Transparent Public Procurement Rating

TPPR

Azerbaijan

Public Procurement Legislation Assessment

The Project – Transparent Public Procurement Rating – is implemented by the Institute for Development of Freedom of Information (IDFI) in Partnership with Transparency International Ukraine (TI-Ukraine), Transparency International Azerbaijan (TI-Azerbaijan), Expert-Grup (Moldova), Freedom of Information Center of Armenia (FOICA) and SYMPA/BIPART (Belarus).

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Methodology

The TPPR Methodology is envisioned to be a universal methodology for assessing public procurement legislations (PPLs) with the ultimate goal of identifying the strengths and weaknesses of legal frameworks and their enforcement around the globe.

Structure and Logic

The Methodology is composed of 64 indicators, each of which holds a similar degree of importance. A number of these indicators are further broken down into scoring components.

The Methodology covers all the major components of any public procurement system, from the nature of the legislation to the complaint review process, with focus on the transparency of public procurement systems.

The selection of indicators for the Methodology was largely based on international best practice, international standards and aspects of other existing methodologies in the sphere of public procurement, such as:

- BRD Methodology and Standard
- GPA Standard (WTO)
- OECD Methodology and Principles
- EU Standard (Directive 2014/24/EU)
- Open Contracting Data Standard (OCDS)

Several indicators have been directly taken from one of the sources listed above as examples of best international practice. All of these indicators have been properly referenced.

During the indicator selection and elaboration process, an effort was made to ensure that the Methodology can be used to assess many different kinds of public procurement systems, but at the same time set high standards.

The indicators are separated into 5 groups (benchmark indicators) that represent the key characteristics (values) of a well-functioning, transparent and accountable public procurement system:

1. **Uniformity of the Legislative Framework** – 14 indicators
2. **Efficiency**– 10 indicators
3. **Transparency**– 18 indicators
4. **Accountability and Integrity**– 7 indicators
5. **Competitiveness and Impartiality**– 10 indicators

The methodology also includes 5 indicators that are used to assess legal components **that are not directly part** of the public procurement legislation but are crucial in terms of creating a transparent environment necessary for a proper functioning of any public procurement system. These indicators are grouped separately under '**Transparency Environment**'.

Indicators are also arranged according to the procurement process:

1. **Pre-tendering Phase** – procurement processes leading up to the publication of a notice of intended procurement.
2. **Tendering Phase** – procurement processes between publication of a notice of intended procurement and selection of a tender winner.
3. **Post-tendering Phase** – procurement processes after the selection of a tender winner.

These two arrangements allow for both process and value-based assessments of public procurement legislations.

Limitations

Public procurement systems vary significantly by country. The TPPR Methodology is intended to be applicable on a global scale, meaning that the indicators cannot be too specific and cannot cover all the possible variations and exceptions.

For the same reason, the TPPR Methodology can only be used to assess public procurement legislations on the national level, and it does not include indicators for any industry specific rules.

Scoring System

Each indicator included in the TPPR Methodology is granted equal weight and receives a maximum of 1 point. With a total of 64 indicators, public procurement legislations are rated on the scale of **0 to 64** (converted to percentages for easier understanding and visualization).

Indicators that are further broken down into scoring components are nevertheless worth 1 point. Each scoring component is evaluated separately.

The Methodology uses two ways to distribute points among scoring components of an indicator:

1. **'Scoring method'** is used when scoring components of an indicator overlap (meaning they do not add up as points) or have an unequal distribution of points.

2. **'Point distribution'** is used when each scoring component of an indicator is given an equal share of the overall point granted to that indicator.

Terminology

This methodology uses universally accepted procurement terminology as well as a few terms of its own design, in order to make key distinctions easier.

Acceptance act– A document signed by parties through which they agree on the terms by which a bargain is concluded.

Bid – Price offered by a tender participant during the bidding procedure.

Bid Security – A refundable amount of money paid by tender candidates validating their participation in a tender.

Coordination – Providing assistance to economic operators and procuring entities to engage in procuring activities.

Day – In the context of this methodology a day implies a calendar day.

Economic Operator – business or other organization which supplies goods, works or services.

Legal entity of public law (LEPL) (Public Legal Entity) – Organization created by the government or a government body, but separated from state management, and performing public authority independent of state control.

Machine-readable – A data format that can be processed (i.e. extract, read, transform) by a computer.

Monitoring – Data collection and analysis.

State non-commercial legal entity – A body governed by public law, having legal personality, not having an industrial or commercial character, and funded or managed, for the most part, by state entities.

Non-competitive procedure (direct procurement) – A type of public procurement procedure that does not involve prior publication of a notice of intended procurement.

Notice of intended procurement – A call for participation in an open tender issued by procuring entities.

Open tender – A type of tender, in which any economic operator can request participation.

Post-tendering phase – procurement processes after the selection of a tender winner.

Pre-tendering phase – procurement processes leading up to the publication of a notice of intended procurement.

