiary companies in the holding. Areas for improvement remain unclear, as they would depend heavily on the type of service that is procured. A review by the respective SOE's leadership could shed some light on possible vulnerabilities for project delivery, corruption and competition issues, among others, and how to tackle these risks.

The share of services procured by Baiterek increased from approximately 74% in 2013 to almost 98% in 2017. While works have always accounted for very small share, the share of goods procured decreased

from around 20% in 2013 to approximately 2% in 2017. Baiterek procured almost no works in the last three years (see Figure 6.4).

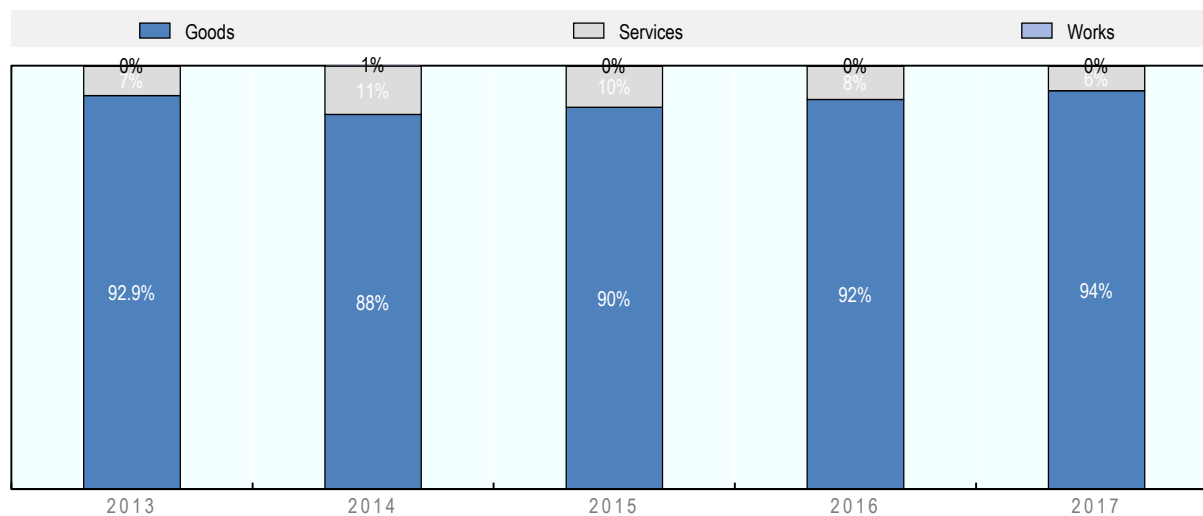
Figure 6.4. Baiterek's procurement, by type (2013-2017)



Source: Information provided by Baiterek.

KazAgro also has an emphasis on services in the procurement volumes, with a share of more or less around 90%. Works take up a consistently low share of around 1%; goods are the remainder. See Figure 6.5 for an illustration.

Figure 6.5. KazAgro's procurement, by type (2013-2017)



Source: Information provided by KazAgro.

The breakdown for some of KazAgro's and Baiterek's subsidiaries is similar, but also reveals differences in the procurement structure for some. As much as 97% of the procurement by subsidiaries was done using non-competitive methods, but some subsidiaries have limited non-competitive procedures to around 20%. Generally, the response rate to open tenders is relatively low (only two bids are received on average.)

Often – and sometimes in all procedures conducted by a subsidiary per year – there is an insufficient number of responses, so that procedures have to be concluded by direct contracting. These diverse purchasing patterns reveal a diverging need for goods, services and works to be procured under the same rules, resulting in a diverse need for methods and tools that can fill the need with the best value for money. In addition, the diverging outcomes in terms of the share of successful bids indicates a diverse level of capacity of the procurement function in the different subsidiaries.

6.2.2. Reducing the use of direct awards for increased efficiency

The high reliance on direct awards as a method raises several concerns. This approach restricts competition, which results in less favourable performance in terms of value for money. Direct awards (or single source methods) frequently goes hand in hand with high levels of corruption: single sourcing is chosen as a method to ensure a certain bidder is successful; companies that are unknown to the contracting authority will not even have a chance to compete. The OECD Recommendation on Public Procurement contains related best practices in its “access” principle (Box 6.4 below).

Box 6.4. OECD Recommendation on Public Procurement: Excerpts from the principle on Access

IV. RECOMMENDS that Adherents facilitate access to procurement opportunities for potential competitors of all sizes.

To this end, Adherents should:

i) Have in place coherent and stable institutional, legal and regulatory frameworks, which are essential to increase participation in doing business with the public sector and are key starting points to assure sustainable and efficient public procurement systems. [...]

ii) Deliver clear and integrated tender documentation, standardised where possible and proportionate to the need, [...]

iii) Use competitive tendering and limit the use of exceptions and single-source procurement. Competitive procedures should be the standard method for conducting procurement as a means of driving efficiencies, fighting corruption, obtaining fair and reasonable pricing and ensuring competitive outcomes. If exceptional circumstances justify limitations to competitive tendering and the use of single-source procurement, such exceptions should be limited, pre-defined and should require appropriate justification when employed, subject to adequate oversight taking into account the increased risk of corruption, including by foreign suppliers.

