



**MALDIVES PUBLIC
PROCUREMENT
SYSTEM STUDY
2020**

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Transparency Maldives (TM), the national chapter of Transparency International (TI), is a non-partisan civil society organization that promotes collaboration, awareness and undertakes other initiatives to improve governance and eliminate corruption from the daily lives of people. Transparency Maldives views corruption as a systemic issue and advocates for institutional changes that will punish and prevent corruption.

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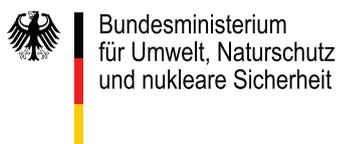


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ACRONYMS

ACC	Anti-Corruption Commission
ADB	Asian Development Bank
AG	Auditor General
AGO	Auditor General's Office
EYC	Economic and Youth Council
FRA	Fiscal Responsibility Act
GDP	Gross Domestic Product
HDC	Housing Development Corporation
HDFC	Housing Development Finance Corporation
LC	Local Council
MACL	Maldives Airport Company Limited
MOE	Ministry of Education
MOH	Ministry of Health
MOF	Ministry of Finance
MTCC	Maldives Transport and Contracting Company
MTFF	Medium Term Fiscal Framework
MVR	Maldivian Rufiyaa



MWSC	Maldives Water and Sewerage Company
NTB	National Tender Board
OECD	Organization for Economic Cooperation and Development
PBA	Public Bank Account
PCB	Privatization and Corporatization Board
PEMEB	Public Enterprises Monitoring and Evaluation Board
PFR	Public Finance Regulation
PO	President's Office
PPB	Procurement Policy Board
PPP	Public Private Partnership
PSIP	Public Sector Investment Programme
SOEs	State Owned Enterprises
STELCO	State Electricity Company Limited
STO	State Trading Organization
TM	Transparency Maldives
TSA	Treasury Single Account
USD	United States Dollars

P R E T E X T

The top recipients of climate finance, receiving 41.9% of all climate related overseas development assistance, are also among the places in the world most prone and at risk for corruption . In the last two decades, the focus of a large proportion of investments in climate change has been for mitigation and adaptation activities.

The Maldives, as one of the leading countries in the global climate movement, is also one of the most vulnerable countries to the negative impacts of climate change. Standing just 1.5 meters above the mean sea level, the rising sea level and coastal flooding are some of the impacts the country faces due to climate change. The Maldives continues to receive significant funds in the form of grants and loans from various international donors and organizations in efforts to combat the negative impacts of climate change.

Typically, climate finance is allocated to projects rather than systematic interventions, which often does not prioritize climate needs and objectives . In addition, large infrastructure projects funded through climate finance often involving many subcontractors makes the procurement process easier to manipulate through bribery, collusion between industry stakeholders, and kickbacks in the management of contracts. Corrupt practices reduce the effectiveness of mitigation and adaptation planning and implementation of projects, causing severe impacts to the vulnerable groups. As large amounts of funds are used for climate change mitigation and adaptation, the need to ensure the effectiveness of procurement governance mechanisms is a high priority.

The Climate Finance Integrity Programme was piloted in 2011 by Transparency International (TI) in six countries, including the Maldives. Through this programme, TI works with selected developing countries to ensure that climate finance is governed with integrity, transparency, and accountability, so that these funds help the most vulnerable people and nations adapt to the climate crisis.

To date Transparency Maldives has conducted several assessments to review the climate finance governance system in the country. Key observations and areas of concern highlighted in these assessments included lack of information collated on climate change projects, lack of accessibility to the available data, lack of transparency in decision making, and the limited space, capacity, and accessibility for civil society to engage in monitoring climate finance and influence government policies. These same issues are also identified through TM's anticorruption work, and hence a systemic change in all sectors is a prerequisite to improving the Climate Finance Governance System. Being an import dependent country, with procurement playing a key role in any project implementation, this study aims to map actors in the public procurement area and garner an understanding of the current legal, regulatory, and policy framework; the current procurement practices, the institutional framework and capacity for implementation of policies and tools.

This preliminary mapping for the Public Finance Procurement Study validated that the systematic issues relating to climate finance procurement remains the same as the larger systematic issues across the public procurement system.

¹Corruption and climate finance: Implications for climate change interventions, Michael Nest, Saul Mullard and Cecilie Wathne, <https://www.u4.no/publications/corruption-and-climate-finance.pdf>

²U4 Anti-Corruption Resource Centre, Corruption risks and mitigating approaches in climate finance. Retrieved from

<https://knowledgehub.transparency.org>

INTRODUCTION



01

An aerial photograph of a coastal park. In the foreground, there are several palm trees and green lawns. A winding path leads through the park. In the middle ground, a concrete bridge with a metal railing spans across the water. The ocean is a deep blue, and a small boat is visible in the distance. The sky is clear and blue.

Public procurement is the government activity of purchasing goods, services and works. Public institutions as well as state-owned enterprises need to procure goods, services and works to carry out their responsibilities and duties. According to OECD (2015), “public procurement refers to the process of identifying what is needed; determining who the best person or organization is to supply this need; and ensuring what is needed is delivered to the right place, at the right time, for the best price and that all this is done in a fair and open manner”

Public procurement generates large financial flows and hence is highly vulnerable to corruption. Public procurement is a key economic activity and is one of the crucial pillars of public service delivery for governments. According to the World Bank public procurement accounts for around 12% of the global GDP and governments purchased goods, services and works from the private sector amounting to USD 11 trillion in 2018 (Bosio and Djankov 2020). Transparency International estimates that a minimum of USD 400 billion is lost every year due to bribery in public procurement of goods and services (OECD 2009a).

This is the report of the 2020 Maldives Public Procurement System Study undertaken by Transparency Maldives (TM). The purpose of this assessment is to review the public procurement system of the Maldives. Maldives is a small island economy with a nominal Gross Domestic Product (GDP) of MVR 88.83 billion in 2019 (MMA 2020). If not effectively managed, public procurement presents endless opportunity and high temptation for corruption in the Maldives. The objective of the assignment is to identify the legal and practical gaps that perpetuate the cycle of corruption in public procurement in the Maldives.

This report proposes recommendations to increase the integrity and transparency of the public procurement system in the Maldives. Anti-corruption is one of the key guiding principles for Transparency Maldives (TM). As a civil society organization working towards a corruption-free society, TM focuses on key areas that are prone to the scourge of corrupt practices. The report helps inform advocacy efforts of Transparency Maldives, as well as key stakeholders through raising awareness on the damaging effects of public procurement related corruption in the Maldives. The report concludes with a position paper targeted for government policy makers, businesses, civil society, and social media audiences to develop and implement effective strategies to tackle corruption.

The report is based on an assessment carried out from 01 May 2020 to 31 August 2020. The methodology adopted for this assessment is based on identifying international best practices for public procurement and evaluating the system and practices in the Maldives against international best practices. Stakeholder consultations and literature review provided evidence for the assessment.

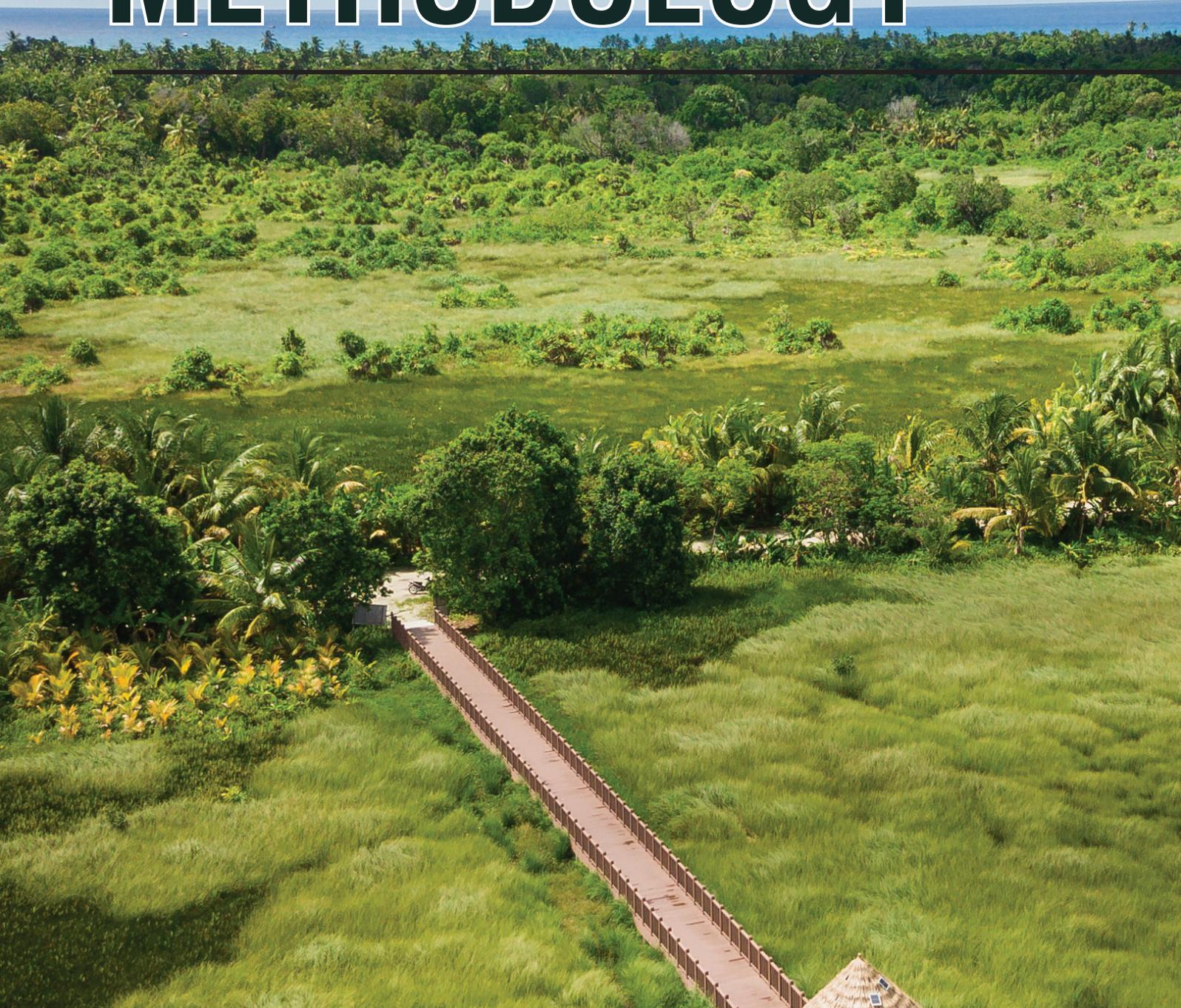
This report was prepared by CDE Consulting. The team for this assessment was led by Dr. Simad Saeed (Managing Director) and included Ms. Nashiya Saeed (Senior Partner) and Ms. Shaffau Shareef (Senior Consultant).