Procurement regulatory body – a state body responsible for managing the public procurement system without necessarily incorporating lawmaking and law enforcement functions.

Procuring entity – A state budget and local government entity (including their respective LEPLs, state owned companies and non-commercial legal entities).

Public procurement annual plan – A document issued by procuring entities that contains information about all procurements planned within a fiscal year.

Tender – A type of public procurement procedure that involves bidding.

Tender application – An economic operator's official request to participate in a tender that includes all the documents requested by the procuring entity.

Tender candidate – An economic operator willing to participate in a tender.

Tender commission – A group of persons within a procuring entity responsible for conducting procurement (this function can also be performed by a single person).

Tender documentation – A collection of documents containing full information about the procurement, such as its subject-matter, technical requirements/specification, eligibility and evaluation criteria, draft contract conditions etc.

Tender participant – An economic operator that has been allowed to participate in a tender.

Tendering phase – procurement processes between publication of a notice of intended procurement and selection of a tender winner.

Results by Indicator
(Arranged by Procurement Process)

Transparency Environment			
#	**Indicator**	**Score**	**Relevant Article and Law (if applicable)**
1.	Business registry is publicly available. – **[1 point]**	0	**Law of Azerbaijan on trade secret (Article 4.1.2)** **Comment:** Business registry is publicly available, however the information about the company's ownership is withheld from the public. Specifically, **"Law on trade secret"** treats information about the founders/shareholders of a commercial entity and their shares in the company as confidential. Because these crucial pieces of information are not publicly available, the score under this indicator is gauged as zero. The registry is available at: https://www.e-taxes.gov.az/ebyn/commersialChecker.jsp
2.	Budgets of all public procuring entities are publicly available. – **[1 point]**	1	**Law of Azerbaijan on access to information (Article 9; Article 29)** **Comment: Article 9** defines inter alia state bodies and municipalities as information owners. **Article 29** requires state bodies, as information owners, to disclose key budgetary information.
3.	Public officials are required by law to file asset declarations. – **[1 point]**	0	**Comment: "Law on combating corruption" (01.01.2005)** includes a section that makes it mandatory for public officials to file financial declarations. **"Rules on the submission of financial information by public officials"** have also been adopted, which further specify the procedures of filing asset declarations, the range of public officials to whom the law applies, the bodies receiving the declarations and the methods of verifying the information. However**, the declaration form of financial disclosure is yet to be approved** by the Cabinet of Ministers. Moreover, the Rules define the financial information filed by public officials as private information and prohibits its release. In view of the legal hurdle that has prevented the law's application for over a decade and the limitations inherent in the legislation, the score under this indicator is zero.
4.	The country has adopted legal provisions ensuring the right to request public information. – **[1 point]**	1	**Law of Azerbaijan on access to public information** **Comment:** The law guarantees the right to obtain information from information owners, including public institutions. **Article 6** cites among the principles of accessing information the duty of state bodies (as well as municipalities, which are not considered state body) to disclose information. **Article 24** states that an information request must be responded not later than 7 work days.

5.	Legislation includes provisions regulating whistleblower protection. – **[1 point]**	1	**Law of Azerbaijan on combating corruption** **Comment:** The amendment dated 14.10.2016 to the **"Law on combating corruption"** regulates whistleblower protection.

General Characteristics of the Procurement System			
#	**Indicator**	**Score**	**Relevant Article and Law (if applicable)**
1.	Public Procurement Legislation (**PPL**), which may include primary and secondary legislation, lays out the basic principles and general framework of the procurement process, makes it operational and indicates how the law must be applied to specific circumstances. – **[1 point]** *Uniformity of the Legislative Framework*	1	**Law of Azerbaijan on public procurement (27.12.2001)**
2.	PPL (including primary and secondary legislation) is available in a single and accessible place. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Uniformity of the Legislative Framework*	0.5	**Comment:** PPL is available (in Microsoft Word and PDF formats) on the official website of the regulatory procurement body, www.tender.gov.az Most documents are not available in English, because Ministry of Economy is reported to be currently working on the legislation.
3.	PPL applies to all state budget and local government entities (including their respective Legal Entities of Public Law (LEPLs), state owned companies and non-commercial legal entities) and all exempted entities are clearly indicated. – **[1 point]**	Overall: 1 Components: a) 0.2	**Law of Azerbaijan on public procurement** **The Decree of Azerbaijan's President on the Rules of making municipal orders (04.07.2001)** **Comment:** The law (Article 1.1) stipulates that it applies to all state bodies, including organizations