Source: (OECD, 2015^[2]).

In fact, competition in public procurement is closely linked to a range of procurement principles, as highlight in the OECD Recommendation under the principles efficiency, transparency, integrity, accountability and risk management. Kazakhstan could achieve several objectives of a good public procurement system by increasingly using open tenders:

- Better value for money through increased competition on prices and quality
- Increased access for companies to procurement opportunities (which again increases competition)
- Increased transparency and accountability
- Reduced opportunity for corruption

With regards to the measures to be employed to increase the number of competitive procedures and limit the use of single sourcing using direct awards, the SOEs might wish to conduct additional investigations

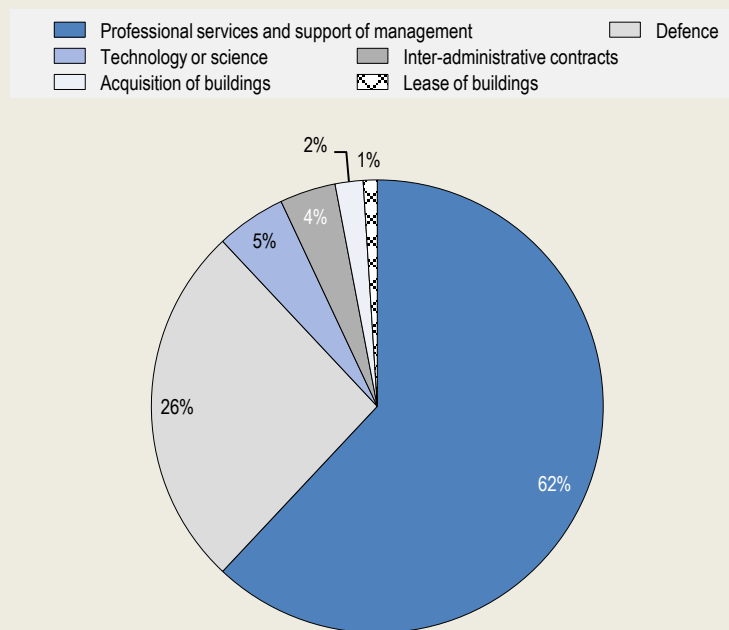
into the reasons for the high use of direct awards to determine the most promising counter measures. As mentioned above, in 80% of the single source procurements, the list of exceptions provides a justification. However, beyond this insight, limited information can shed light on the specific reasons. No data has been available or shared with the analysts to shed light into the more disaggregated breakdown of purchased items. The example of public procurement reforms in Colombia illustrates how a data-driven analysis of direct awards informed policy makers about the most promising course of action to increase the use of competitive procedures (see Box 6.5 below).

Box 6.5. Investigating reasons for direct awarding in Colombia

Colombia undertook a major public procurement reform in the early 2010s. Part of this effort was the creation of a dedicated public procurement authority that led the reforms in the following years. Part of the challenges was a very high number of direct awards (comparable to Kazakhstan's single source procurements), while the law identified open tenders as the standard method.

Colombia's measures to address this challenge were built on a rigorous analysis of the direct awards to identify the reasons behind the high number of direct awards. Quantitative analysis revealed that the direct awards were mostly to purchase defence-related items and to hire personnel (see Figure 6.6).

Figure 6.6. Frequency of the use of exceptions to carry out direct awards in Colombia at the national level, 2013



Source: (OECD, 2016^[11]).

Further investigations revealed systemic reasons for hiring personnel through the public procurement system: restrictive human resource policies made it impossible to hire additional civil servants, notwithstanding a great need.

While this insight certainly does not correspond to the norm across all countries, it highlights the importance of evidence-based policy making. Any effort to tackle the issue that disregarded HR policies would fail in really reducing the number of direct awards.

Source: (OECD, 2016^[11]).

Good practices from OECD countries highlight a plethora of measures that can increase competition (see also chapter 2). Ideally, an encompassing approach would combine revisions in the legal framework with measures to increase the capacity of both procurers and suppliers (see also the following section on the legal framework and challenges with regards to competition).

In the area of rules, SOEs could aim at reducing the number of exceptions in the dedicated list, make the use of open tender the default option above certain thresholds and introduce strategic, competitive procurement methods such as framework agreements (see also chapter 1.) Which of these proves most useful depends on further analysis.

Beyond changes to the rules of procurement, additional efforts should be made to ensure that the rules are applied in the most effective way. Of importance is to build on existing efforts to professionalise the procurement workforce and increase their capacity. This is important as competitive and especially strategic procurement methods can be more complex than direct awards. Additional training and guidance, as well as having enough staff in terms of numbers is crucial. Focus areas should be on all stages of the public procurement cycle, but most notably on planning and market research, as well as the preparation of technical specifications that invite competition. Finally, efforts could be made to work with suppliers to increase their capacity and understanding of the public procurement processes.

