

Transparent Public Procurement Rating



Togo

Public Procurement Legislation Assessment

The Assessment of the Public Procurement Legislation of Togo was prepared by ANCE Togo.

The Project – [Transparent Public Procurement Rating](#) – is implemented by the Institute for Development of Freedom of Information (IDFI) in partnership with a [network](#) of organizations and procurement specialists from more than 30 countries.



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The opinions expressed in this draft document belong to the Institute for Development of Freedom of Information (IDFI) and its partner organizations, and do not reflect the position of Open Society Institute Budapest Foundation (OSI). Therefore, this organization is not responsible for the content of this report.

2018

Introduction

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:

- EBRD 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.

About the Project

The Methodology has been developed within the framework of the project [Transparent Public Procurement Rating \(TPPR\) – Assessing Public Procurement Legislation and the Enforcement Process in the Eurasian Region](#).

The project was funded by Open Society Institute Budapest Foundation (OSI) and has been implemented by a Georgia-based civil society organization [Institute for Development of Freedom of Information \(IDFI\)](#) together with 5 partner organizations from each country in the Eurasian region covered by the project:

Armenia – [Freedom of Information Center of Armenia](#)

Azerbaijan – [Transparency International \(TI\)](#)

Belarus – [BIPART](#)

Moldova – [Expert-Grup](#)

Ukraine – [Transparency International \(TI\)](#)

In its initial stage, the TPPR project only covers the Eastern Partnership (EaP) Region; however, it plans to scale the methodology up to larger regions in the future.

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.

This scoring system and the structure of the Methodology allow for the results to be presented in three ways:

1. **Country Overall Results and Rating** – country overall results on the scale of 0-64 are converted into and presented using percentages (0-100%). Countries are then ranked by their overall results.
2. **Results by Benchmark Indicators** – results for benchmark indicators are presented only through percentages, since benchmark indicators include an unequal number of indicators (and, therefore, unequal number of maximum points).
3. **Results by Procurement Process** – results for different phases of the procurement process are presented only through percentages, due to unequal number of indicators included in each phase.

Countries are also ranked and compared by their results for each benchmark indicator.

Visualization

Visualizing the results of the assessment is crucial to the goal of the methodology. For this purpose, the overall points received by each country shall be shown graphically using the scale of 0-100%, divided into 4 quarters of a specific color:

- Low compliance with TPPR Standards – 0% to 25% (red)
- Average compliance with TPPR Standards – 26% to 50% (orange)
- Good compliance with TPPR Standards – 51% to 75% (yellow)
- Excellent compliance with TPPR Standards – 76% to 100% (green)

Visualizations will also include spider graphs depicting country results by benchmark indicators and the procurement process, and multi-colored bar graphs for comparing country results in these categories.

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, transform and process) 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 and state owned companies).

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.

TPPR Methodology Indicators

Transparency Environment			
#	Indicator	Score	Relevant Article and Law (if applicable)
1.	Business registry is publicly available. – [1 point]	1	Décret n° 2012-008 portant modification du décret 2000-091 / PR https://togo.eregulations.org/media/decr%C3%A9t%20n%C2%B02012-008_pr.pdf ; https://www.cf

			etogo.org/
2.	Budgets of all public procuring entities are publicly available. – [1 point]	0	http://www.togoreforme.com/fr/index.php?option=com_docman&Itemid=122
3.	Public officials are required by law to file asset declarations. – [1 point]	0	
4.	The country has adopted legal provisions ensuring the right to request public information. – [1 point]	1	http://www.mrdibd.org/RTI/RTI%20laws%20of%20country/Togo.pdf
5.	Legislation includes provisions regulating whistleblower protection. – [1 point]	0	

Indicators by Procurement Process

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] <i>Uniformity of the Legislative Framework</i>	1	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

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] <i>Uniformity of the Legislative Framework</i>	1	https://www.droit-afrique.com/uploads/Togo-Loi-2017-07-transactions-electroniques.pdf
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] 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] <i>Uniformity of the Legislative Framework</i>	Overall: 1 Components: a) [0.2] b) [0.2] c) [0.2] d) [0.2] e) [0.2]	https://www.droit-afrique.com/uploads/Togo-Loi-2017-07-transactions-electroniques.pdf
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] <i>Uniformity of the Legislative Framework</i>	Overall: 1 Components: a) 0.5 b) 0.5	https://www.droit-afrique.com/uploads/Togo-Loi-2017-07-transactions-electroniques.pdf
5.	PPL determines a separate state body (procurement regulatory body) responsible for managing public procurement or assigns this function to a subordinate public body(ies). – [1 point] Scoring Method	1	http://armptogo.com/docs/reglementation/decrets/decret_2