	Point Distribution a) All state budget entities – **[0.2]** b) Local government entities – **[0.2]** c) Legal Entities of Public Law (LEPL) – **[0.2]** d) State owned companies – **[0.2]** e) State non-commercial legal entities – **[0.2]** *Uniformity of the Legislative Framework*	b) 0.2 c) 0.2 d) 0.2 e) 0.2	and enterprises, in the statutory fund of which the state's share is 30% or more. The notable exception is the local self-government exercised by municipalities. The status of municipalities is defined separately from state bodies under the Constitution. The Decree establishes the general parameters that guide municipal procurement (albeit in very general terms).
4.	The scope of coverage of PPL includes all sectors of the economy where competition is possible and exemptions are clearly listed in the PPL. – **[1 point]** **Point Distribution** a) The scope of coverage of PPL includes all sectors of the economy where competition is possible. – **[0.5]** b) PPL clearly lists or refers to all exemptions. – **[0.5]** *Uniformity of the Legislative Framework*	Overall: 1 Components: a) 0.5 b) 0.5	**Law of Azerbaijan on public procurement** **Comment:** The law does not exempt key sectors of the economy from the jurisdiction of the law on public procurement. However, it significantly curtails competitiveness of the bidding by treating local businesses on preferential terms (the benefits for local businesses are discussed elsewhere in this document). Moreover, the minimal threshold for open bidding is 50 thousand AZN (or about 27 thousand USD). Procuring entities are authorized to use any method of procurement for goods and services below this threshold. This means they are free to use non-competitive bidding in those instances. Also, procurement for defense and national security purposes are conducted through closed tender (**Article 19.3**). But the tender should still comply with the procedures set forth in **Law on public procurement (Article 47.3).** **Procurement of imported goods (services/works) suspended until 01.01.2018.** The government has suspended governmental entities' and budgetary organizations' procurement of imported goods, services and works until January 1, 2018. In the meantime, Ministry of Economy may approve upon the consent of the President of procurement of urgently needed goods from abroad.
5.	PPL determines a separate public body (procurement regulatory body) responsible for	0.75	**Law of Azerbaijan on public procurement** **Comment:** Until January 2016, State Procurement

	managing public procurement or assigns this function to a subordinate state body (ies) (e.g. Ministry department). – **[1 point]** **Scoring Method** • PPL determines a separate public body responsible for managing public procurement which is authorized to have income in addition to state funding. – **[1]** • PPL determines a separate public body responsible for managing public procurement. – **[0.75]** • PPL assigns this function to a subordinated state body(ies). – **[0.5]** • There is no procurement regulatory body. – **[0]** *Uniformity of the Legislative Framework*		Agency was the regulatory body overseeing this sphere. The Presidential Decree dated 15.01.2016 liquidated the Agency and delegated its responsibilities/functions to **Ministry of Economy. As such, the Ministry is not a subordinate body.** However, State Service for Antimonopoly Policy and Protection of Consumer Rights under Ministry of Economy is responsible for the **implementation of the functions** of a regulatory body set forth in Law on public procurement. The potential downside of this change is that while previously the regulatory body exclusively dealt with procurement issues, now procurement has become one of several among its functions. This may result in a situation, in which organizational resources are spread too thinly across different responsibilities and hinder effective performance in this area.
6.	PPL stipulates that the procurement regulatory body is responsible for at least coordination and monitoring (i.e. data collection and analysis as opposed to regulation and control) of public procurement activities. – **[1 point]** *Uniformity of the Legislative Framework*	1	**Law of Azerbaijan on public procurement** **Regulations of the State Service for Antimonopoly Policy and Protection of Consumer Rights**
7.	Legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the procurement system. PPL obligates the entity responsible for managing public procurement to use this mechanism on a regular basis. – **[1 point]** **Point Distribution** a) Legislation provides for a mechanism of consultation with the private sector. – **[0.25]** b) Legislation provides for a mechanism of consultation with the civil society sector. – **[0.25]**	Overall: 0 Components: a) 0 b) 0 c) 0	

	c) PPL obligates the entity responsible for managing public procurement to use this mechanism on a regular basis. – **[0.5]** *Accountability and Integrity*		
8.	PPL stipulates that electronic means is the primary method of conducting public procurement and of communication between procuring entities and tender participants. – **[1 point]** **Point Distribution** a) PPL stipulates that electronic means is the primary method of conducting public procurement. – **[0.5]** b) PPL stipulates that electronic means is the primary method of communication between procuring entities and tender participants. – **[0.5]** *Efficiency*	Overall: 0 Components: a) 0 b) 0	**Comment:** The concept of e-procurement is not set forth in the law and communication is still conducted by traditional methods.
9.	PPL establishes a single official point of access (i.e. an online portal) for all procedures and information related to public procurement. – **[1 point]** *Efficiency*	1	**Law on public procurement** The website of the regulatory body, www.tender.gov.az provides a single official point of access to information. However, none of the procurement procedures is conducted via e-services.
10.	Legislation requires that software used for electronic procurement and related communication shall be non-discriminatory, free to use and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure. – **[1 point]** *Competitiveness and Impartiality* *Source: EU Standard*	0	**Comment:** E-procurement has not been introduced in Azerbaijan.
11.	PPL ensures that tender candidates must be given equal treatment, without regard to nationality, residency or political affiliation: – **[1 point]**	Overall: 0.6 Components: a) 0	**Law of Azerbaijan on public procurement** **Comment:** PPL contains contradictory provisions with regard to the nationality of tender candidates.