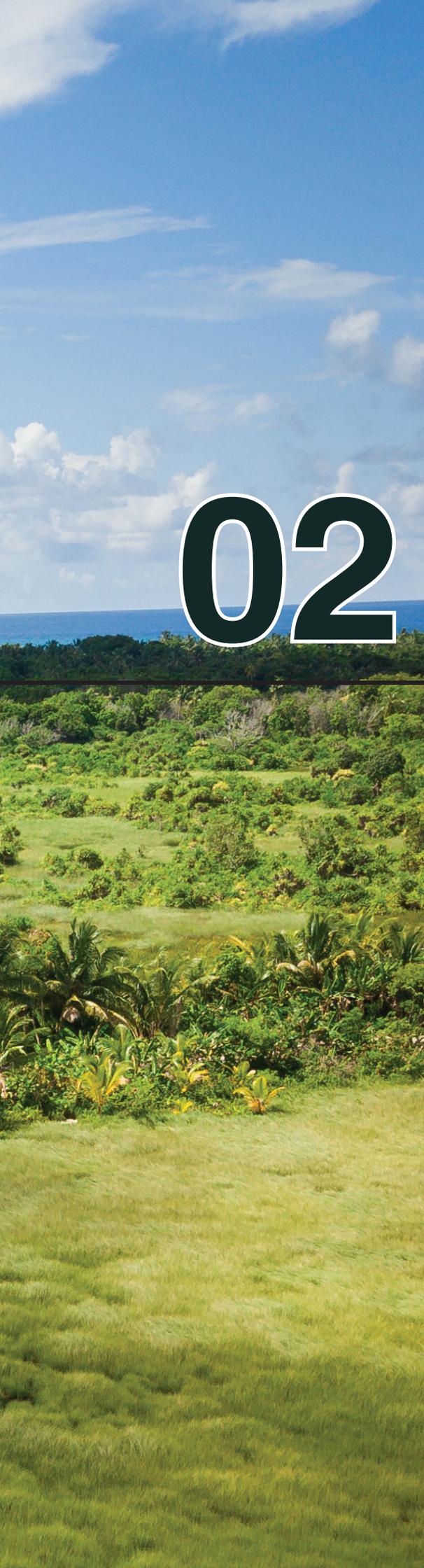
The report is presented in seven chapters. Report structure is as follows:

1. Introduction to the report
2. Assessment framework and methodology
3. Country context
4. Assessment of the existing laws, regulations, and policies
5. Assessment of institutional framework and management capacity
6. An analysis of existing public procurement operations and market practices
7. Assessment of the integrity and transparency of the public procurement system

Each substantive chapter is structured to present key findings, significant gaps, and recommendations. In the next chapter, the assessment framework and methodology are described.

ASSESSMENT FRAMEWORK AND METHODOLOGY





02

2.1

DEFINITIONS

The WTO definition of public procurement is adopted for this assessment. In the Revised Agreement on Government Procurement of the World Trade Organization that entered into force in April 2014 (WTO 2014), public procurement is defined as procurement for government purposes goods, services, and works; NOT procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale; by any contractual means including purchase; lease; and rental or hire purchase, with or without an option to buy; by a government procuring entity or a state owned enterprise.

The public procurement cycle consists of three main phases. The three phases are (1) pre-tendering, including needs assessment, planning, and budgeting, definition of requirements and choice of procedures; (2) tendering, including the invitation to tender, evaluation and award; and (3) post tendering, including contract management, order, and payment (OECD 2009a).

Procurement methods include open; selective; and limited tendering. Open tendering means a procurement method whereby all interested suppliers may submit a tender; selective tendering means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender; while limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice. Multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once.

2.2

EVALUATING PROCUREMENT SYSTEMS

OECD has developed tools and guidelines to evaluate the quality and effectiveness of public procurement systems. The OECD tools and indicators are developed to cover all the principles of OECD Recommendations on Public Procurement (OECD 2015). These recommendations are aimed to develop the institutional framework and to measure the efficiency and effectiveness of the public procurement system for all countries.

OECD has identified five key elements of an effective procurement system. The essential elements of an effective procurement system are an adequate legislative framework, supported by regulations to address procedural issues not normally the subject of primary legislation; an adequate institutional and administrative infrastructure; an effective review and accountability regime; an effective sanctions regime; and adequate human, financial and technological resources to support all elements of the system (OECD 2009a).

The methodology for this assessment is based on the Terms of Reference (ToR) issued by TM. This assessment comprised of a review of existing laws and regulations relating to public finance; review of key changes brought to the public procurement system during the past 10 years; analysis of gaps and inconsistencies in the existing legal framework; review of the governance system for procurement including the role of the Tender Board; assessment of the procurement practices in the government, State-Owned Enterprises (SOEs), independent institutions and the role of Unsolicited Proposals (USPs). The scope also includes recommendations on reforming and strengthening the existing public procurement system and identifying recommendations towards increasing transparency of the public procurement system in Maldives. The ToR is given in Annex 1.

2.3

ASSESSMENT PROCESS

The information for this assessment has been compiled using primary and secondary research methods and tools. Qualitative data and information were used in the assessment process. Primary research was undertaken to gather insight and information directly from key stakeholders within the state and non-state entities. The primary research was undertaken using Key Informant Interviews (KIIs). Secondary research included rapid analysis of the 2019 budget components, literature review of international best practices, reviews of laws and regulations on public procurement and review of audit reports and case studies.

A stakeholder mapping exercise was undertaken to identify a comprehensive list of stakeholders relevant for the public procurement system assessment. The key stakeholders for this assessment include the Ministry of Finance, National Tender Board (NTB), Auditor General Office (AGO) and Anti-Corruption Commission (ACC). Other stakeholders included government ministries, SOEs and audit firms. A total of 26 key informants from 17 institutions were consulted for this assessment. A detailed list of stakeholders is given in Annex 2.

The consultations were undertaken with the identified stakeholders in the form of Key Informant Interviews (KIIs). Purpose of these interviews were to understand the procurement process and the systemic issues.

KIIs for this assessment were undertaken digitally via Google Meet. Although face to face interviews is the commonly used method for KIIs, due to the lockdown in Greater Male' Region because of COVID-19 community spread, interviews were conducted digitally for this assessment. Each interview lasted for 1 to 1.5 hours. Apart from a few interviews with internet connectivity issues, smooth flow was noted across all interviews. Some stakeholders were consulted with follow up interviews to validate findings. The informants shared critical insights into the procurement practices and areas or practices most at risk for corruption. The informants also provided suggestions for recommendations to improve the procurement system of Maldives.

The secondary data gathered for this assessment was undertaken through budget review, literature review and internet searches. Literature review of the international best practices, WTO agreements, OECD MAPS, review of World Bank, IMF, ADB, ACC and AGO reports were undertaken and used in the design of the assessment framework.

Rapid analysis of the 2019 budget of the Government of the Maldives was undertaken to explore the status of the public procurement system. The review of the national budget helped identify the most critical areas of procurement and areas at most risk for corruption. National budget data also was used to analyze information of external loans for the past 10 years.

The desk review of all the laws relating to public procurement was undertaken, with a comprehensive analysis of the Public Finance Regulation - Chapter 10 (procurement). Furthermore, changes to the procurement regulations and practices in the past 10 years was analyzed.

2.4

VALIDATION OF FINDINGS

To ensure that the assessment is valid and credible, a validation exercise involving key stakeholders was undertaken. Due to the Covid 19 pandemic and the physical distancing rules that are applicable at this time, the validation was conducted through an online workshop via Zoom on 8 July 2021. The online validation workshop provided opportunity for external stakeholders to agree on the key findings, substantive gaps and prioritize the recommendations to address the critical weaknesses in the public procurement system.

The validation was undertaken in two stages. The first stage of validation was a technical validation of chapters on laws, regulations, and institutional framework with the regulatory agency, tender evaluation agency and oversight institutional agencies. The second stage was with all stakeholders who took part in the KIIs as well as other important stakeholders to validate the procurement practices, substantive gaps, and overall recommendations of the assessment.

CONTEXT



03

This chapter presents a systematic context of the local environment in the Maldives, to highlight the country's specific situation, structures, and the relevant background to understand the public procurement system. The context description relies on easily accessible information and existing data from reliable official sources. This chapter includes the country's geographic location, economic situation, political systems, national policy objectives, the public procurement reform environment, and the relationship between the public procurement system and the public finance management. The context also identifies key internal and external stakeholders linked to public procurement.

3.1

GEOGRAPHIC AND ECONOMIC CONTEXT

The Maldives is a small island state comprising of 1190 islands located in the Indian Ocean. Of the 1190 islands (Shaig 2006), 187 are inhabited and the capital is Male City. The resident population of the Maldives in 2020 is estimated to be 557,426. Of the resident population in 2020, about 40% is estimated to live in the Male' region comprising the capital Male', Hulhumale', and Vilimale' (NBS 2020).

The Maldives is an upper middle-income economy. The nominal Gross Domestic Product (GDP) was MVR 88.83 billion in 2019 (MMA 2020). In the same year, the real GDP per capita of Maldives was MVR 140,872.3. The Maldives economy has been exposed to serious debt vulnerabilities over the last five years. According to Ministry of Finance, the total public and publicly guaranteed debt reached 78% of GDP (MVR 68 billion) in 2019.

In October 2019, the Government of the Maldives launched the five-year Strategic Action Plan (SAP) 2019-2023. The SAP consists of the state's targets towards socio-economic growth of Maldives and includes the current administration's pledges as well as several developmental projects that are currently underway. The priorities included in SAP are: 'Blue Economy' which focuses on reinvigorating and boosting the country's economy in all aspects or sectors, 'Caring State' which emphasizes on the transparency and fair conduct of the state towards citizens, 'Dignified Families' the initiative towards strengthening or emboldening the living standards of local families, 'Jazeera Dhiriulhun' which promotes the utilization of the country's pristine and natural qualities and 'Good Governance' which enforces accountability of state institutions. The SAP is the main national plan against which alignment of public procurement with national development priorities can be assessed.

3.2

PUBLIC PROCUREMENT IN THE MALDIVES

The Maldives national budget presented to the Majlis is the main evidence for procurement expectations for the fiscal year. The Maldives is a multiparty constitutional democracy with a presidential system of

governance and the Minister of Finance holds the portfolio for public finance. Prior to the commencement of each financial year, the Minister of Finance is required to submit the projected national budget with revenue and expenditures for the year and a statement of actual revenue and expenditures for the preceding year. The budget cycle typically comprises fiscal framework, budget preparation, budget execution, reporting and auditing and control measures through internal and external audits.

The Maldives government financed procurements are usually undertaken in the form of a budgeted expenditure as a national spending, through the national budget or sometimes in the form of a loan or grant. The government expenditure comprises the recurrent and capital expenditure which is the indicator for expenses to be incurred by the government for the fiscal year.

The total government expenditure (recurrent and capital combined) was MVR 30.46 billion in 2019. The total recurrent expenditure was 21.37 billion while capital expenditure amounted to 8.76 billion (MoF 2020). The highest recurrent expenditure for 2019 was wages and salaries which accounted for 27.10 percent of the total approved budget expenditure. The components and value of recurrent expenditure of the national budget in 2018 and 2019 are given Table 1 of Annex 3. The most significant procurement related expenditure from the recurrent approved budget in 2019 were on medical supplies, MVR 897.5 million (2.9% of the total budget expenditure) and Aasandha expenditure, MVR 1,001 million (3.3% of the total budget expenditure). Losses and write offs accounted for 3.5% (MVR 1,053.7 million) of the total budget expenditure.

Annual public procurement from the government budget exceeded MVR 12.9 billion in 2019. The value of procurement is estimated based on the budget components for capital expenditures, administrative services, administrative supplies, operational consumables, and travelling expenses. The total volume of public procurement from the 2019 government budget is estimated as 42.5% of government expenditure and accounted for 14.6% of GDP (GDP MVR 88.83 billion in 2019). The procurement of public infrastructure is now financed through a mix of national and foreign finance in the form of budget expenditure and loans combined. In some instances, the government has

also used bonds for infrastructure project finance. High levels of public sector spending, both current and capital, have resulted in a large increase of general government debt, reaching around 78 percent of GDP in quarter four of 2019 (MoF 2020). The five-year average of current spending is by far the highest in the region, around 37% of GDP (IMF 2019).

Highest ratio of capital expenditure is incurred for Public Sector Infrastructure Projects (PSIP) projects. Procurement of works for roads, bridges, and airports were the highest value in infrastructure financed from the government budget in 2018 and 2019. MVR 3.38 billion and MVR 1.96 billion was assigned for this component of the budget in 2018 and 2019 respectively (Annex 3 Table 2).