	• PPL determines a separate state body responsible for managing public procurement which is authorized to have income in addition to state funding. – [1] • PPL determines a separate state body responsible for managing public procurement. – [0.75] • PPL assigns this function to a subordinated public body(ies). – [0.5] • There is no responsible state body. – [0] <i>Uniformity of the Legislative Framework</i>		011_182.pdf
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] <i>Uniformity of the Legislative Framework</i>	1	http://armptogo.com/docs/reglementation/decrets/decret_2011_182.pdf
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] c) PPL obligates the entity responsible for managing public procurement to use this mechanism on a regular basis. – [0.5] <i>Accountability and Integrity</i>	Overall: 0.5 Components: a) 0.25 b) 0.25 c) 0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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	Overall: 0 Components: a) 0 b) 0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	communication between procuring entities and tender participants. – [0.5] <i>Efficiency</i>		
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] <i>Efficiency</i>	1	http://armp.tg/
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] <i>Competitiveness and Impartiality</i> <i>Source: EU Standard</i>	0	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
11.	PPL ensures that tender candidates must be given equal treatment, without regard to nationality, residency or political affiliation: – [1 point] Point Distribution a) PPL should not allow domestic preferences. – [1/5] b) Participation of any candidate or group of candidates is based on qualification. – [1/5] c) Ensures that registration if required does not constitute a barrier to participation in tenders. – [1/5] d) State owned companies are not given any preference. – [1/5] e) Time-periods, including any extension of the time-periods, shall be the same for all interested or participating candidates.– [1/5] <i>Competitiveness and Impartiality</i> Source: GPA Standard	Overall: 1 Components: a) 1/5 b) 1/5 c) 1/5 d) 1/5 e) 1/5	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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]	1	http://ekldata.com/law-africa-news.eklablog.com/perso/TO

	<i>Competitiveness and Impartiality</i>		GO/Code-des-marches-publics-du-Togo-2009-.pdf
13.	PPL stipulates that each procuring entity has a staff member(s) responsible for conducting procurement activities. – [1 point] <i>Uniformity of the Legislative Framework</i>	1	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
14.	PPL references sanctions for violations of the PPL. – [1 point] <i>Accountability and Integrity</i>	1	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Accountability and Integrity</i> Source: OECD Methodology	1	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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		http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	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] <i>Uniformity of the Legislative Framework</i>	0.25	marches-publics-du-Togo-2009-.pdf
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] 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] <i>Uniformity of the Legislative Framework</i>	Overall: 2/3 Components: a) 1/3 b) 1/3 c) 0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Uniformity of the Legislative Framework</i>	Overall: 0.7 Components: a) 0.7 b) 0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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]	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	- Only on paper – [0.25] - None – [0] <i>Transparency</i>		
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] 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] <i>Transparency</i>	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Efficiency</i>	Overall: 0 Components: a) 0 b) 0 c) 0 d) 0	Existing law but not yet enforced, the law be entered into force on January 2019 http://www.dr oit-afrique.com/uploads/Togo-LF-2018.pdf

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 • 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] <i>Transparency</i>	0	Existing law but not yet enforced, the law be entered into force on January 2019 http://www.droit-afrique.com/uploads/Togo-LF-2018.pdf
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] <i>Efficiency</i> Source: OECD Methodology	1	Existing law but not yet enforced, the law be entered into force on January 2019 http://www.droit-afrique.com/uploads/Togo-LF-2018.pdf
4.	PPL stipulates that procurement process should not normally be initiated until the appropriate financial resources have been identified. – [1 point] <i>Accountability and Integrity</i>	1	Existing law but not yet enforced, the law be entered into force on January 2019 http://www.droit-afrique.com/uploads/Togo-LF-2018.pdf
5.	PPL defines the composition, powers, responsibilities and decision-making procedures of the body (tender commission or a person) responsible for	0	Existing draft regulation not