	Point Distribution a) PPL should not allow domestic preferences. – **[0.2]** b) Participation of any candidate or group of candidates is based on qualification. – **[0.2]** c) Ensures that registration if required does not constitute a barrier to participation in tenders. – **[0.2]** d) State owned companies are not given any preference. – **[0.2]** e) Time-periods, including any extension of the time-periods, shall be the same for all interested or participating candidates. – **[0.2]** *Competitiveness and Impartiality* **Source: GPA Standard**	b) 0.2 c) 0 d) 0.2 e) 0.2	**Article 8 of the law** guarantees non-discrimination on the basis of nationality. However, local suppliers are offered preferential treatment under certain provisions of the law. For example, the recently amended **Article 36.9** states that local goods, if they satisfy the terms and conditions of the tender, shall be granted preferential correction at 20% amount of the competing, imported goods. Moreover, the recently amended rules for public entities' centralized procurement of food products also provides favorable conditions for local suppliers. There is no specific rule regulating those instances, in which registration may be a barrier to participation in tenders. All tender participants are to be informed of the extension made to the time periods **(Article 43.2)**
12.	PPL stipulates that a procuring entity shall, consistent with its own reasonable needs, provide sufficient time (based on the GPA standard - Article XI) for candidates to prepare and submit tender application. – **[1 point]** *Competitiveness and Impartiality*	1	**Law of Azerbaijan on public procurement** **Comment:** In open tenders, the notice of intended procurement must be placed on state newspapers and media outlets circulating internationally at least 30 bank days before tender applications are considered (20 days if the notice is published for the second time) **(Article 25.1)**. In two stage tenders, these periods are respectively 60 and 40 days **(Article 25.2)**.
13.	PPL stipulates that each procuring entity has a staff member(s) responsible for conducting procurement activities. – **[1 point]** *Uniformity of the Legislative Framework*	0	**Law of Azerbaijan on public procurement** **Comment:** PPL does not explicitly require that a staff member be assigned to conduct procurement activities. However, it mandates the procuring entity to form a tender commission to conduct any procurement related activities.

14.	PPL references sanctions for violations of the PPL. – **[1 point]** *Accountability and Integrity*	1	**Law of Azerbaijan on public procurement** **Comment:** The law defines sanctions for violations of the PPL by both the procuring entity, including tender commission **(Article 38.2)** and the supplier **(Article 6.7; Article 12)**.
15.	Legislation explicitly defines fraud and corruption / abuse of public office and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption. – **[1 point]** *Accountability and Integrity* **Source: OECD Methodology**	1	**Law of Azerbaijan on combating corruption** **The Criminal Code of Azerbaijan (Chapter 33)**
16.	PPL ensures the right to review (complaints), for all interested parties, including general public, tender participants and potential suppliers. – **[1 point]** **Scoring Method** • PPL ensures the right to review, for general public, tender participants and potential suppliers. – **[1]** • PPL ensures the right to review, for tender participants and potential suppliers. – **[0.75]** • PPL ensures the right to review, for tender participants. – **[0.25]** • No one has the right to review. – **[0]** *Uniformity of the Legislative Framework*	1	**Law of Azerbaijan on citizens' appeals** **Law of Azerbaijan on public procurement** **Comment:** The former establishes the legal framework for complaints by the citizens in general, while the latter is specifically applied within the context of procurement and deals with tender participants and potential suppliers. Also, complaints cannot be made of the following **(Article 55)**: Choice of a procurement method, 2. Restriction of procurement procedures based on the nationality; 3. The procuring entity's decision to reject all tender proposals, offers and quotations.
17.	PPL ensures the right to review throughout the procurement process. – **[1 point]** **Point Distribution** a) Complaints can be filed at any time during the procurement process up until the signing of the contract. – **[1/3]** b) A procurement contract cannot be awarded with a pending complaint. – **[1/3]**	Overall: 1/3 Components: a) 1/3 b) 0 c) 0	**Law of Azerbaijan on public procurement (Article 56.1)**

	c) A reasonable amount of time should be left between publication of the contract award decision and the signing of the contract, in order to give any stakeholder the opportunity to challenge the award decision. – **[1/3]** *Uniformity of the Legislative Framework*		
18.	PPL ensures the existence of an independent (from parties involved in a procurement dispute) review body with the authority to review complaints and grant remedies. – **[1 point]** **Point Distribution** a) PPL ensures the existence of an independent review body. – **[0.7]** b) The review body includes civil society members. – **[0.3]** *Uniformity of the Legislative Framework*	Overall: 0 Components: a) 0 b) 0	
19.	PPL ensures electronic, machine-readable and free of charge access to submitted complaints, either the full text or key information contained in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*	0	
20.	PPL ensures electronic, machine-readable and free of charge access to dispute resolutions (of the independent review body), either the full text or key information contained in these documents. – **[1 point]**	0	