The 2019 budget also included over MVR 1 billion as ramped up support for State Owned Enterprises (SOEs). This support for SOEs was in the form of share purchase, capital allowance and other capital. The loans to SOEs increased by 110% in 2019 compared to 2018, while there was a 97% increase in capital allowance to SOEs in the same year. Its noteworthy that many public projects and public procurement were passed on to SOEs during these years.

3.3

PROCUREMENT ECOSYSTEM

The Ministry of Finance is the key institution responsible for public procurement in the Maldives. The Ministry submits the compiled annual budget to parliament, and undertakes resource management and deals with liability, indemnity, and payments. The National Tender Board (NTB), Procurement Policy Board (PPB), and the Privatization and Corporatization Board (PCB) are key institutions under the purview of the Minister of Finance with primary responsibilities for public procurement entities and SOEs.

There are more than 250 public procurement entities as of 8 November 2020. They include the President's Office, Parliament, 6 superior courts, 18 government ministries, 200 local councils, 06 uniform bodies and 25 independent institutions. Some schools and some health institutions under the Ministry of Education and Ministry of Health respectively have separate procurement entities.

Four ministries account for the bulk of public procurement. Ministry of National Planning, Housing, and Infrastructure (MNPHI), Ministry of Health, Ministry of Education, and Ministry of Environment are the key ministries for public procurement. These Ministries undertake the highest proportion of public procurement from the government budget.

There are 178 island councils, four city councils and 17 atoll councils that undertake procurement as local government entities. The Local Governance Authority (LGA) formed under the Decentralization Act oversees the local governance and monitor the councils' performance (LGA 2019). LGA is the state institution responsible for local government: City Councils; Island Councils, and Atoll Councils.

There are 32 SOEs in the Maldives. The SOEs are regulated by the Companies Act (10/1996) and Privatization and Corporatization Act (3/2013). The Privatization and Corporatization Board (PCB) is responsible to monitor the performance and evaluation functions of all the majority and minority shareholding SOEs of the government. In addition, the Capital Market Development Authority (CMDA) undertakes monitoring of governance and financial supervision of listed SOEs.

The institution relevant to oversight functions of public procurement is the Auditor General's Office (AGO). The Auditor General (AG) is the external auditor of the state with the primary objective to serve the people of the Maldives by holding public officials and institutions accountable for their use of public resources by conducting independent audits of all the offices, departments and institutions operating under the legislative, executive, and judicial powers of the State. AG reports directly to the Parliament, the President and to the Public. The institution with primary responsibility for integrity training, investigation and prevention of corruption is the Anti-Corruption Commission (ACC).

The Parliament has a Select Committee and Standing Committees with oversight functions. The Parliament Budget Committee is a Select Committee reviewing the national budget submitted to the Parliament. The Public Account Committee has the function to oversee if government expenditure is against the budget passed by the Parliament. The Parliament also has a Standing Committee on SOEs.

3.4

KEY DEVELOPMENTS IN PUBLIC PROCUREMENT REFORM

The first Public Finance Regulation was issued in 2009. Prior to 11 February 2009, procurement and all other matters related to public finance was governed by the 'Government Assets, Finance and Financial Statements Regulation 2002' issued by the Auditor General's Office and by 'Voucher System, Government Assets, Finance and Financial Statements Regulation 2006'. When the new PFR was issued in 2009, previous regulation of 2002 and chapter 8 of Regulation of 2006 were dissolved.

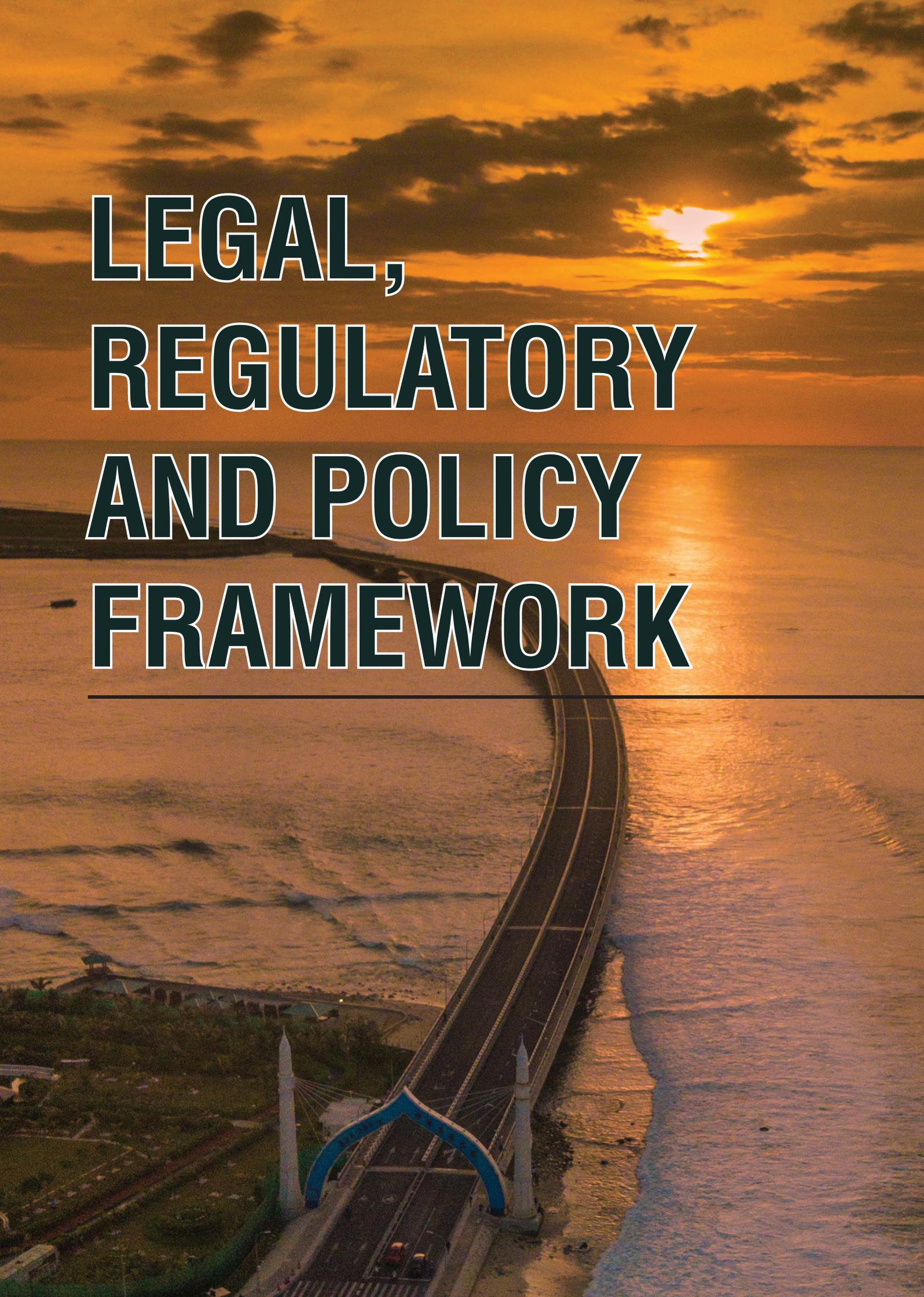
A dedicated chapter for public procurement was added to PFR in 2010. In the 'Chapter 15: Government Procurement' added on 31 October 2010, all matters relating to procurement of the government that were previously in other chapters were consolidated and compiled as an independent chapter.

Several changes have been made to the PFR over the past ten years which has significantly changed the rules on public procurement. The most significant changes were made to public procurement through the 11th amendment to PFR made on 28 May 2015. As a result of this change, special projects can be authorized by the Economic Council of the Cabinet to SOEs or listed companies without an open bidding process. Secondly, mega projects under foreign aid can be authorized by the Economic Council of the Cabinet without an open bidding process. The information about the project must be shared with ACC and AGO.

The PFR 2009 was dissolved on 20 February 2017 and a new PFR (2017/R-20) was issued. Chapter 10 of the PFR 2017/R-20 prescribes the standard provisions for public sector procurement in the Maldives. The PFR (2017) sets all the processes, procedures, requirements, and related engagement about public finances that state institutions should adhere to. The regulation states that the government finances must be spent in the most economically beneficial transparent, and responsible way. The regulation also specifies that the bidding process shall be transparent to create trust among bidders and there shall be no discrimination among bidders, to increase the private parties that apply for the bid and to ensure confidentiality of bidders.

To date, three amendments have been brought to Chapter 10 of the new PFR (2017/R-20). The most recent amendment to the procurement rules was made in July 2020. Key changes brought under Amendment 2 include changes to the institution in charge of procurement policy (10.06), unsolicited proposals (10.27), minimum number of participants for a tender (10.31), bid procedures and securities (10.43), announcing selected parties (10.52), and alterations to contract value and durations (10.55). Changes brought to Amendment 1 include but are not limited to; changes to shopping (10.24), single source procurement (10.25), emergency procurement (10.26) and unsolicited proposals (10.27), advance payment (10.67), retention payment (10.68). A Procurement Policy Board was formed by Presidential decree on 23rd February 2020 to strengthen the public procurement structure and to create procurement related policies.

The Fiscal Responsibility Act (FRA) passed on 15 April 2013, specifies several fiscal targets such as ceilings on public debt and fiscal deficit. FRA places stringent limits on the monetization of fiscal deficit by the MMA and specifies procedural rules to ensure fiscal accountability and transparency. The FRA also contains clauses that provide flexibility to the government, with the approval of the People's Majlis, during emergencies and exceptional circumstances such as natural disasters or an economic downturn. The FRA also covers the fiscal policies and limits that should be followed by the local councils. The FRA was ratified by the president on 6 May 2013 with a decree to delay enforcement of 22 articles of the FRA by 12 months, as certain policies and systems required for its enforcement were not established at the time. The FRA came fully into force on 6 May 2014. The Act specifies that the overall debt to GDP ratio must not exceed 60%, and overall budget deficit to be reduced to levels not exceeding 3.5 percent of GDP by end of 2016 and maintained at that level thereafter.

An aerial photograph of a long, multi-lane bridge stretching across a wide body of water. The sun is low on the horizon, creating a golden glow over the sky and reflecting on the water's surface. The bridge has a distinctive blue archway at its entrance. The text 'LEGAL, REGULATORY AND POLICY FRAMEWORK' is overlaid in large, bold, white letters with a dark outline.

LEGAL, REGULATORY AND POLICY FRAMEWORK



04

An adequate legislative framework supported by regulations to address procedural issues not normally the subject of primary laws is an essential structural pillar of an effective and efficient public procurement system. This chapter identifies the existing laws and policies relating to public procurement in the Maldives. The rules and regulations governing public procurement are assessed and compared to international best practices. The chapter evaluates the scope of regulatory frameworks during tenders, the quality of operational procedures, requirements for sustainability, and the availability of model tender documentation and conditions of contract.

4.1

PROCUREMENT LAWS AND RULES

4.1.1 Scope of Application and Coverage

The legal structure for public procurement in the Maldives is based on the mandate provided by the Public Finance Act (PFA). Other laws that are relevant to public procurement include the Fiscal Responsibility Act (FRA), Contract Law (4/1991) and Privatization and Corporatization Act (PCA 3/2013).

All the rules, thresholds, methods, and procedures for public procurement in the Maldives are specified in the Public Finance Regulation (PFR). The PFR covers all aspects for public finance and are not specific to public procurement. The Chapter 10 of the PFR (2017/R-20) is dedicated to the rules for public procurement in the Maldives. Furthermore Chapter 17 of the PFR is also applicable to public procurement as it has the mechanisms for complaints and grievances. The Minister of Finance also issues circulars and policy guidelines under the PFR that are relevant to procurement.