	conducting tender within the procuring entity. – [1 point] <i>Uniformity of the Legislative Framework</i>		yet adopted
6.	Minimum monetary thresholds exist for different types of procurement. – [1 point] <i>Efficiency</i>	0	Existing draft regulation not yet adopted
7.	PPL stipulates that open tender is the default procedure for any public procurement, and all 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] <i>Competitiveness and Impartiality</i>	Overall: 1 Components: a) 0.5 b) 0.5	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
8.	PPL stipulates that justification for using a non-competitive procedure must be made public by the procuring entity. – [1 point] <i>Accountability and Integrity</i>	1	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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	0.5	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	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 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] <i>Uniformity of the Legislative Framework</i> Source: GPA Standard		
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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: 1 Components: a) [1/8] b) [1/8] c) [1/8]	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	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] <i>Competitiveness and Impartiality</i> Source: GPA Standard	d) [1/8] e) [1/8] 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] <i>Competitiveness and Impartiality</i>	Overall: 0.8 Components: a) [0.2] b) 0 c) [0.2] d) [0.2] e) [0.2]	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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	Overall: 2/3 Components: a) [1/3]	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO

	manufacturing facilities. – [1/3] b) Financial position. – [1/3] c) Grounds of restriction for participation. – [1/3] <i>Competitiveness and Impartiality</i> Source: EBRD Methodology	b) [1/3] c) 0	O/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Efficiency</i> Source: EU Standard	Overall: 0 Components: a) 0 b) 0	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
5.	PPL ensures electronic, machine-readable and free of charge access to notices of intended procurement (including tender documentation), 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] <i>Transparency</i>	0	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

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] <i>Transparency</i>	0	
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] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <i>Transparency</i>	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Transparency</i>	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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]		http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	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] <i>Transparency</i>	0	O/Code-des-marches-publics-du-Togo-2009-.pdf
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 eliminating certain undertakings or certain products. – [1 point] <i>Competitiveness and Impartiality</i> Source: EU Standard	1	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Efficiency</i>	1	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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	Overall: 1 Components: a) [1/3] b) [1/3] c) [1/3]	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	procedure. – [1/3] b) PPL stipulates that persons responsible for procurement decision-making in procuring entities must declare in writing any conflict 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] <i>Accountability and Integrity</i> 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] <i>Competitiveness and Impartiality</i>	1	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Competitiveness and Impartiality</i>	Overall: 1 Components: a) [0.5] b) [0.5]	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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		http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	as it is made, but no later than the end of the following working day. – [1 point] <i>Transparency</i>	1	com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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]. <i>Transparency</i> Source: EU Standard	Overall: 1 Components: a) [0.5] b) [0.5]	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Efficiency</i> Source: EU Standard	Overall: 1 Components: a) [1/3] b) [1/3] c) [1/3]	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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 the service from which this information may be obtained. – [0.1] <i>Transparency</i> Source: EU Standard	Overall: 1 Components: a) [0.1] b) [0.1] c) [0.1] d) [0.1] e) [0.1] f) [0.1] g) [0.1] h) [0.1] i) [0.1] j) [0.1]	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

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] <i>Transparency</i>	Overall: 1 Components: a) [0.5] b) [0.5]	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Transparency</i>	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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 • 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] <i>Transparency</i>	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
5.	PPL ensures electronic, machine-readable and free of charge access to contract performance information (acceptance act and milestone reports), either the full text or key information included in these documents. – [1 point]	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	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] <i>Transparency</i>		O/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Transparency</i>	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Efficiency</i> Source: OECD Methodology	Overall: 1 Components: a) [0.5] b) [0.5]	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
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]	0	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	• Only on paper – [0.25] • None – [0] <i>Transparency</i>		Togo-2009-.pdf
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] <i>Efficiency</i> Source: OECD Methodology	1	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
10.	PPL defines specific procedures for modifying contracts. – [1 point] <i>Uniformity of the Legislative Framework</i>	1	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
11.	PPL stipulates that procurement contract must include dispute resolution procedures. – [1 point] <i>Uniformity of the Legislative Framework</i>	1	http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf
12.	PPL stipulates that all procurement related documentation must be maintained: – [1 point] Scoring Method		http://ekldata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf

	• 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] <i>Transparency</i>	0.5	O/Code-des-marches-publics-du-Togo-2009-.pdf
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] <i>Accountability and Integrity</i>	Overall: 1 Components: a) [0.5] b) [0.5]	http://ekladata.com/law-africa-news.eklablog.com/perso/TOGO/Code-des-marches-publics-du-Togo-2009-.pdf