	Scoring Method • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*		
Pre-tendering Phase			
#	**Indicator**	**Score**	**Relevant Article and Law (if applicable)**
1.	PPL obligates procuring entities to publish as early as possible in each fiscal year a notice regarding their future procurement plans - "public procurement annual plan". The annual plan must include at least: – **[1 point]** **Point Distribution** a) Subject-matters (CPV- or other similar classificatory system) of planned procurements. – **[0.25]** b) Planned dates (a range of week/month/quarter) of publication of the notices of intended procurement. – **[0.25]** c) Estimated value of procurements. – **[0.25]** d) Source of funding. – **[0.25]** *Efficiency*	Overall: 0 Components: a) 0 b) 0 c) 0 d) 0	**Comment:** PPL does not mandate procuring entities to publish their future procurement plans early in a fiscal year.
2.	PPL ensures electronic, machine-readable and free of charge access to public procurement annual plans of all procuring entities or key information included in these documents. – **[1 point]** **Scoring Method**	0	**Comment:** The PPL does not include such a norm. However, under the Open Government Partnership National Action Plan for 2012-2015, the state bodies committed to publish their procurement plans. Public has online access to the database of the procurement plans. However, procurement plans are haphazardly compiled and

	• Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*		do not cover all relevant information for each state body.
3.	Legislation stipulates that the planning of procurement and estimation of associated expenditures are part of the state budget formulation process in a fiscal year. – **[1 point]** *Efficiency* **Source: OECD Methodology**	1	**Law of Azerbaijan on budget system**
4.	PPL stipulates that procurement process should not normally be initiated until the appropriate financial resources have been identified. – **[1 point]** *Accountability and Integrity*	1	**Law of Azerbaijan on budget system**
5.	PPL defines the composition, powers, responsibilities and decision-making procedures of the body (tender commission or a person) responsible for conducting tender within the procuring entity. – **[1 point]** *Uniformity of the Legislative Framework*	1	**Law of Azerbaijan on public procurement** Comment: Law on public procurement defines all of the mentioned elements. But PPL fails to set forth minimal standards to ensure transparency and accountability in tender commissions' operations.
6.	Minimum monetary thresholds exist for different types of procurement. – **[1 point]** *Efficiency*	1	**The Decision of the Collegium of Ministry of Finance (20.05.2003)** **Comment:** Minimum thresholds exist only for open tenders and quotations.
7.	PPL stipulates that open tender is the default procedure for any public procurement, and all	Overall: 0.5 Components:	**Law of Azerbaijan on public procurement** **Comment:** PPL stipulates that open tender is the default procedure for any public procurement.

	exceptions are clearly listed by the PPL. – **[1 point]** **Point Distribution** a) Open tender is the default procedure for any public procurement. – **[0.5]** b) All exceptions are clearly listed by the PPL. – **[0.5]** *Competitiveness and Impartiality*	a) 0.5 b) 0	However, as indicated above, open tender is the default procedure for public procurement above the 27 thousand USD threshold. As shall be discussed elsewhere in this document, the other problem is the broad formulation of the exceptions.
8.	PPL stipulates that justification for using a non-competitive procedure must be made public by the procuring entity. – **[1 point]** *Accountability and Integrity*	0	
9.	PPL stipulates that provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against foreign suppliers or protects domestic suppliers, a procuring entity may use non-competitive procedure (direct procurement) when: – **[1 point]** a) Where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist. b) For additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; or would cause significant inconvenience or substantial duplication of costs for the procuring entity. c) Insofar as is strictly necessary where, for reasons of extreme urgency brought about	0.5	**Law of Azerbaijan on public procurement** **Comment:** PPL includes a wider range of cases, in which a procuring entity may select a non-competitive tender procedure. For instance, the law authorizes single-source procurement if an urgent need of goods arises and it is not expedient to organize a tender or use other methods of procurement **(Article 21.1.2)**. The law also allows for the use of limited (closed) tender if the time period or expenditures used to review and evaluate tender applications are disproportionate to the value of the goods (services and works) at question **(Article 19.2.2)**. In none of these cases, the standards are clear and specific enough to judge the merits of selecting the method at issue.

	by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering. d) Where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. e) For purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers. – **[1]** **Scoring Method** In case of any additional exceptions – **[0.5]** *Uniformity of the Legislative Framework* **Source: GPA Standard**		
Tendering Phase			
#	**Indicator**	**Score**	**Relevant Article and Law (if applicable)**
1.	PPL stipulates that the notice of intended procurement / tender documentation must include at least: – **[1 point]** **Point Distribution** a) Name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any. – **[1/8]** b) A description of the procurement, including the nature and the quantity of	Overall: 7/8 Components: a) 1/8 b) 1/8 c) 1/8 d) 0/8 e) 1/8	**Law on public procurement, Article 26** (the content of the tender notice) **Comment:** The law rules out the disclosure of information about estimated value of the goods until the consideration of tender applications (**Article 27.3**).