The regulation scope covers all procurement carried out by government agencies using public money. All procurement of goods, works and services, including consulting services using public funds is hence covered. Where procurement is related to defense, national security, or natural disasters the application of the procedures may be changed according to the instructions of the Chief of Defense Force.

The procurement rules apply for all the government agencies including independent institutions, and local councils. Article 1.02 of the PFR defines the public entities. In 2008, the governance structure of the Maldives was changed to a multi-party presidential system with separation of the executive, judiciary and parliamentary powers, decentralization of local governance, and establishment of several independent institutions.

The FRA 2013 specifies ceilings on public debt and fiscal deficit and prescribes procedural rules to ensure fiscal accountability and transparency. The FRA also contains clauses that provide flexibility to the government, during emergencies and exceptional circumstances such as natural disasters or an economic downturn. The FRA also covers the fiscal policies and limits that should be followed by the local councils.

The current laws, regulations and policies for public procurement are published and easily accessible to the public at no cost. The procurement rules and circulars are made available on the website of the Ministry of Finance. However, the procurement rules are only made available in Dhivehi language. Since there is no access to the archive of previous versions of procurement rules, it is difficult to track the changes to procurement rules over time and this was a limitation to this study.

4.1.2 Procurement Methods

The permissible procurement methods are clearly defined and unambiguously established in the PFR. The PFR defines the situations in which open tendering or alternative procurement methods can be used. Provisions in PFR on procurement methods include open tendering (10.22), restricted tendering (10.23), shopping (10.24) single source procurement (10.25), emergency procurement (10.26) and direct procurement through SOEs, listed companies and mega projects (10.27). The associated conditions under which each method may be used are covered in the procurement rules.

The five procurement methods prescribed in the procurement rules include competitive and less competitive procurement procedures. The methods provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality, and integrity.

Fractioning of contracts to limit competition is prohibited. Article 10.29 (a) prohibits fractioning to circumvent competitive rules.

Appropriate standards for competitive procedures are specified. The PFR clearly specifies approval levels and acceptable justification. Open competitive tendering is the standard procurement method encouraged in PFR. Restricted tendering is to be used for situations where number of suppliers are limited and/or for emergency procurement. The choice of the method should also depend on the time it takes to follow through on the procedure and strive to avoid delays.

4.1.3 Advertising Rules and Time Limits

The legal framework requires that procurement opportunities be publicly advertised. Any procurement of goods, services or works which amounts to more than MVR 35,000 undertaken by a government entity should be officially announced for public tender. Procurement specification should be publicized and provided in writing to the potential bidders. This specification should also provide information on the selection guide by providing the evaluation criteria including weights and how points will be allocated.

The PFR ensures that the publication of opportunities provides time, consistent with the method, nature, and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited. Article 10.43 (e) stipulates a time range of 7 to 60 days for open tendering and request for proposals; 7 to 30 days weeks for restricted tendering; and 1 to 7 days for shopping.

Publication of open tenders is mandated clearly. Article 10.38 (b) requires publication of tenders on a unique official website dedicated for all public procurement opportunities and on the government gazette. Article 10.38 (c) gives procuring entities the discretion to publish tenders on at least a newspaper or magazine of wide national circulation. Article 10.38 (e) permits advertising of tenders above a determined threshold or projects deemed to require competitive international bidding by the Ministry of Finance to be published in a minimum of two newspapers and/or magazines with international circulation.

4.1.4 Rules on Participation

The PFR establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions. There are two articles in the PFR that relate to participation: conditions (10.33), eligibility and qualification criteria (10.34), and supplier registration (10.35).

PFR ensures that there are no barriers to participation in the public procurement market. The qualification criteria that may be specified in the procurement documents are defined (10.34b) and includes: (a) professional and technical qualifications; (b) financial resources, capacity and condition; (c) equipment and other physical facilities; (d) personnel and managerial capability; (e) record of past performance of similar contracts; (f) existing projects and capacity (g) pending litigation in a court; and (h) registration or licensing with the relevant professional body in the Maldives or in the tenderer's country of origin where so required by law.

The eligibility criteria in the PFR provides for exclusions for criminal or corrupt activities, and for administrative debarment. According to Article 10.33 procurement entities shall require that the tenderer has the legal capacity to enter the contract and has not been suspended pursuant to Article 17 of the PFR. According to Standard Tender Document used by NTB, the eligibility criteria includes that the tenderer is not insolvent, in receivership, bankrupt or being wound up; that the tenderer has fulfilled its obligations to pay taxes; that the tenderer has not been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract; and that the tenderer does not have a conflict of interest in relation to the procurement requirement.

The PFR provides for general and specific procurement through State-Owned Enterprises (SOEs). Under Article 10.25 on single source procurement, SOEs are eligible to tender for government procurement. Article 10.27 of the fourth Amendment brought to PFR on 1 October 2020 specifies that mega projects listed in the national budget and undertaken by the government can be assigned without bidding to SOEs with more than 50% government shareholding; subsidiary companies of such SOEs with 100% shareholding; and companies listed on the Maldives Stock Exchange with

majority government shareholding. In addition, such mega projects can only be assigned to an SOE if the project is related to a registered business activity of the company and assigned projects cannot be subcontracted to another company. However, there are exceptions for subcontracting.

The PCB has launched the Procurement Guidelines for SOEs on 8 April 2021. The Procurement Guidelines set out the procurement principles for SOEs, and the tender standards to be followed for the procurement of goods and services by SOEs. The guidelines require SOEs to revise internal procurement processes to match objectives of achieving fairness, transparency, and accountability.

The PFR provides fair competition and incentives for local SMEs. According to a Circular issued by Minister of Finance on 4 July 2019, only local SMEs are eligible for supply of goods and services below threshold level of MVR 2.5 million advertised by public procurement entities. This excludes consultancy work and goods and services not available locally within the country.

4.1.5 Procurement Documentation and Specifications

PFR establishes the minimum content of the procurement documents and requires that content be relevant and sufficient for suppliers to respond to the requirement. According to Article 10.37, all procurement entities shall use the appropriate 'standard document' developed by the Ministry of Finance or a document approved by the Ministry of Finance. The minimum content of all invitation documents specified in Article 10.37 are: (a) clear instructions on the management of the procurement process and the applicable rules; (b) a clear description of the subject of the procurement in the form of a statement of requirements; (c) the proposed form and conditions of contract or a statement of the form and conditions of contract which will apply; (d) evaluation method, selection criteria, and award methods; and (e) formats/forms of all the information, guarantees, and securities that the bidder has to submit.

The PFR requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate. Article 10.36 specifies that all statements of requirements shall give a correct and complete description of the goods, works or services required through use of specifications, drawings, bills of quantities, delivery or completion schedules,

terms of reference or other appropriate documents. According to Article 10.36 (c) the statement of requirements included in the invitation document shall be prepared with a view to creating fair and open competition.

PFR requires recognition of standards that are equivalent when neutral specifications are not available. Article 10.36 (e) specifies that statements of requirements shall not include any reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue, or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words “or equivalent” shall be included and the description shall serve only as a benchmark during the evaluation process.

Potential bidders can request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing). Article 10.43 provides for government agencies to organize a pre-bid meeting to brief tenderers or to offer the opportunity for them to seek clarifications; and/or a site visit, to enable tenderers to gain access to the site for delivery of any proposed works or services. Details of pre-bid meetings and site visits shall be included in the invitation document and, where possible, in any tender notice. Attendance at pre-bid meetings and site visits are not mandatory.

4.1.6 Evaluation and Award Criteria

The PFR mandates that the award decision is made solely based on the criteria stipulated in the documents. The procurement rules on evaluation criteria are specified in Article 10.45 (a). The rules imply that evaluation criteria be precisely specified in advance in the procurement documents. However, there are no references to the objectivity of the evaluation criteria or the relevance of the criteria to the subject matter of the contract.

The use of price and non-price attributes is permitted as appropriate to ensure objective and value-for-money decisions. The PFR Article 10.47 (a) permits Quality and Cost Based Selection; Quality Based Selection; Fixed Budget Selection; and Least Cost Selection. The consideration of life cycle cost is not articulated in the PFR.

There are specific provisions to evaluate proposals for consulting services. Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined in Article 10.41.

The PFR indicates the evaluation criteria that may be used in Open and Restricted Tendering. The rules stipulate that evaluation criteria shall be related to the performance, characteristics or terms and conditions of a tender, such as delivery or completion schedule, payment schedule, the cost of spare parts or after sales service, operating or maintenance costs, or the productivity of equipment. However, the rules do not require a clear definition of the way evaluation criteria are to be combined and their relative weight to be determined in the procurement documents.

There is no guidance on ‘non-disclosure of information’ during the period of the evaluation. According to the OECD/DAC – World Bank Indicators for Procurement System Assessment information on the examination, clarification, and evaluation of bids/proposals is not to be disclosed to participants or to others not officially involved in the evaluation process (OECD 2009b). Ministry of Finance informed that the Circular on Code of Conduct for Procurement Officials includes provisions on maintaining confidentiality during procurement evaluations.

4.1.7 Submission, Receipt and Opening of Tenders

The modality of submitting tenders and receipt by the government is well defined and regulated, to avoid unnecessary rejection of tenders. According to Article 10.44 the invitation documents shall clearly state the date and time of the deadline for tendering. Late tenders and quotations shall be rejected. The procuring entities are required to establish the means for receiving tenders.

Opening of tenders is a defined and regulated proceeding. The public tender opening occurs after the tendering deadline for all tenders received on time under open or restricted tendering procedures. Records of proceedings for bid openings are retained and available for review.

Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts. Article 10.44 requires that bids be kept confidential and sealed until the time for opening the bids. However, there is no explicit prohibition in the PFR on the disclosure of specific sensitive information.

4.1.8 Challenges and Appeals

Chapter 17 of the PFR provides the mechanism for procurement related challenges and appeals. Appeals must be submitted in writing to the Procurement Officer of the respective procurement entity. Article 17.09 restricts contract awarding until such appeals are resolved and mandates to respond to queries in writing within 14 working days.

There are provisions for administrative review of challenges and appeals by another body, independent of the procuring entity. International best practice requires establishment of administrative review authority with powers to suspend the award decision and grant remedies and establish the right for judicial review. According to Chapter 17 of PFR, in case of dissatisfactory reasoning given by a procurement entity or a contract is awarded while investigation is ongoing, the issue can be appealed to the Ministry of Finance within 10 working days of decision of appeal by the respective procurement entity. The Ministry of Finance can set up an Independent Review Committee to investigate the appeal. Appeals must be investigated within 14 working days. The Ministry is vested with power to suspend the award decision while investigation is ongoing and establish right for judicial review.

There are no specific rules for providing easy access to applications for appeals and appeal related decisions. There is also no legal framework to protect sensitive information.

4.1.9 Contract Management

Functions for undertaking contract management are defined and responsibilities are clearly assigned. According to Article 10.54 the procurement entities shall nominate a contract manager for every contract awarded. The contract manager is responsible for managing the obligations and duties of the procurement entity specified in the contract; and to ensure that the supplier or contractor performs the contract in accordance with the terms and conditions specified in the contract.

Conditions for contract amendments are defined and ensures economization.

All contract amendments or terminations require the prior written authorization of the appropriate approval authority. The appropriate approvals authority shall be determined by the original or revised value of the contract, whichever is greater. For contract amendments that require an increase in project value or duration by more than 10% written authorization is needed from the authority that awarded the project.

The PFR does not specify any processes to resolve disputes during the performance of the contract. Hence, there is no mechanism specified to ensure prompt, efficient and fair dispute resolution. There is also no provision to ensure that the outcome of a dispute resolution process is enforceable.