6.3. Procurement rules and practices for SOEs in Kazakhstan

Overall, the procurement by SOEs seems to be aligned with the rules for general government procurement, even where separate legal or regulatory frameworks exist. Kazakhstan's most recent reform adopted in December 2018 strengthened the oversight of the Ministry of Finance of the quasi-state sector which comprises most SOEs; Samruk-Kazyna, however, continues to follow an entirely separate framework. Limited information was provided in the questionnaire responses. The following sections reflect the responses as well as information previously reported in OECD reviews and from other sources. In many instances, information might need updating, especially data.

6.3.1. Legal and institutional structures

The different SOE types have dedicated frameworks that regulate their respective procurement, see Table 6.5.

Table 6.5. Legal framework and governance environment of SOEs in Kazakhstan

		General legal framework	Framework for procurement	Oversight ministry
Samruk-Kazyna	"National welfare fund"	Law on the national welfare fund "Samruk-Kazyna"	Procurement rules of Samruk-Kazyna	Ministry of Finance
KazAgro Baiterek	"Quasi-state sector"	Law on State Property 413/2011	Unified procurement rules developed by the Ministry of Finance (forthcoming) Previously: standard rules for procurement approved by Governmental Decree 787 out of 28 Mai 2009 (Order of the Ministry of Finance)	
Others		Law on State Property	Law on government procurement	

Source: Authors compilation.

Until 2019, the general principle for organising public procurement of SOEs was that a) the public procurement rules are aligned with the Law on Government Procurement, even if this law does not directly apply, and b) that the boards of the SOEs adopt their own procurement rules, at times as developed by the Ministry of Finance. The Ministry of Finance is the overseeing ministry for all SOEs. The procurement reform adopted in late 2018 initially attempted to bring all SOEs under the coverage of the general public procurement law. Within the version that ultimately entered into force, all SOEs, except Samruk-Kazyna, are now required to follow unified rules developed by the Ministry of Finance. These rules are expected to be closely aligned with the general public procurement law.

Samruk-Kazyna's operations are governed by the Law on the National Welfare Fund, adopted in 2012 and revised in 2015 and 2018 (original title in Russian: О Фонде национального благосостояния. Закон Республики Казахстан от 1 февраля 2012 года № 550-IV). The organisation's board adopts procurement rules for Samruk-Kazyna (i.e., the "Procurement Rules for Goods, Works and Services by Joint Stock Company 'Sovereign Wealth Fund Samruk-Kazyna' and Organisation, Fifty or More of Shares (Interest) of Which are directly or indirectly owned by Joint Stock Company 'Sovereign Wealth Fund Samruk-Kazyna'"). The Ministry of Finance is tasked with supervising the operations of Samruk-Kazyna, but there is limited de-facto influence since several additional high-ranking officials from other parts of government are part of the board. (OECD, 2017^[11])

Baiterek and KazAgro both fall under the Law on State Property. The Ministry of Finance issued standard rules for procurement (Governmental Decree 787, 28 Mai 2009). Since 2019, Baiterek and KazAgro are required to follow unified procurement rules developed by the Ministry of Finance. Previously, the organisations adopted own, detailed rules based on the overarching legal framework and standard rules.

The subsidiaries in all SOEs (i.e., their holding structures) have considerable independence within the procurement rules. The process is more or less similar along the following steps:

1. Budget proposals are prepared by the subsidiaries and approved by the board. Budget approvals are required to launch a procurement process.
2. To launch a procurement request, the substantive unit in the subsidiary submits a request for procurement to the procurement unit, which includes technical specifications.
3. The procurement unit organises the procurement process. This includes a review by the budget and legal departments.
4. Signature of the contract and contract management are managed by the substantive unit.

In all SOEs and their subsidiaries, and similar to the rules for government procurement, open tender is not considered a default option. Rather, different methods are provided for and contracting authorities can choose which ones to pick. All SOEs have a list of items or situations (similar to the list for government procurement) in which case the contracting authority can opt for direct award methods (also called single-source procurement.) In practice, as detailed in section 6.2 above, the direct award method is indeed the most-used method among SOEs, by far. This is related to the vast number of exceptions that allow for direct awards.