	the goods or services (including construction) to be procured or, where the quantity is not known, the estimated quantity. – **[1/8]** c) CPV codes (or other classificatory system of a similar nature). – **[1/8]** d) Estimated value of the goods or services to be procured. – **[1/8]** e) The time-frame for delivery of goods or services or the duration of the contract. – **[1/8]** f) The procurement method that will be used. – **[1/8]** g) The address (where applicable) and any final date for the submission of requests for participation in the procurement. – **[1/8]** h) A list and brief description of any conditions (eligibility criteria) for participation of candidates, including any requirements for specific documents or certifications to be provided by candidates in connection therewith. – **[1/8**] *Competitiveness and Impartiality* **Source: GPA Standard**	f) 1/8 g) 1/8 h) 1/8	
2.	PPL stipulates that the notice of intended procurement / tender documentation must include: – **[1 point]** **Point Distribution** a) Payment conditions – **[0.2]** b) Information about bid security (if required) – **[0.2]** c) Source of funding – **[0.2]** d) Payment information for multi-year contracts – **[0.2]** e) Draft of contract – **[0.2]** *Competitiveness and Impartiality*	Overall: 0.2 Components: a) 0 b) 0.2 c) 0 d) 0 e) 0	**Law of Azerbaijan on public procurement (Article 26)**

3.	PPL defines all eligibility criteria for participation in tender that must include at least: – **[1 point]** **Point Distribution** a) Capabilities with the respect to personnel, equipment, and construction or manufacturing facilities. – **[1/3]** b) Financial position. – **[1/3]** c) Grounds of restriction for participation. – **[1/3]** *Competitiveness and Impartiality* **Source: EBRD Methodology**	Overall: 1 Components: a) 1/3 b) 1/3 c) 1/3	**Law of Azerbaijan on public procurement** **Comment:** The law defines eligibility criteria for tender participants **(Article 6.2)**, which include the qualifications under this indicator. It also stipulates that no other criteria besides the aforesaid can be applied to restrict participation (**Article 6.4**).
4.	PPL stipulates that procuring entities may seek consultations for the purpose of planning procurement (drafting of tender documentation) from independent experts or market participants. In such cases, these experts or market participants may not take part or benefit from tenders they helped plan unless it can be demonstrated that there is no conflict of interest (as defined by the national legislation). – **[1 point]** **Point Distribution** a) PPL stipulates that procuring entities may seek consultations for the purpose of planning procurement from independent experts or market participants. – **[0.5]** b) PPL prohibits these experts or market participants from taking part or benefiting from tenders they helped plan, unless it can be demonstrated that there is no conflict of interest (as defined by the national legislation). – **[0.5]** *Efficiency* **Source: EU Standard**	Overall: 1 Components: a) 0.5 b) 0.5	**Law of Azerbaijan on public procurement** **Comment:** The law stipulates that procuring entities may involve experts in their work **(Article 23.3)** PPL contains a conflict of interest rule that prohibit experts/tender participants from tenders they helped plan **(Article 13)**
5.	PPL ensures electronic, machine-readable and free of charge access to notices of intended procurement (including tender documentation),	1	**Law of Azerbaijan on public procurement** **Comment:** The law on public procurement

	either the full text or key information contained in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*		**(Article 4.1.7)** lists among the responsibilities of the regulatory body setting up a website, in which it must place notices of intended procurement and the results of the procurement process. The notice of intended procurement must be placed on state newspapers and media outlets circulating internationally at least 30 bank days before tender applications are considered (20 days if the notice is published for the second time) **(Law on public procurement, Article 25.1)**.
6.	PPL ensures electronic, machine-readable and free of charge access to tender documentation amendments, either the full text or key information contained in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*	0	**Comment:** The amendments are sent to the tender participants, however, they are not electronically available **(Article 30.2)**.
7.	PPL ensures electronic, machine-readable and free of charge access to tender candidate applications (all documents needed for the request to participate in a tender), either the full text or key information contained in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]**	0	

	• Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*		
8.	PPL ensures electronic, machine-readable and free of charge access to information about the bids offered by tender participant. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*	0	
9.	PPL ensures electronic, machine-readable and free of charge access to decisions of the tender commission, either the full text or key information contained in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*	0	**Comment:** PPL requires that the results of the procurement process be published however, tender commissions are not asked to provide access to their decisions **(Law on public procurement, Article 4.1.7).**
10.	Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterizes the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favoring or	1	**Law of Azerbaijan on public procurement (Article 14)** **Comment:** The law also stipulates that criteria, requirements or procedures should not be discriminatory in relation to tender candidates **(Article 6.6)**.