4.1.10 Electronic Procurement

There is no e-procurement law or regulation. Article 10.2 (d) of the PFR allows the use of modern technologies for procurement provided it conforms to the provisions of the regulation. Though the Ministry of Finance has started using tools and procedures paving the way for future e-procurement, the legal framework for providing access levels to the system, privacy, security of data and authentication is yet to be established. There are no legal provisions on informing interested parties which parts of the procurement processes will be managed electronically.

4.1.11 Safekeeping of Records and Data

The PFR has established a comprehensive list of the procurement records and documents related to transactions including contract management. The list is established under Article 10.56 (c). The procurement records shall be maintained by the procurement entities. The PFR does not outline what records are available for public inspection including conditions for access.

There is a document retention policy in the PFR. The document policy is both compatible with the statute for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles. According to Article 10.56 (b) the procurement entities shall follow the specifications in Articles 12.02 and 12.03 of the PFR before destroying any procurement records.

Chapter 12 of the PFR establishes security protocols to protect records both physical and/or electronic. Although general security protocols are established in PRF 12.01, the risk of misplacement, damage, and loss is still high.

4.1.12 Procurement Principles in Specialized Legislation

Precedence is given to provisions in bilateral agreements or agreements with multilateral organizations over procurement rules. According to Article 10.04, where the procurement rules conflict with an obligation of the Government of the Maldives arising out of an agreement with one or more States or with an international organization, the provisions of the agreement shall (to the extent that the procurement rules conflict with that obligation), prevail over the procurement rules.

The legal framework applies to Public Private Partnerships (PPP) and Award of Concessions. Article 10.05 stipulates that the award of contracts for the construction, rehabilitation and/or operation of public infrastructure and other public goods based on private investment; for service concessions and for comparable forms of contracting, shall be in accordance with the objectives, principles, and rules of conduct in Chapter 10 of the PFR. However, the PFR does not clearly assign responsibilities for developing policies and supporting the implementation of PPPs, including concessions.

The President's Office has issued an Unsolicited Proposals Policy (USP) in January 2019. The USP Policy allows domestic and foreign private parties to submit proposals for development projects that the government has not identified but which conforms with the government's broad development agenda; and proposals that propose innovative and affordable solutions to needs that have been identified by the government in its Strategic Development Plan (TM 2021). This USP Policy is based on Article 10.27 of the PFR.

4.2

IMPLEMENTING REGULATIONS AND TOOLS

4.2.1 Defining Processes and Procedures

Detailed procurement rules are given in Chapter 10 of the PFR formulated under the PFA. There is no separate law for procurement, and since the PFA does not have any stipulations on public procurement, there is no room for procurement rules to contradict the law.

The PFR has a comprehensive and consolidated Chapter as procurement rules and the rules are readily available on the website of the Ministry of Finance. The Chapter 10 of the PFR guiding procurement lacks clarity and is difficult to comprehend due to the detailing of all administrative procedures along with principles, objectives, institutions, methods and roles and responsibilities in a single document. Ambiguity in definition of some articles can cause differences in the interpretation.

The Ministry of Finance (MoF) is the responsible agency for the PFR, and therefore Chapter 10 of PFR. The PFR update is a continuous process and undertaken when necessary and seen fit by the MoF. Since the new PFR was formulated in 2017, four amendments have been made to date to amend some articles more fitting for procurement practices deemed necessary by the government. The last three amendments, in particular the changes to 10.27, were brought following issues highlighted by the PFR. According to Ministry of Finance, weekly meetings are held by the 'Public Finance Regulation Review Committee' to discuss necessary changes to the PFR.

4.2.2. Model Procurement Documents

There are no distinct model procurement documents for goods, services, works, and consultancy services procured by the state entities. Each procuring entity within the government prepares their own procurement documents when tendering. Only in procurements financed by international aid agencies and National Tender, standard procurement documents are used.

There are no minimum or mandatory standard clauses or templates that reflect procurement rules. Clauses such as timeframe and duration, price and technical experience are the most used standard criteria in bidding and tendering by all institutions. However, there are no standards specified for the minimum criteria for procurement of goods and services, works or consultancy. Hence there is no harmonious grading scheme used for similar projects undertaken within one institution or separate institutions.

4.2.3 Standard Contract Conditions

The Law of Contract (4/91) has 28 Articles. Of these, the Article on Damages (Article 23) has high implications for public procurement. The Article states that (a) a party who commits a breach of contract shall be liable in damages for the loss arising from that breach (b) the loss refers to the loss directly arising from the breach; and the loss which was known by the parties to the contract to be a probable result of the breach.

There are no standard contracts nor standard conditions for the common types of contracts. Article 10.52(g) identifies the mandatory points to be included in procurement related contracts. Furthermore, Article 10.37(b3) species that agreement clauses should be include in the Bid Document. Despite the requirements in Articles 10.37 and 10.52, the lack of standard contract conditions for goods, works, services and consultancy are identified as a major risk for corruption in public procurement. Although all the contracts are with the Government of the Maldives, the general conditions often vary depending on the procuring entity even for similar types of contracts. Contracts are sometimes drafted in such a way that there is obvious bias in favor of the contractor. This is due to the lack of general contract conditions (GCC) stipulated in law.

Although the contract conditions used are generally consistent with internationally accepted practice, there are a few critical gaps. There are no standard conditions for important clauses such as jurisdiction, dispute resolution, liability, and compensation. Lack of standard conditions on maximum compensation limits is a serious gap, particularly for the mega projects. Some project disputes resolved through international arbitration have caused major losses to the state with huge compensation payments.

4.2.4 User's Guide or Manual for Procuring Entities

There is no standard single procurement manual detailing all procedures for the correct implementation of regulations to be used by all procuring state entities.

The responsibility for the development of this important implementation tool is vested with the Minister of Finance. According to Article 10.06 the Public Procurement Policy Board may issue public procurement guidelines, circulars, and instructions to provide further guidance on the interpretation and application of procurement rules.

4.3

SUSTAINABLE DEVELOPMENT AND INTERNATIONAL OBLIGATIONS

4.3.1 Sustainable Public Procurement

There is no publicly available information on a policy or strategy to implement sustainable public procurement (SPP). There are no SPP implementation plans nor in-depth assessment; systems and tools to operationalize SPP. According to European Commission, Sustainable Public Procurement (SPP) 'is a process by which public authorities seek to achieve the appropriate balance between the three pillars of sustainable development - economic, social and environmental - when procuring goods, services or works at all stages of the project' (European Commission 2020).

The legal and regulatory framework does not discuss sustainability criteria.

There is no guidance on balanced application of economic, environmental, and social criteria to ensure value for money.

4.3.2 Obligations Deriving from International Agreements

The Maldives is a party to the United Nations Convention against Corruption (UNCAC) since March 2007. Article 9 on Public Procurement and Management of Public Finances necessitates to establish appropriate systems of procurement based on transparency, competition, and objective criteria in decision-making, that are effective, inter alia in preventing corruption.

The WTO Agreement on Government Procurement (GPA) is relevant to the Maldives in the context of donor funded projects. World Bank or European Union funding often require recipient countries to apply the procedures of the respective donor organization.

4.4

SUBSTANTIVE GAPS

There is no law specific to public procurement in the Maldives. The procurement rules have been issued as a chapter in a regulation and through circulars and policy guidelines issued by the Minister of Finance. Since the procurement rules are set out in a regulation and not a law, changes have been made to the rules to fulfill the needs of the government as and when needed. The procurement rules are subject to quick and easy change. As an example, the 11th amendment to PFR made on 28 May 2015 had major implications for transparency and increased the risk of corruption in public procurement. The amendment allowed special projects to be authorized by the Economic Council of the Cabinet to SOEs or listed companies without an open tender process. The same amendment also allowed mega projects under foreign aid to be authorized by the Economic Council of the Cabinet without an open bidding process. The only transparency requirement was for information about the project to be shared with ACC and AGO. Following this major amendment, the regulation itself was repealed, and a new regulation issued. The most recent amendment to the procurement rules was made in October 2020.

Sustainability criteria has not been defined and are presently not used in public procurement. International best practice requires definition of sustainability criteria and inclusion of sustainability considerations in procurement contract clauses. There is no requirement to include sustainability clauses in contracts in the Maldives and as a result, serious gaps are observed in the alignment of economic, environmental, and social outcomes. This is particularly apparent in the energy sector, in the procurement of fossil fuel-based generator sets versus renewable energy. There are also serious risks of damage to biodiversity and natural resources from public infrastructure projects for which contingent liability can be introduced through procurement rules.

The present legal framework does not cover procurement by all public entities.

The transparency and effectiveness of procurement varies drastically across the 32 SOEs in the Maldives. Since SOE procurement is substantially high and sets their own policies and procedures for procurement, the PCB has issued a common guideline for SOE procurement. Though the new guidelines help harmonise the procurement process, there are gaps in ensuring accountability of board of directors for SOE procurement and addressing undue influence of ministries in procurement decisions of SOEs.

A credible regulatory environment for USPs that ensures transparency, sustainability and fair competition remains a major gap.

While a USP Policy has been issued under Article 10.27 of the PFR, lack of clarity on priority development needs and the spectrum of incentives for private sector participation exposes USPs to mistrust and low credibility. Lack of transparency on priority development needs opens the doors for private sector investment in projects that do not provide value for money for public resources.

Clarity is lost in the procurement rules due to length of the PFR and language ambiguities.

Although the existing procurement rules in the PFR covers international best practices, there is ambiguity in certain definitions of important principles and technical concepts in Dhivehi language. Furthermore, the inclusion of detailed administrative rules for NTB and Bid Committees and meeting protocols have made the Chapter 10 lengthy, complex and difficult to follow.

A few but critically important procurement best practices are lacking in the current procurement rules.

There is no clear mechanism for dispute resolution during performance of contract. Although the PFR permits the use of modern technologies for procurement, it is silent on the critical rules necessary for integrity and fairness in e-procurement.

There is no framework to harmonize public contracts in the Maldives.

Public contracts are contracts in which at least one party is a government ministry, independent institution, a council or an SOE. Entities of the government currently use different forms of contracts with varying clauses and enter into contracts in Dhivehi or English language. In addition, the Law of Contracts is outdated, and modern principles and dispute resolution mechanisms of public contracts are lacking.

It is difficult to track the changes to procurement rules overtime. Although the current procurement regulation and applicable circulars related to procurement are accessible at no cost through the website of Ministry of Finance, these rules are available only in Dhivehi language. In addition, there is no access to the archive of previous versions of procurement rules with commentaries on the amendments to procurement rules and dates of amendment.

4.5 RECOMMENDATIONS

1. **Enact a Maldives Procurement Law.** The Maldives Procurement Law shall clearly specify achieving value for money and benefits to the Maldives economy as key objectives of procurement.
2. Include **sustainability as an objective of public procurement** and integrate sustainability requirements in the Maldives Procurement Law.
3. The Maldives Procurement Law shall **apply to all public entities including SOEs**. It is recommended that a distinct procurement regulation be developed for procurement by SOEs including **fiduciary rules and accountability mechanisms** for board directors and executive management of SOEs.
4. The Maldives Procurement Law shall pave the way for detailed protocols and procedures for ensuring transparency, accountability, integrity, contract performance and **risk management of USPs and PPPs**.
5. Formulate **two distinct regulations for detailed operational and administrative rules** of procurement. It is strongly recommended to separate out the administrative requirements and issue the administrative procedures as a distinct regulation. The operational rules shall provide adequate clarity for dispute resolution during contract performance.
6. Formulate a **regulation on e-procurement** to promote transparency, efficiency, value for money and lower transaction costs.
7. Develop the **legal framework for public contracts** in the Maldives.
8. Establish an e-archive of procurement rule changes and make it easily accessible and retrievable to the public and searchable by chronology, theme and article number.