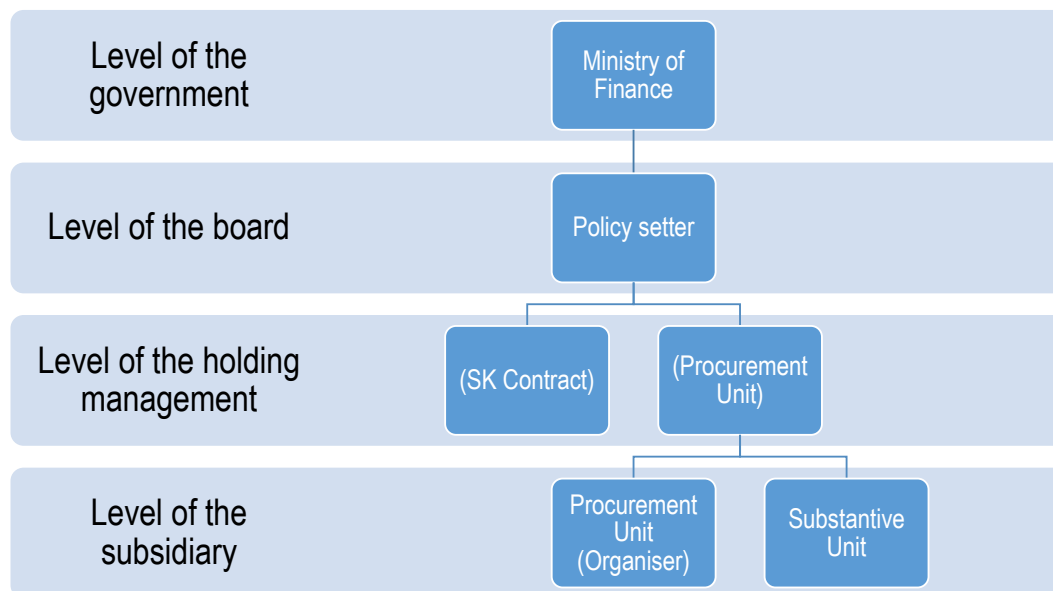
Another factor that drives the efficiency and effectiveness of procurement procedures relates to thresholds. The subsidiaries of KazAgro and Baiterek are set by the procurement rules applicable for these entities. The 2018 procurement reform introduced unified procurement rules (to be developed) applicable to KazAgro and Baiterek among other entities. These rules are expected to change the thresholds. At the time of drafting, the thresholds follow a generally similar approach to the general public procurement system, based on two thresholds: Below a threshold of EUR 22 856 (4 000 monthly calculation indices of KZT 2 405 each, i.e. KZT 9 620 000) procuring entities can use the method of request for quotation. Direct awards are possible for procurements below a threshold of EUR 11 430 (2 000 indices, i.e. KZT 4 810 000). In both cases, the threshold applies to whatever is planned to be purchased of the same item in one year.

While these thresholds are much higher than the thresholds in the state procurement system (see chapter 2), they are still considerably low. As a consequence, the value of individual procedures conducted by contracting authorities in KazAgro and Baiterek, even for open tenders, is very low. For example, for one subsidiary, 9 procedures were initially announced as open tenders for one year. These procedures in total accounted only for a value of roughly EUR 265 000 for all categories, i.e. on average these procedures did not exceed the threshold by much (EUR 29 383 for each procedure on average, where the threshold is EUR 22 856.) For comparison, the lowest threshold in the European Union above which some procurements have to be organised as open tenders on EU level is EUR 144 000. This threshold can be much higher for certain other goods, works or services (see chapter 2 for a more detailed breakdown.)

There is limited aggregation between the different subsidiaries of the same holding. In the case of Samruk-Kazyna, the central function at the level of the holding review procurements and provides guidance. The Samruk-Kazyna holding has a specific subsidiary, Samruk-Kazyna Contract LLP (SK Contract) that provides certain centralised services, with a focus on e-procurement solutions.

Below, Figure 6.7 illustrates the different institutions that are typically involved in public procurement in the SOEs.

Figure 6.7. Types of institutions conducting procurement in SOEs



Source: Author's compilation.

6.3.2. Ongoing reform of public procurement and the SOE sector in Kazakhstan

The structure and legal framework for the SOE sector has been in flux in recent years including public procurement. One aspect pertains to an increased push for reform of the SOE sector as a whole, mostly to decrease its footprint in Kazakhstan's economy. A second one relates to the reform of the public procurement system.

Since 1990, Kazakhstan's government made efforts to privatise SOEs, with limited success as new SOEs were formed within the existing structure. The current target foresees to reduce the share of economic activity by SOEs to 15% of GDP, from the present estimate of 30 to 40%. This shows that SOEs still have an important impact in the Kazakhstani economy, and are still crucial for public service delivery in Kazakhstan. (OECD, 2017^[11])

As part of this general push for privatisation, some of the SOEs and their subsidiaries have made efforts to become more competitive and better candidates for privatisation. Procurement has been identified as one of the areas for reform. For example, Samruk-Kazyna has followed a reform-oriented mind-set in some areas, resulting in dedicated change management strategies to ensure effective implementation (see Box 6.6).