	eliminating certain undertakings or certain products. – **[1 point]** *Competitiveness and Impartiality* **Source: EU Standard**		
11.	PPL stipulates that procuring entities may require tender candidates to confirm the validity of their bid with a bid security that is refunded once the procedure is completed. – **[1 point]** *Efficiency*	1	**Law of Azerbaijan on public procurement** **Comment:** PPL allows procuring entities to require security bid, the amount of which may be 1-5% of the value of the tender proposal **(Article 33)**. It also authorizes the application of participation fee, which must not exceed 0.5 percent of the estimated price of procurement and 1.5 times of tender costs. The problem is that tender candidates are given access to tender documentation only after they have paid the participation fee requested in the notice of intended procurement.
12.	Legislation explicitly defines conflict of interest and includes mechanisms for its prevention: – **[1 point]** **Point Distribution** a) The concept of conflicts of interest covers at least any situation where staff members of the procuring entity or of a procurement service provider acting on behalf of the procuring entity who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure, have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure. – **[1/3]** b) PPL stipulates that persons responsible for procurement decision-making in procuring entities must declare in writing any conflict	Overall: 1/3 Components: a) 1/3 b) 0 c) 0	**Law of Azerbaijan on public procurement** **Comment:** Law on public procurement includes a provision on conflict of interest, which deals with the issues mentioned in the Point (a). However, the other two points are not addressed in PPL **(Article 13)**. Also, Azerbaijan's legislation does not contain provisions relating to public officials' conflict of interests.

	of interest with tender participants. – **[1/3]** c) The legislative framework prohibits the participation of active public officials and former public officials for a reasonable period of time after leaving office in public procurement procedures in ways that benefit them, their relatives, and business or political associates financially or otherwise. – **[1/3]** *Accountability and Integrity* **Source for a): EU Standard** **Source for b): OECD Methodology**		
13.	PPL stipulates that award decisions must be made solely on the basis of evaluation criteria that have been precisely specified in advance in the tender documentation. – **[1 point]** *Competitiveness and Impartiality*	1	**The law of Azerbaijan on public procurement** The law includes a point to this effect and prohibits the use of criteria not set forth in tender documentation **(Article 36.6)**.
14.	PPL stipulates that upon modification of any criteria and requirements set out in tender documentation prior to the completion of tender application submission period, a procuring entity shall transmit in writing all such modifications: – **[1 point]** **Point Distribution** a) To all tender candidates; and – **[0.5]** b) Give additional adequate time (either by extending or restarting the time) to allow such candidates to modify and re-submit amended tender application. – **[0.5]** *Competitiveness and Impartiality*	Overall: 0.5 Components: a) 0.5 b) 0	**The law of Azerbaijan on public procurement** The law allows for such situations and stipulates that all tender candidates must be informed of the changes **(Article 43.2)**
15.	PPL stipulates that procuring entities shall inform each tender participant of the decision reached about the winner of the tender, including failure to do so, as soon as it is made, but no later than the	0	**The law of Azerbaijan on public procurement** The law states that upon the signing of the procurement contract the procuring entity must send the winner's name, address and tender price

	end of the following working day. – **[1 point]** *Transparency*		to tender participants **(Article 40.9)**. But there is no requirement that it be done no later than the end of the following working day.
16.	PPL ensures that on request from the tender participant the procuring entity shall as quickly as possible inform: – **[1 point]** **Point Distribution** a) Any unsuccessful tender candidate of the reasons for the rejection of its request to participate (if such approval is required). – **[0.5] ***** b) Any unsuccessful tender participant of the reasons for the rejection of its bid. – **[0.5]** ******* If a) is not applicable, b) equals **[1 point]**. *Transparency* **Source: EU Standard**	Overall: 0 Components: a) 0 b) 0	
17.	PPL stipulates that in cases when evaluation criteria include both price and quality, the winner shall be chosen using a cost-effectiveness approach, such as: – **[1 point]** **Point Distribution** a) Life-cycle cost – **[1/3]** b) Best price-quality ratio – **[1/3]** c) Environmental and/or social costs – **[1/3]** *Efficiency* **Source: EU Standard**	Overall: 1/3 Components: a) 0 b) 1/3 c) 0	**The law of Azerbaijan on public procurement (Article 36)** **Comment:** The law does not explicitly mention the use of best-price quality ration, but it can be inferred from Article 36 that a similar approach is prescribed.
Post-tendering Phase			
#	**Indicator**	**Score**	**Relevant Article and Law (if applicable)**