An aerial photograph of a port facility on a tropical island. The water is a vibrant turquoise, transitioning to deep blue further out. In the foreground, a large, modern pier extends into the water, featuring a helipad, palm trees, and a paved area with parked cars. Numerous colorful boats are docked along the pier. To the right, a large red and white cargo ship is docked. In the background, a larger port area with various buildings, including a prominent white one, and more boats is visible. The sky is clear and blue. Overlaid on the center of the image is the text 'INSTITUTIONAL FRAMEWORK AND CAPACITY' in large, bold, black letters with a white outline.

INSTITUTIONAL FRAMEWORK AND CAPACITY



05

An adequate institutional and administrative infrastructure is a key element for a well performing public procurement system. Adequate human, financial and technological resources to support the entire procurement system are critical elements for effectiveness and efficiency. Recognizing public procurement as a profession is known to enhance the resistance to wasteful mismanagement and reduce the risks of corruption. This chapter reviews the institutions and management systems used to conduct and operate public procurement in the Maldives.

5.1

PROCUREMENT PLANNING AND BUDGET CYCLE

PFR provides for annual or multi-annual procurement plans to be prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning. Article 10.20 (b) prescribes that all government agencies shall be responsible for preparing an annual procurement plan and providing information on their forecast procurement needs to the government agency or agencies designated by the Minister of Finance. Budget funds are committed in a timely manner and cover the full amount of the contract or the amount necessary to cover the contract performed within the budget year.

Chapter 5 of the PFA provides a mechanism for feedback reporting on budget execution. The PFA explicitly requires reporting on the completion of activities budgeted for the financial year by the public procurement entities and a consolidated financial statement by the MoF. International best practice requires feedback reporting on contract performance regarding the completion of major expenditures incurred. The consolidated financial statement of the government must be submitted to the AGO within 3 months and 14 days from end of financial year. The PFA mandates AGO with the function of auditing the consolidated financial statement within 2 months from submission. The AGO is vested with the responsibility of reporting to the President and the Parliament in case of failure to submit the consolidated financial statement.

PFR ensures that solicitation of tenders/proposals takes place only with certification of the availability of funds. Article 10.62 specifies that solicitation or orders for goods or services shall not be initiated until the confirmation that funds are included in the budget, and the availability of funding for the requirement has been established, and approval to proceed is given by an accountable officer of the Budget Section or by the Principal Accounts Officer.

The PFR outlines the financial procedures and systems for processing of invoices and authorization of payments. The rules for processing of invoices and payments are publicly available and describe the protocols for advance payment (10.67), retention money (10.68) and invoice payments for completed works/deliverables (10.69).

5.2

INSTITUTION IN CHARGE OF REGULATORY FUNCTION

The Ministry of Finance is primarily responsible for setting the Maldives government public procurement policies and rules. The Ministry develops regulations, issues circulars, and maintains oversight of public procurement. The PFA provides the legal framework for procurement policy.

The regulatory and policy function is assigned to the Procurement Policy Board (PPB). The legal basis for the Procurement Policy Board is the Presidential Decree dated 23 February 2020. The third Amendment of the PFR dated 4 July 2020 provides for the functions of the PPB (10.06). The PPB was created to strengthen the public procurement structure and to create procurement related policies.

The Administrative Regulation of the PPB was published on the gazette on 07 September 2020. The regulation specifies the regulatory function and assigns appropriate authorities to enable the institution to function effectively.

The procurement policy and regulatory functions are clearly assigned to the PPB without creating gaps or overlaps in responsibility. The responsibilities assigned to the PPB includes: plan; manage and implement the public procurement system; proposing changes/drafting amendments to the legal and regulatory framework; establish principles and procedures to ensure value for money and economic efficiency; ensure a transparent, open and competitive procurement environment for tenderers; promote fair and non-discriminatory treatment for all tenderers; providing tools and documents; support training and capacity development; supporting the professionalization of the procurement function; undertake stakeholder consultations and dialogue; designing and managing centralized online platforms and other e-procurement systems; providing integrated procurement information; and monitoring public procurement.

PPB has a high level of authoritative standing in the government. Chairperson of the PPB is the Minister of Finance and with a cabinet minister portfolio, has the full power and authority to regulate procurement. The membership of the PPB also shows it has a high level of authoritative standing in the government. Secretariat and administrative support to the PPB is provided by the Procurement Policy and Project Monitoring and Evaluation Unit of the Ministry of Finance. Chief Procurement Executive is the head of the Unit and has a high-level and authoritative standing in government.

The PPB's internal organization and staffing are insufficient and not consistent with its responsibilities. The Procurement Policy and Project Monitoring and Evaluation Unit of the Ministry of Finance is responsible for implementing all the decisions of the PPB. However, the staffing levels and capacity of staff are not sufficient to undertake the functions assigned to them efficiently and effectively. At present there are two officials who serve the Secretariat, and they have master's degree qualifications. The Ministry of Finance plans to recruit additional 13 staff to support the PPB and recruitment was delayed due to the Covid-19 pandemic.

The PFR has a system in place to avoid conflicts of interest. Article 10.07 prescribes the independent establishment and operation of the procurement regulatory function distinct from the central procurement function to avoid conflict of interest.

5.3

PROCURING ENTITIES AND THEIR MANDATES

Procuring entities are defined by the establishment of a Bid Committee as stipulated in Article 10.13 of the PFR. The primary public procuring entities in the Maldives include the ministries, parliament, courts, independent institutions, hospitals, schools, uniform bodies, and the local government councils. All these entities are required to adhere to the PFA and the PFR in their procurement practices.

There are more than 250 public procurement entities as of 8 November 2020. They include the President's Office, Parliament, 6 superior courts, 18 government ministries, 200 local councils, 06 uniform bodies and 25 independent institutions. Some schools and some health institutions under the Ministry of Education and Ministry of Health respectively have separate procurement entities.

Responsibilities and competencies of procuring entities are clearly defined. Responsibilities of procurement entities include: preparing an annual procurement plan; providing information on their forecast procurement needs to the designated lead government agency or agencies; initiating procurement requirements and obtaining all necessary authorizations for the commitment of funds; recommending the appropriate method of procurement; preparing invitation documents, advertisements and shortlists;

leading the evaluation of tenders and preparation of evaluation reports, including contract award recommendations; providing technical inputs and participating in the evaluation of tenders where so required; preparing contract documents and amendments; and the management of contracts, including supplier performance

Procuring entities are required to establish a designated, specialized procurement function with the necessary management structure, capacity, and capability.

PFR requires a Bid Committee (BC) to be established in every procurement entity. Bid committee is selected/approved by the Minister of Finance and shall comprise technically competent people. The names and job titles of the BC members should be recorded in writing. Additionally, BC members need to notify in writing and that notification needs to be recorded. The minutes of the BC meeting should be recorded in writing. The PPB revised the eligibility criteria for membership of the BCs (Article 10.13) on 21 October 2020. With more than 250 bid committees, ensuring capability and capacity of BC members is a challenge.

Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved. The Annex 1 of procurement rules in Chapter 10 of the PFR provides for the following levels of authority for approvals. Procurement Officer - up to MVR 2,000; *Maalee Zimmaadhaaru Veriyaa* (Finance Executive) - up to MVR 35,000; Bid Committee up to MVR 5,000,000.

The procurement officer in every procuring entity is responsible for procurement related appeals. Article 17.9 states that procurement related grievance shall be lodged with the procurement officer of the respective procuring entity. Article 10.53 (b) requires informing the outcome of bid evaluation to all bidders after awarding to the successful bidder.

The PFR provides for the establishment of a centralized procurement function in charge of consolidated procurement, framework agreements or specialized procurement. According to Article 10.12, if the procurement value is more than MVR 5,000,000, the tender must be processed by the National Tender Board (NTB). Article 10.45 (c) of PFR states that bids awarded by the NTB must be evaluated by a committee formulated by the secretariat of the NTB. Final awarding decisions will be made by the NTB.

The NTB is a 7-member board. The Board members are appointed by the President upon recommendation of the Minister of Finance (10.10 (b)). The NTB members shall comprise people with education qualification or experience in fields such as finance, planning, engineering, law, and commerce (10.10 (d)). The NTB and the head of the board have a high-level and authoritative standing in government.

The centralized procurement body's internal organization and staffing are sufficient and consistent with its responsibilities. National Tender acts as the secretariat body of the NTB. The National Tender is a section based within the Ministry of Finance. They comprise 10 full time staff. Tender evaluation function is undertaken by the staff of National Tender with participation of line ministry staff. Where technical procurements are undertaken, a technical committee is formulated by the National Tender for procurement evaluation.

An Advisory Committee established by the President undertook selection decisions for some mega projects in the past. This arrangement had serious transparency concerns as evident from the Dharumavantha Hospital contractor selection. The ACC in 2016 concluded the project was assigned to the contractor under a special permission provided by the President of the Maldives and was in accordance with the section 8.15 of the PFR (ACC 2016). However, ACC has commenced reinvestigation of the Dharumavantha Hospital's case in October 2020.

5.4

PUBLIC PROCUREMENT INFORMATION SYSTEM

Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results, and performance.

All procurement announcements of government entities are published on the official government gazette. The procurement announcements on the gazette can be viewed online (<https://www.gazette.gov.mv/iulaan>). All the procurement announcements along with the Terms of Reference (ToR) / Requests for Proposals (RFPs) by the government entities are made available under the general announcements.

A centralized online public procurement portal ‘Beelan’ exists. This integrated information is established to provide up-to-date information with easy access to all interested parties at no cost. Beelan also provides links to up-to-date information of procurement regulation and guidelines that are relevant to promote competition and transparency.

Beelan (<https://beelan.egov.mv>) provides information on specific procurements through National Tender. It includes advertisements of tender notices for procurement opportunities, and contains information on invitation number, procurement number, procurement agency, reference, published date, submission date, and status.

Beelan provides information on contract awards. The award information includes procurement number, procurement name, agency, awarded party, currency, awarded amount and awarded duration.

Beelan does not yet provide information on procurement plans and is yet to provide comprehensive information on selection. There are no evaluation reports, and full contract documents including technical specifications. There are no contract implementation details, including amendments, payments, and appeals decisions.

Information is published in an open and structured machine-readable format, using identifiers and classifications. Beelan portal functions include register to participate in tenders; notifications and alerts on new tenders; notification and alerts on documentation updates on registered tenders; track upcoming deadlines through alerts; get up to date information on procurement guidelines and regulation to other agencies and interested parties.

Responsibility for the management and operation of the system is not clearly defined in the PFR.

Bandeyri Portal Bandeyri Pay and Neelan Portal are complementary to public procurement. Bandeyri Portal (<https://bandeyri.finance.gov.mv>) is the government procurement portal that provides vendor services to check status of payments and verify any purchase orders received. Bandeyri Portal also has features for utility payments and PSIP monitoring. Bandeyri Pay (<https://bandeyripay.finance.gov.mv>) is the portal for making online payments to government agencies. Neelan Portal (<https://neelan.egov.mv>) is the portal for government inventory management.

E-procurement is being progressively developed. At present some elements of e-procurement undertaken by the National Tender are available for bidders through the Ministry of Finance website (<https://www.finance.gov.mv>) under 'Recent Tender' and 'Awarded Projects'. E-procurement has tremendous potential to improve transparency and communication in the tender process.

Procurement entities located in Male' have the capacity to plan, develop and manage e-procurement systems while those in islands do not have sufficient capacity. Aspects such as electronic document verification and e-signature are important legal changes needed for full implementation of e-procurement, however they are lacking now. Technical risks to e-procurement for national level execution include internet and cyber security issues.