Box 6.6. Change management in Samruk-Kazyna in support of procurement reforms

In 2014, Samruk-Kazyna started a major overhaul. Currently, the modernisation effort is in its third wave and is expected to end in 2022. Samruk-Kazyna being a large, diverse and dispersed organisation, change management has proven crucial to ensure the effective implementation of the reforms. Stakeholder analysis and engagement were at the heart of the change management process.

During the transition, it became apparent that key-stakeholder were reluctant and blocked the transformation programme. In the design stage of the transformation programme, analysts realised that especially in the area of public procurement, highly qualified leaders with expertise on public procurement were necessary to conduct the transformation process. Therefore, Samruk-Kazyna recruited and replaced managers of public procurers in some of its subsidiaries to ensure effective implementation of the programme.

The leaders in the subsidiaries were supported by the central structure with tools related to internal communications advocating for central management of procurement. This stakeholder engagement aimed at highlighting the benefits of more centralised and more professional public procurement from a business perspective.

Overall, the change management during the transition focused on three steps that frequently appear in change management approaches:

1. Develop a sponsor for the proposed change
2. Engage the main stakeholders
3. Develop the competencies of all stakeholders and professionals

Deliverables of the change management process included a change management plan, stakeholder maps and a change agenda with the main goals (what needs to change, why and with whom.)

Source: Interviews with Samruk-Kazyna.

As outlined in chapter 1, Kazakhstan's government has recently concluded a reform of the national public procurement system, and SOEs are affected by the proposed changes as well. Initially, the reform aimed at bringing all SOEs under the same legal framework. Samruk-Kazyna, however, has been removed from the proposal, and will continue to follow its own procurement rules in the future. At the same time, Samruk-Kazyna's governing law has been updated as part of the same reform bundle.

The most important change in the reform with regards to the focus of this chapter is that the quasi-state sector, i.e. KazAgro and Baiterek, are now covered by the general public procurement rules. The new law now includes unified rules for the quasi-state sector. This change promises to simplify the legal and regulatory framework from the perspective of a supplier: where bidders had to previously adapt to the individual procurement rules of the subsidiaries of KazAgro and Baiterek, there would now be one set of rules applicable to general government procurement, as well as all of the subsidiaries of the entire quasi-state sector as defined by the Law on State Property 413/2011 (most recently updated in 2018, in parallel to the procurement reform.) Samruk-Kazyna and its subsidiaries will not be covered under these unified

rules. However, there is an expectation that Samruk-Kazyna's procurement rules will be aligned to the new law, and agreed with the Ministry of Finance.

The new legal and regulatory framework for the quasi-state sector foresees in detail changes related to e-procurement as well as the establishment of a central unit overseeing procurement, as well as administrative liability for civil servants. SOEs are now required to use e-procurement. The law also introduces a requirement for SOEs to establish a control body (i.e., central control unit) that is separate from the general management of the enterprise and reports to the board of directors. In addition, there will be a single point of contact that would consolidate procurement opportunities. This change is responding to capacity constraints on the Ministry of Finance, aiming at better supervision for procurement conducted by all SOEs. In addition, a single point of contact addresses concerns that there is a fragmented landscape with regards to public procurement, in that there are many different institutions that have individual platforms and rules. Another noteworthy addition to the rules is that procurement officials of the quasi-state sector now face administrative liability. With the changes, public procurers can be held liable for wrongdoing in connection with public procurement processes.

For Samruk-Kazyna, the legal reform introduces a requirement to streamline the own e-procurement system with the central platform for other SOEs. The reform also strengthens central control and audit function within Samruk-Kazyna, entrusted to the Methodology and Control Department. Finally, Samruk-Kazyna's procurers now also fall under the administrative liability mentioned above.

The reform introduced parts of Samruk-Kazyna's model for the other holdings, such as a dedicated body for procurement in each holding or the principle of pre-qualification. Aspects of this proposal have to be brought in line with the wider legal framework for SOEs and their structure.

In fact, Samruk-Kazyna seems to be ahead of the remaining Kazakhstani procurement system on several fronts. This is in part due to a leadership effort to make Samruk-Kazyna more competitive, which in turn incentivised efforts to improve procurement. Samruk-Kazyna's leadership recognised that introducing innovations can spark backlash in a large organisation, and therefore created a unit to focus on change management (see Box 6.6).

Discussions about the proposed changes have been ongoing while this report was being drafted, for example during parliamentary discussions, as well as in hearings with suppliers and civil society. KazAgro and Baiterek were consulted regarding the draft law and its provisions concerning the quasi-state sector, albeit in a relatively formal sense, via letters directed to the Ministry of Finance that detailed the position of the respective SOE. According to stakeholders, some of the suggestions have been taken into account by the Ministry of Finance. In addition, a working group was established comprising relevant government agencies, members of parliament, and representatives from the SOE sector.