1.	PPL stipulates that upon successful conclusion of tender (upon choosing and announcing of the winner) the following information must be made public as soon as it is available: – **[1 point]** **Point Distribution** a) Name, type, identification number, address, telephone, fax number (where applicable), email and internet address of the procuring entity and, where different, of the service from which additional information may be obtained. – **[0.1]** b) Subject of procurement. – **[0.1]** c) CPV codes (or other classificatory system of similar nature). – **[0.1]** d) Description of the procurement: nature, extent, quantity or value of goods, works and services. Where the contract is divided into lots, this information shall be provided for each lot. – **[0.1]** e) Type of award procedure; in the case of negotiated procedure without prior publication, justification. – **[0.1]** f) Date of the signing of contract(s) or of framework agreement(s). – **[0.1]** g) Duration of the contract. – **[0.1]** h) Number of bids and their respective amounts received. – **[0.1]** i) Name, address, telephone, fax number (where applicable), email address and internet address of the successful tender participant(s) including: information whether the contract was awarded to a group of economic operators (joint venture, consortium or other) (where applicable). – **[0.1]** j) Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number (where applicable) and email address of	Overall: 0.2 Components: a) 0 b) 0.1 c) 0.1 d) 0 e) 0 f) 0 g) 0 h) 0 i) 0 j) 0	**Law of Azerbaijan on Public Procurement** **Comment:** The law makes it incumbent on the procuring entity to publish the information about the procurement contract on the official website (and in the newspaper, in which the notice of intended procurement had been placed) within 5 banking days after the signing of the contract **(Article 5.3)**. However, the contract information shared with the public is not detailed.

	the service from which this information may be obtained. – **[0.1]** *Transparency* **Source: EU Standard**		
2.	PPL stipulates that the information on subcontractors must be made public upon successful conclusion of tender (upon choosing and announcing of the winner). – **[1 point]** **Point Distribution** a) Procurement contracts include information on what proportion of the contract can be subcontracted to third parties. – **[0.5]** b) Information on subcontractor/s (if any): name, address, ID, contact information, is made public as soon as this information is available. – **[0.5]** *Transparency*	Overall: 0 Components: a) 0 b) 0	
3.	PPL ensures electronic, machine-readable and free of charge access to procurement contracts, either the full text or key information contained in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*	0	
4.	PPL ensures electronic, machine-readable and free of charge access to contract amendments, either the full text or key information contained in these documents. – **[1 point]** **Scoring Method**	0	

	• Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*		
5.	PPL ensures electronic, machine-readable and free of charge access to contract performance information (e.g. acceptance act and milestone reports), either the full text or key information included in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*	0	
6.	PPL ensures electronic, machine-readable and free of charge access to payment receipts, either the full text or key information contained in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*	0	

7.	PPL clearly defines the procedures for inspection and quality control procedures: – **[1 point]** **Point Distribution** a) Quality control (**QC**) procedures for goods, works and services are well defined in the draft contracts/documents or in the regulations. – **[0.5]** b) Inspection of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors. – **[0.5]** *Efficiency* **Source: OECD Methodology**	Overall: 0 Components: a) 0 b) 0	
8.	PPL ensures electronic, machine-readable and free of charge access to any inspection and quality control reports, either the full text or key information contained in these documents. – **[1 point]** **Scoring Method** • Electronic, machine-readable, free of charge – **[1]** • Electronic, machine-readable, not free of charge – **[0.75]** • Electronic, non-machine-readable – **[0.5]** • Only on paper – **[0.25]** • None – **[0]** *Transparency*	0	
9.	Procedures for acceptance of final products and processing of final payments are clearly defined by the PPL or contract law and are incorporated as standard clauses in contracts. – **[1 point]** *Efficiency* **Source: OECD Methodology**	1	The Civil Code of Azerbaijan

10.	PPL defines specific procedures for modifying contracts. – **[1 point]** *Uniformity of the Legislative Framework*	0	
11.	PPL stipulates that procurement contract must include dispute resolution procedures. – **[1 point]** *Uniformity of the Legislative Framework*	1	**Law of Azerbaijan on Public Procurement (Article 24.1.25, Article 40.10)** **Comment:** The law requires that dispute resolution procedures be laid out in the tender documentation (i.e. the tender's terms and conditions) and in the procurement contract.
12.	PPL stipulates that all procurement related documentation must be maintained: – **[1 point]** **Scoring Method** • In electronic form for a period of at least 10 years. – **[1]** • In paper form for a period of at least 3 years. – **[0.5]** *Transparency*	0.5	**Law of Azerbaijan on Public Procurement (Article 54.2)** **Comment:** The procurement-related documents are maintained for 5 years.
13.	PPL stipulates that public procurement operations must be subject to internal and external audit conducted by qualified specialists. – **[1 point]** **Point Distribution** a) PPL stipulates that public procurement operations must be subject to internal audit conducted by qualified specialists. – **[0.5]** b) PPL stipulates that public procurement operations must be subject to external audit conducted by qualified specialists. – **[0.5]** *Accountability and Integrity*	Overall: 1 Components: a) 0.5 b) 0.5	**Law of Azerbaijan on Chamber of Accounts (external audit)** **Comment:** Chamber of Accounts conducts external audit of public procurement operations. Since 2014, the annual activities report of this body, which includes information on the results of the audits is published on its website. **Regulations of Azerbaijan's Ministry of Finance (internal audit)** **Regulations of State Financial Control Service of Ministry of Finance** The State Financial Control Service of Ministry of Finance is the body responsible for financial oversight of the spending of budgetary funds.