Procurement staff are not adequately skilled to use e-procurement systems reliably and efficiently. Undertaking training for nationwide procuring agencies was recognized as a challenge. Ministry of Finance has plans to undertake training when the e-procurement system is operational. There is a need for building trust and confidence in the digital procurement.

Language barrier remains a challenge for small and medium-sized enterprises to participate in a digital public procurement market. Dual language systems with Dhivehi compatibility and easy to use interface will be essential for inclusiveness of island based local SMEs.

There is no system in operation for collecting data on the procurement system of goods, works and services, including consulting services, supported by e-procurement or other information technology. As there is no system to collect and manage data for the entire procurement process it is not possible to undertake analysis of procurement trends, levels of participation, efficiency and economy of procurement and compliance with requirements.

5.5

PUBLIC PROCUREMENT SYSTEM CAPACITY

There are no permanent procurement training programmes of suitable quality and content to cater for the needs of the procuring entities.

The types of training undertaken now include needs basis training for procurement officers in procurement entities as well as local councils through direct classroom based and online training. Training module for procurement has been formulated with Civil Service Training Institute. ACC also conducts procurement training programmes.

Lack of lawyers experienced in public procurement contracts is a major issue for contracting. Some stakeholders consulted for this report revealed that capacity of the in-house legal departments in public procurement entities are low, experience in contract review is weak, and capacity to advise in commercial transactions undertaken by the state entities is very limited.

Routine evaluation and periodic adjustment of training programmes based on feedback and need do not exist. There is no evidence of evaluation and adjustment of existing training modules and courses to incorporate procurement related content.

Advisory service function to resolve questions by procuring entities is established within the Ministry of Finance. However, there is no established help desk mechanism for suppliers and the public.

Procurement is not recognized as a skilled profession in the same manner as accounting and finance. Procurement positions are not defined at different professional levels. Job descriptions and the requisite qualifications and competencies for procurement have not been specified. As a result, the wage, allowances, and benefits paid to procurement officials in government entities are lower compared to accountants and auditors. Recently, the Ministry of Finance has established a Procurement Professional's Network (Circular 13-P/CIR/2020/50 dated December 2020).

Appointments and promotion for procurement positions are not competitive and are not based on qualifications and professional certification. Public procurement is seen as an administrative task and often undertaken by junior staff or civil servants who lack the appropriate skills and experience. Therefore, the quality and professionalism in procurement planning, screening, and monitoring is lacking in several procuring entities. Procurement staff performance is not evaluated on a regular and consistent basis. For civil service staff, general performance evaluations are conducted annually.

Procurement performance monitoring does not exist. A performance measurement system is yet to be developed and as a result there is no quantitative and qualitative information to gauge procurement performance. Strategic policy making on procurement is very weak and there are no strategic plans with a results framework. According to the Administrative Regulation of the PPB, the responsibility for performance monitoring has been assigned to the recently established PPB.

5.6

SUBSTANTIVE GAPS

There are no standard protocols on how government agencies become procuring entities and on the institutionalization of BCs.

Some schools, hospitals and government agencies can buy themselves, while others are managed centrally. As a result, more than 250 public procurement entities located in some 179 islands. This causes issues of transparency and efficiency in public procurement.

The procurement information system only covers procurements by National Tender. The centralized information system does not provide information of tenders approved by the BCs in procuring entities. The system also does not have annual procurement plans. Furthermore, the system does not publicize evaluation reports with details of scores and contract performance which are necessary to increase transparency and to improve competition. In December 2020, the Ministry of Finance has issued a circular (13-P/CIR/2020/50) requiring procuring entities to publish procurement awards

in the government gazette.

Procurement is not considered as a profession and lack of capacity and competency is a major challenge. There is lack of capacity within the major government procuring entities for procurement planning, contracting and contract management. There is also lack of capacity to undertake performance audits of major procurements. The pay scale of procurement officers does not match with the value of procurement and responsibilities assigned to them.

5.7 RECOMMENDATIONS

1. Establish **protocols for designating procuring entity status** to public schools, hospitals and other public service providers with separate Bid Committees.
2. **Establish a one stop digital portal for e-procurement.** The e-procurement portal shall show all potential procurements of the government to be conducted in the financial year providing information and opportunities in advance. All tenders and quotations from all government agencies shall be published on the portal. The e-procurement portal shall have capabilities for supplier registration and bid submissions. Procurement related invoicing shall also be integrated in the e-procurement portal. Details of all selection results and contract awards shall be published in the e-procurement portal.
3. Formulate an **integrated strategy to develop the capacity** of key actors involved in public procurement based on a comprehensive capacity and training needs assessment.
4. Develop **procurement as a profession** and provide certification, rigorous training, and technical allowances for procurement professionals.
5. Develop the **capacity of the Procurement Professional's Network** to improve lesson sharing, and problem solving in procurement.



PROCUREMENT OPERATIONS AND MARKET PRACTICE

An aerial photograph of a densely packed urban area, likely in the Maldives. The buildings are multi-story and feature a variety of colors, including white, blue, green, and orange. In the foreground, there is a playground with colorful equipment and a green lawn. A car is parked on a paved area near the playground. The number '06' is overlaid in a large, white, outlined font in the center of the image.

06

This chapter focuses on how the procurement system in the Maldives operates and performs in practice. This chapter looks at transparency, efficiency, and effectiveness of the procurement system by assessing procurement planning, tendering, contracting and contract management. It also reviews how the procurement market operates in practice by considering the relationship between private sector and the public procurement entities.

6.1

NATIONAL BUDGETARY PLANNING

Stakeholders acknowledged that budgetary plans are done every year to fulfill the budget cycle responsibilities. The PFR mandates the

annual national budget to be prepared and passed by the Parliament at least two months prior to the start of the fiscal year. The national budget passed by the Parliament is the framework under which the entities of the government make claims for procurements for the fiscal year. For the formulation of the national budget, all government entities are mandated to prepare an action level budget for the entity in accordance with the government policies or to implement the objectives mandated for the entity.

Feedback reporting on budget execution is not made public. The Ministry of Finance sends a consolidated annual financial statement report to the Auditor General's Office (AGO). The audited consolidated annual financial statement is not published by the AGO. Hence, there is no reporting on the completion of contracts, and on quality of contract performance. In addition, there is no system to generate knowledge on efficiency, economy, transparency, and integrity in public procurement.

6.2 Procurement Planning

Public procurement plans of procuring entities are not publicly available. Each government entity is mandated to prepare a procurement plan including the requirements for procurement. Despite the requirement stipulated in the PFR, stakeholders identified that public procurement plans are not prepared by procuring entities.

Proper needs analysis is not undertaken for procurement planning. While some entities such as the Ministry of Health and Ministry of Education undertake needs analysis at a basic level, not all entities practice needs analysis. A proper needs identification process will define the reasons for planning to buy goods, works or services, and will plan for the associated risks.

Market research is not undertaken to guide procurement strategies. Stakeholders identified that while there is a good understanding of the need for market research to achieve value for money, the lack of capacity and time constraints limit market research in public procurement. Research on products, materials, technology, suppliers, distributors, and changes to market prices are not undertaken by procuring entities.

The requirements and desired outcomes for procurement of machinery and goods are not adequately communicated. Accurate needs of the procuring entities are not always communicated to the suppliers to prepare in advance. This results in getting the wrong machinery and equipment, having compatibility issues, spare part unavailability in the local market, issues with repair and maintenance services as well as low quality products which eventually end up being unused or underused and replaced before its useful life.

There is no whole of government approach to coordinate and manage national procurements. There is no designated authority to manage the national procurements, including maintaining inventory, specifications, and standards. Hence procurements are carried out by different entities to their own specifications and perceived requirements. This is particularly problematic in ICT, machinery and equipment, marine transport hire, accommodation, office rentals and office equipment related procurements.

Serious corruption risks exist due to poorly planned infrastructure development projects. Poor planning was identified by stakeholders as a risk for poor construction quality, delayed completion of projects and high costs for schools and health infrastructure in islands.

6.2.1 Selection and Contracting

Although multi-stage procedures are often used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process, several issues in selection were identified. Stakeholders identified lack of transparency and uniformity, collusion, favoritism in public procurement.

A registration system exists for procurement of works, but there is no registration for suppliers of goods and services, and consultancy. The Ministry of National Planning, Housing, and Infrastructure (MNPHI) regulates the construction sector and has formulated criteria and registration requirements for construction sector. In procurement of work for PSIP, the selection of the contractor is guided by the Registry of Contractors. The contractors are classified under GC: general building contractors;

HC: harbor contractors; UC: utility contractors; OB: specific building construction contractors; ME: specific mechanical/electrical contractors; SY: construction material supply contractors; OT: other types of construction related contractors and CM: construction material manufacturers. Specific eligibility grades are assigned to each type of contractor.

Collusion and favoritism are common as there are no clear and integrated procurement documents, standardized and proportionate to the need. There are no national standard tender documents for goods, services, works and consultancy services, that are followed by all procuring entities. In the pre-tender stage, procuring entities introduce their own standards and criteria or borrow standards and criteria from projects of a different scale or type. There is also no guidance on how points for technical competence, financials and timeline are assigned.

Standard and agreed information dissemination protocols are not used. Information withholding is used to discourage broad participation from potential competitors. Prior information is given to certain bidders to provide unfair advantage creating obstacles to fair competition. Sometimes eligibility and award criteria are tailor made for certain companies with such specificity and preciseness that other companies cannot apply or qualify. Despite PFR clearly specifying attendance at pre-bid meeting is not mandatory, most procuring entities prevent eligible parties from participation in the bid based on absence and punctuality at information sessions.

Procurement methods are not always chosen, documented, and justified in accordance with the PFR. Although fractionation is explicitly prohibited, some government entities manipulate the project specification to avoid procurement through NTB. In such projects, major variations are introduced at a later stage, or parallel projects are advertised to achieve the full procurement outcome. In some cases, solicitation of tenders take place with certification of availability of funds for a few components of the projects. Emergency procurement is also often used to justify restricted or single source procurement.

Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. The protocols for allowing bidders or their representatives to attend bid openings is adhered to. The bid values are recorded in the presence of the bidders and communicated to all participants. Throughout the bid evaluation and award process, confidentiality is ensured.

Although an appeals mechanism is included in Chapter 17 of PFR, most of the grievance and appeals are lodged at ACC. While all procurement rules are in Chapter 10 of the PFR, the appeals mechanisms for public procurement are stipulated in Chapter 17. Since Chapter 10 is published as the procurement rules and there is no reference to appeals within the Chapter 10, it is probable that some of the bidders are not fully aware of the appeals mechanism in Chapter 17. Bidders and public tend to lodge most tender related grievances at ACC and of the 1,397 cases lodged to ACC in 2019, 548 cases (28%) were related to public procurement (ACC 2019). On average 2 procurement cases were reported to ACC every working day.

Each procuring entity follows their own contracting practices. Some procuring entities have inhouse lawyers and rely on internal advice for contract preparation while advice from the Attorney General (AG) is sought depending on the size of the project. Stakeholders identified that delay of contract signing is a commonly used tactic after the award process to give lead time for contractors and unfair advantage in duration of delivery.

Weak contracts pose serious risk to procurement integrity. Stakeholders identified that the Contract Act is outdated. Stakeholders also questioned the authenticity of the AG's legal advice on procurement and referred to situations where advice given by the preceding AG was contradicted by the following AG that resulted in serious losses for the state. Furthermore, third party legal advice from experienced lawyers are not sought for complex procurements or unique projects. The contracts also lack important clauses such as capping aggregate liability for compensation.

Only the contract awards by the NTB are announced as prescribed. The NTB contract awards are announced and published at www.finance.gov.mv/public-procurement/awarded-projects since 2018. However, procurements by all entities are not announced. In December 2020, the Ministry of Finance has issued a circular (13-P/CIR/2020/50) requiring procuring entities to publish procurement awards in the government gazette.