It is commendable that the current reform takes steps to streamline the legal and regulatory framework. A simplified, streamlined legal and regulatory framework has been proven to facilitate participation by suppliers and increase competition. However, whatever eventual model that this reform will introduce, frequently changing laws and regulations can be a deterrent for companies to participate in public procurement opportunities. Policy makers should aim at stabilising the legal and regulatory framework so that potential suppliers can anticipate the conditions under which they would enter into public contracts.

6.3.3. Increasing competition is the pressing challenge for SOEs

Aspects of the legal and regulatory framework for SOEs in Kazakhstan limit competition. The issues are similar to those in the procurement system for general government procurement, but will be briefly summarised here from the perspective of SOEs.

E-procurement in Samruk-Kazyna has been developed from a fragmented system, with the individual subsidiaries using dedicated portals. The individual platforms have now been integrated using an IT

integration tool, which consolidated the systems, but further unification is planned towards one portal only as different tasks (like prequalification, plans or submission of bids) are published on individual portals. To date, the e-procurement system covers the procurement cycle until the e-signature (i.e., contract management and payment is conducted outside of the system.) To avoid any fraud, falsification or meddling with the provided information, Samruk-Kazyna uses block chain technology and made manual inputs technically impossible.

Baiterek and KazAgro have also developed an e-procurement platform. KazAgro owns the platform, Baiterek is leasing it. The individual SOEs in the holdings have individual platforms. Commercial aggregators capitalise on this dispersed publication of opportunities. As part of the reforms, a consolidation and concentration of electronic purchasing for these entities was introduced. Quasi-state companies now have to use a single portal, and Samruk-Kazyna has to ensure integration with this platform. To allow flexibility for a different nature of procurement, Kazakhstan has refrained from including the procurement of SOEs into the electronic system for state procurement.

In all systems, and similar to the e-procurement system for government procurement, information is relatively open. For the last few years, the e-procurement systems were able to collect disaggregated procurement data that can provide insight into analytics (see section 6.2 above.) A large proportion is also publically available, which increases transparency but has raised concerns with suppliers for reasons of competition.

The fact that the individual subsidiaries and SOEs all use individual e-procurement systems, and different portals for different tasks that do not seem to be integrated, substantially diminishes access to procurement opportunities for potential suppliers. Small- and medium-sized enterprises are disproportionately disadvantaged, as these types of companies have fewer resources to monitor and handle a large number of portals, and to pay fees that are potentially charged by the aggregators. In this context, the introduction of a shared platform could prove a useful measure.

Restrictive access of foreign suppliers to the e-procurement system reduces competition. One major shortcoming that the SOEs' e-procurement systems share with the systems for general government procurement relates to the accessibility for foreign suppliers. A cascade of restrictive rules in the e-procurement system prevents foreign suppliers from accessing public tenders: in order to bid for public tenders, companies have to be registered in the e-procurement system with an electronic signature. In order to register for electronic signature, companies have to have a presence in Kazakhstan, i.e. a registered entity. Acknowledging the restrictive effect that this approach has for foreign suppliers, Samruk-Kazyna established an alternative approach for those companies that do not have an established, physical presence in Kazakhstan: Gamma Technologies, a service provider, creates an electronic signature that enables foreign companies to participate in open tenders by Samruk-Kazyna. The signature is valid for one year and costs EUR 130. This has resulted in a very low number of foreign suppliers registering in the e-procurement system. Among 15 000 registered suppliers for Samruk-Kazyna, for example, 15 have been identified as foreign companies, according to the Fund.

SOEs run some of Kazakhstan's critical infrastructure and public services (such as air traffic control, health care services, etc.) Some of the equipment to perform these tasks has to be procured from specialised providers abroad. As reported by stakeholders, the current rules make it difficult to impossible to procure this equipment: At times, the sole suppliers of a certain spare part have been unwilling to supply based on the current system; the main reason being that the supplier would have to register an entity in Kazakhstan. Where spare parts or other equipment is not available, major infrastructure might not be able to operate anymore or with large constraints that might impact the security of Kazakhstan's population. This illustrates that this mode of operation can pose a serious risk to Kazakhstan and its citizens.

The mechanism of "intra-holding cooperation" poses additional hurdles to competition. Subsidiaries in most SOE holdings enjoy a preferential treatment when it comes to procurement by the SOEs. For example, Samruk-Kazyna and KazAgro have rules that determined what items should or could be procured

from other subsidiaries in the same holding, according to the Law on the Fund. In these cases of intra-holding cooperation, contracting authorities can procure directly (i.e., without open tender). Prerequisites for intra-holding cooperation are a) that the supplier is owned by at least 25% by the same holding, and b) that the procured item corresponds to core activity of the contracting authority. For this reason, intra-holding cooperation is less relevant for Baiterek, as it has a very diverse range of subsidiaries.

Given these quite vague rules, intra-holding cooperation prevents competition and access for suppliers from companies outside of the holding. A wide range of situations can be used as a justification for restricted procurement methods under intra-holding cooperation. This, in turn, will result in less value for money in the purchasing. Suppliers do have the possibility to lodge complaints, but it remained unclear to what extent complaints against intra-holding cooperation have ever been successful.

SOEs are subject to the general audit function of the Republic of Kazakhstan. Kazakhstan's supreme audit institution, the Accounts Committee for Control over the Execution of the Republican Budget (Accounts Committee) is in charge of external audit of SOEs and their subsidiaries, according to the Law on State Audit and Financial Control, Article 12. The Accounts Committee's predominant aim is to ensure the execution of the budget; the committee reports annually to the parliament but is subordinate to the president (OECD, 2017^[11]). The President effectively also controls the SOEs via the cabinet members that are directors of the national managing holdings and SOEs. This structure probably has effects on the auditing of public procurements as well and is likely to be somewhat restrained due to a potential lack of independence of the auditors.

Complaints are reviewed by the Committee for Internal State Audit in the Ministry of Finance. These complaints are submitted via a web-portal ("register of complaints"). While the committee deliberates the case, the procedure is suspended. Decisions are accessible via the web-portal as well, according to the response to the questionnaire.

In Samruk-Kazyna, auditing as well as complaints are handled by a Special Committee on the level of the board of directors. The Accounts Committee is a member of this Special Committee. Companies who want to lodge a complaint in relation to procurement by Samruk-Kazyna are first expected to address the contracting authority (i.e., the subsidiary that is procuring), then the Procurement Methodology and Control Department, and finally the Special Committee. The following Table 6.6 summarises complaints related to procurement in Samruk-Kazyna.

Table 6.6. Complaints related to procurement by Samruk-Kazyna

	Year	2014	2015	2016
Complaints reviewed		1 032	1 856	1 620
Complaints upheld		329	515	399
Complaints referred to relevant organisations		354	749	479
Complaints deferred		349	547	667
Number of staff subject to disciplinary actions		28	144	149

Source: (OECD, 2017^[10]).

Audit and control of public procurement in Baiterek begins with the central management. In this unit of the holding, procurement managers have oversight over all procurement processes, and analyse the results of procurement procedures. In case that the central office identifies any signs of potential misconduct, the central office notifies the subsidiary company conducting the procurement and collaborates to mitigate the situation.

In KazAgro, each subsidiary has individual rules regarding control and audit. The central management at the holding level can provide recommendations on how to manage issues, but these are not compulsory instructions.

Overall, just like general government procurement, there are a number of measures that could improve the effectiveness and efficiency of public procurement by SOEs through increased competition. The above-mentioned aspects hinge on restrictions to competition and could be addressed by introducing legal changes as well as other measures to increase the openness of the SOE's procurement system like the ones below:

- Eliminate restrictions for foreign suppliers. Allow for a use of e-signature regardless of the place of incorporation. This will allow SOEs to access the goods, works and services they require to deliver crucial public services.
- Reduce the circumstances that allow for exceptional direct awards and intra-holding cooperation to increase the market for certain goods, works or services. This will allow contracting authorities to choose from a larger supplier base. This will result not only in lower prices, but more importantly in better response to the needs.
- Revise the audit and control framework such that the oversight is truly independent by introducing checks and balances. Currently, oversight through control and audit is equivalent to the institutional oversight over SOEs. This link could be separated.

6.3.4. SOEs have innovated with regards to some procurement practices

Some SOEs have used their institutional independence and dedicated legal realm to develop alternative procurement practices. This is especially true for Samruk-Kazyna, which enjoys the highest degree of independence, in combination with a push towards competitiveness and privatisation. This section highlights a few noteworthy practices that can be an example for Kazakhstan's entire procurement system or that would require increased effort.

Profile of the procurement function in SOEs

Samruk-Kazyna has more than 1 400 staff throughout its subsidiaries working on public procurement. More than 300 have a management role. As part of the reform, Samruk-Kazyna has begun a structured professionalisation effort and is planning to introduce a certification mechanism based on the model of the Chartered Institute of Procurement and Supply (CIPS). The plan is to first conduct tests of about 1 000 procurement professionals, including around 300 managers. Depending on their level of procurement knowledge, the procurers are required to participate in different kinds of training activities. The lower their grade, the more intensive the training process will be. More advanced procurers are allowed to conduct self-study and e-learning, whereas lower performers will be required to conduct in-class training. Later, unit is envisioned to introduce a certification-based system that includes classes, case studies and tests. In addition, Samruk-Kazyna has already begun experimenting with 360 degree reviews and also maintains "SK University", a corporate body offering training on a variety of topics.

In Baiterek, a total of approximately 60 officers work on procurement. Baiterek has eleven affiliated organisations with five to six procurement officers in each one of them. An additional two individuals procure for the holding.

KazAgro does not have a dedicated procurement department; instead, the legal department also overs procurement issues. In the entire KazAgro group employs approximately 12 procurement officers. Some of them also work on other tasks beyond procurement, such as accounting or legal questions.

Prequalification based on categories in Samruk-Kazyna

Following an insight that the performance of suppliers was frequently sub-standard, Samruk-Kazyna as part of its procurement rules introduced a prequalification mechanism. This was a first in Kazakhstan and in fact inspired the current revision of the general government procurement system in Kazakhstan.

Prequalification in Samruk-Kazyna is done for 16 000 items, including goods, works and services and in fact went hand in hand with the introduction of category-based management. Prequalification is mandatory. Of the 16 000 items, 9 000 have already gone through a first pre-qualification process as follows:

1. The supplier registers online and fills in an applications form.
2. The supplier fills in a questionnaire, to determine at what level the supplier will provide items: less critical level 1 items like stationary, water, etc. to critical level 3 items like safety-relevant items, aviation, complex works, etc.
3. Risk-based audit: suppliers for level 1 items will be less scrutinised than suppliers for level 3. Verifications include certificates, investigations by audit firms and on-site visits.
4. Prequalification for a certain level and certain items are granted.

Suppliers with pre-qualification can save on fees and bid securities. Prequalification is an ongoing process and suppliers can join upon an expression of interest.

Ethics and Integrity

In the area of integrity and ethics management, different SOEs and quasi-state entities vary greatly from one to another. Some have more structured systems than others. In general, responsibility for follow up to allegations of corruption lies with the general institutions that would follow up in all corruption cases (see chapter 4 on the management of integrity risks in public procurement). (OECD, 2017_[10])

In most SOEs, the internal control department appears to handle issues related to corruption, violation and conflict of interest. Internal rules are based on the national anti-corruption rules. Features include codes of conducts, whistle blower hotlines and asset declarations. None of the entities appears to follow a more risk-based approach. For example, the SOEs could identify procedures and sectors that are most vulnerable to corruption and wrongdoing, and implement closer follow up in those areas.

Some SOEs have implemented additional measures beyond the requirements of the national legal framework. For example, Samruk-Kazyna's control department runs integrity-related trainings as part of the general training for new hires. These trainings have three to four modules and cover the most common violations, how to avoid them, disciplinary measures and similar topics. Baiterek has a dedicated Ombudsman.

Overall, it remains questionable whether all of them have an awareness and a focus on corruption issues. Some entities do not seem to pay serious attention to corruption risks. Stakeholders report that the perceived corruption is higher in SOE procurement and the procurement by Samruk-Kazyna than in government procurement. It was not possible to support this statement with data or more structured information from broader surveys. In any circumstance, the leadership of the SOEs analysed in this chapter might wish to consider strengthening their integrity framework, especially with practical measures beyond stricter rules.

In doing so, SOEs can exploit their independent status like they did with respect to other policy areas and spearhead efforts towards a public procurement system in Kazakhstan that works with greater integrity. SOEs can consider:

- Increasing training efforts on integrity,
- Increasing competition and transparency, and
- Introducing measures to foster a culture of integrity.

For additional insights on how to practically implement measures in these areas, please refer to chapter 4.

Proposals for action

Many of the issues that are present in the general public procurement system are valid also for the procurement by SOEs. As a consequence, the proposals for actions by the SOE sector to improve its procurement are similar to proposals already presented in this report. The following list summarises them:

- Measures could be taken to increase competition in public procurements in all SOEs. A high share of direct awards is evidence of a system that is most likely not achieving the best value for money possible for Kazakhstan's citizens. Different measures can help procurers in conducting more open tenders, including legal provisions that a) identify open tendering as default method, b) reduce the number of exceptions, and c) allow for the use of strategic procurement methods like framework agreements. Non-legal measures are equally important and should aim at increasing the professionalization of the procurement workforce in SOEs by offering additional guidance and training on market research, planning and drafting of technical specifications. Additional measures should target the private sector, and aim at building companies' capacity to increase their successful participation in procurement.
- Allow for as much legal stability as possible with regards to the legal and regulatory framework. The recent legal reforms improved the legal and regulatory framework for public procurement in Kazakhstan. However, it is a fact that frequent changes to the rules of public procurement introduces insecurities on the side of procurers and suppliers. Frequent adaptation to new rules binds capacities that could otherwise be used to conduct public procurement more strategically.
- SOEs should aim at analysing data in a more stringent way, aiming at identifying areas for improvement. To that end, more dis-aggregated data collection is necessary. Such an approach could identify opportunities for using more strategic procurement methods and for aggregation, any risks with regards to policy goals or the most basic procurement goals of value for money and timeliness, for synergies between subsidiaries, and could also support planning.
- Aim at further streamlining the structure of the SOE sector, both regards to general oversight and with regards to public procurement. There are a plethora of SOEs in Kazakhstan in different managing holdings, with individual procurement rules. The most recent public procurement reform aims already at simplifying and consolidating the rules and establishing oversight in a dedicated institution. Additional measures should aim at consolidating the procurement itself, for example in central purchasing units.

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