There is no standard ‘payment terms’ for procurement of works, consultancy services and goods and services. Advance payment and retention money vary for similar types of projects depending on the procuring entity. Stakeholders identified that in some instances payments are made for incomplete work. Stakeholders also noted that changes are often made to the scope of works after bid evaluation or contract awarding.

6.2.2 Contract Management in Practice

Contracts are not implemented in a timely manner. Stakeholders acknowledge that contract management in public procurement projects is very weak at present. Although the PFR requires the designation of a contract manager for each contract, entities lack competent human resources to manage contracts. Delay in project completion is a serious issue. Delays are quite common due to factors such as supply chain issues, materials and goods not being available locally and labor related issues.

There are limitations in inspection, quality control, supervision of work and final acceptance of products. The procuring entities of the government are mandated with contract preparation and bringing the necessary changes to the contract in accordance with the PFR. Contract management becomes more concerning in high value projects. The stakeholders expressed serious concerns on the lack of inspection and quality control that cost the state heavily. This is a major issue, particularly in procurement of works for island-based infrastructure such as schools and classrooms. Some of the procurement related issues with school infrastructure development include delay in project completion and poor construction quality resulting in damages to the building and high maintenance costs. Issues also include a contractor bidding for multiple projects beyond its material and human resource capacity. This leads to project execution failures and in most instances, advance payments are already paid for the contractor.

Subcontracting is used to bend procurement rules. Subcontracting is not always permitted in the construction contracts, and where allowed it is specifically stated in the contracts. Subcontracting compromises the overall quality of the project and affects accountability associated with the procurement. Although projects are awarded to registered, graded contractors, projects get subcontracted to unqualified, unregistered parties, which often result in serious quality concerns as expressed by stakeholders. On the other hand, subcontractors raise grievances to procurement entities about dishonored payments by the contractor.

There are several issues in contract management. Stakeholders raised concerns about lack of contract monitoring and missing deadlines. Stakeholders also identified that contracts often have clauses that prescribe responsibilities on the procuring entity, which if unfulfilled could pave way for contractors to claim large sums for compensation. Stakeholders referred to large compensation cases by the state due to issues in contract management.

Invoicing and payments system complies with good international practices. Invoices are examined by the Financial Controller. Time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. The Ministry of Finance requires procuring entities to submit purchase orders through SAP and invoices for purchase orders generated through SAP are honored. Sometimes payment delays are experienced due to delays in posting payment requests by procuring entities, delays in approval within the procuring entities, delays in changes to budget codes and cash flow issues.

There is no review of contract amendments. There is no evidence of contract amendment reviews being issued and published.

Procurement records are complete and accurate; however, they are managed manually in paper files. Since procurement records are managed in paper files, it is not easily accessible in a single file. Multiple projects are executed by most procuring entities and manual contract management affects proper monitoring of contract performance.

6.3**PUBLIC PROCUREMENT MARKET****6.3.1 Dialogue and Partnerships between Public and Private Sector**

Dialogue and partnership between the public and private sector to improve public procurement is non-existent. There are no regular or systematic consultations or evidence of government encouragement of open dialogue with the private sector to improve procurement. There are no established and formal mechanisms available for open dialogue through associations or other means. There is no transparent and consultative process to formulate changes to the public procurement system. There are no applicable ethics and integrity rules of the government to be followed in dialogue.

Opportunities for small and medium businesses exist in public procurement, however there are significant barriers in their entry to the market. Though the government has programmes to help build capacity among small and medium private companies, there is no evidence of training to help new entries into the public procurement marketplace for small businesses.

6.3.2 Private Sector's Organization and Access

Except for health care procurements, the private sector is competitive, well-organized, willing, and able to participate in the competition for public procurement contracts. For the health sector, there is limited competition in the market due to brand distributorship rights held by a few parties. On the other hand, there is good organization, competition, and willingness to participate in the supply of works.

There are no major systemic constraints inhibiting private sector access to the public procurement market except in the health sector. The key challenges for health sector procurement are due to the limited market size of the Maldives and the control of medical equipment by regional distributors of major manufacturers.

6.3.3 Procurement through SOEs

SOEs play an important role in procurement of goods and services to serve the geographically dispersed islands of Maldives and help achieve economies of scale. SOEs are defined as fully or partially owned companies of the government and are involved in development of public infrastructure such as airports, housing, road development; in providing essential goods such as medical supplies, food, and fuel and in service delivery such as electricity, transport, and waste collection services. Since procurement through SOEs is beyond the scope of this study, it is recommended that a separate study be done on this area.

6.3.4 Key Sectors and Sector Strategies

Government has not identified the key sectors associated with the public procurement market. The research undertaken for this report revealed that the key sectors for procurement in the Maldives include health (medical equipment, consumables, and pharmaceuticals); transport (airports, roads, and harbors); energy; education; water and sewerage.

There is no evidence of systematic assessment of risks associated with the key sectors. The government has also not undertaken assessment of opportunities in key sector markets. There is limited engagement of sector market participants to help the government achieve the procurement policy objectives. In 2015, ACC published a report on Health Sector Corruption Risk Assessment. The main risks identified were; absence of health sector needs/requirement; absence of guidelines necessary to execute the Memorandum of Understanding (MoU) between the Ministry of Health (MoH) and State Trading Organization (STO) to procure medical consumables, re-agents, machinery and other equipment; inconsistencies in recording and maintaining stock and inventory across health centers and hospitals; double purchases and excess stock; absence of a proper information management system to monitor supply, delivery and manage coordination with the MoH; and emergency procurement of medical consumables without a clear definition of 'emergency procurement'.

The significant scaling up of infrastructure investments carries major public procurement corruption risks. The Government of the Maldives has significantly scaled up infrastructure investments, with infrastructure projects estimated to amount to 35% of GDP between 2015-2019 (IMF, 2019). As a result of these procurements, general government debt has increased significantly, and fiscal space is now extremely limited, with current spending among the highest in the region.

6.4

SUBSTANTIVE GAPS

6.4.1 Procurement Planning

Transparency in the flow of public funds to high value infrastructure projects is not adequate. Such projects are often undertaken as exceptional national development priorities and there are no clear links established to government budget cycle and fiscal responsibility requirements. Mega projects such as the Dharumavantha Hospital, 7,000 housing flats in Hulhumale' phase II, and the Ministry of Finance Office Building were initially undertaken as private contractor finance projects. Some of these projects were later financed through treasury bonds and sovereign guarantee loans and there were serious transparency issues in the source of finance. Such projects carry palpable corruption risks.

The audited consolidated annual financial statement of the government is not published. Hence, there is no reporting on the completion of contracts, and on quality of contract performance. In addition, there is no system to generate knowledge on efficiency, economy, transparency, and integrity in public procurement. The end of financial year audit reports of most procuring entities is issued normally after two to three years. Hence, if any corruption related issues are identified in the audits, these issues cannot not be addressed in a timely manner. As a result, the same issues may get repeated over the two-to-three-year time span.

Lack of strategic procurement planning and demand forecasting are identified as major gaps in health care procurement. Health care procurement for medical equipment, consumables, and pharmaceuticals is carried out without directly and openly informing key stakeholders about forthcoming opportunities. Health care procurement (MVR 897.5 million in 2019) is the riskiest recurrent budget component to corruption. According to stakeholders, there is no central system for planning medical procurements and there are no regulations or benchmarks used in the procurement of medical equipment and machinery. While medicines are regulated strictly, medical equipment and consumables are not regulated. There is no robust integrated inventory management system and large volume stocks are not well planned. In addition, challenges posed by small market size, brand specific constraints, and distributorship limitations are exacerbated due to lack of strategic planning and proper market research.

Urgency is often used as an excuse in the procurement of machinery and equipments. Single-source procurement gets justified frequently for generator sets, and expensive equipment and machinery. The rules permit such procurement only in the exceptional circumstances of a catastrophic event, where there is an extremely important need and where any other method of procurement would be impractical given the time constraints.

There is poor procurement planning and needs assessment for island level public infrastructure. Procurement for island infrastructure is carried out in Male' by the Ministries. Local councilors and civil servants at island level are more in touch with specific infrastructure needs and contexts of their constituencies. In addition, decentralization is likely to narrow the scope for corruption, as the elected politicians and civil servants at island levels are directly accountable to the citizens they serve.

Achieving value for money is hindered due to inadequate procurement planning. Only limited information is provided in advance to potential suppliers. Procurement planning where practiced is generally viewed as an administrative task and undertaken by junior staff who lack adequate knowledge and experience. Hence procurement planning in all institutions is weak and does not improve efficiency. There is also a need to increase competition and transparency in USPs through providing clear information on national development priorities that require innovative solutions.

6.4.2 Selection

PFR provisions on selection are not enforced uniformly and fully by all entities in their procurement practices. Government agencies use a spectrum of documents of varying quality with varying eligibility, qualification, and award criteria for similar types and scales of contracts. This opens the door for deviant documents tailor made to favor certain tenderers and highly obvious discrimination. Lack of a standard procurement manual with examples of good practices makes it difficult for uniform, streamlined and smooth execution of procurement rules across the ministries, independent institutions, and local government entities. Time ranges given to respond to tenders are sometimes not sufficient and complaints of undue advantage given to some tenderers in proposal preparation are commonplace. Lack of a standard evaluation and award criteria for works, consultancies, and supplies results in varying evaluation criteria. There is no uniformity in the evaluation criteria combinations and allocation of weights.

The absence of a centralized vendor registration system for suppliers, service providers, and consultants increases risk of corruption. Currently a register for construction contractors exists as required by the Construction Act. In the absence of a bidder registration system, procuring entities can issue qualification criteria that are tailor made for favored bidders. Information to be submitted for qualification requirements of the tender is different for projects of similar size and type when undertaken by different procuring entities.

Projects that are financed by foreign grants or concessional loans can be awarded to a specific party without a transparent tender process. The public infrastructure procurement through loan finance far exceeds the value of infrastructure procurement through government budget finance. Over the last five years, the largest infrastructure projects were loan financed, through provision of sovereign guarantees. Amendments to Article 10.27 of PFR specify that such projects only require a selection approval by the cabinet or cabinet committee. For concessional loans and foreign grants, the tender process can only be overruled if the loan or grant specifies a contractor for the project.

6.4.3 Contracting and Contract Management

Lack of standard contract conditions on indemnity, liability, insurance, and dispute resolution has opened the doors for fraudulent compensation claims, contractors not meeting liability, and lengthy dispute resolution. Insurance is not used as a tool for effective risk management in contracting. Some procurement entities require contractor insurance while others do not. There is also no evidence of government entities or local councils having government wide insurance for their officials and employees. In addition, different government entities use different approaches to liability. Stakeholder interviews revealed that most government procuring entities lack the legal knowledge and capabilities for proper contracting to manage the liability risks involved in the high value commercial procurement transactions. International best practices require standard contract conditions on indemnity, liability, insurance, and guarantees. Corporate best practices for contracts include liability caps which set the maximum claim levels for damages.

Poor contract management is the major underlying issue in the judicial cases of losses and write offs costing the state heavily. Contracts often get delayed because of deliberate political influence to abuse advance money and variation. According to the stakeholders, variations are made in more than 90% of the projects. Lack of a digital contract management system makes it impossible to manage and assess contract performance. There are more than 250 procuring entities and unfulfillment of contract goes unnoticed or deliberately ignored due to absence of effective monitoring, leading to serious compensation charges and losses.

6.5 RECOMMENDATIONS

1. Increase the **transparency and integrity of all public infrastructure projects** above MVR 1 billion threshold through comprehensive needs analysis, public disclosure, performance evaluation and reporting of the project.
2. **Publish the audited annual financial statement** of the government.
3. Undertake an in-depth **national needs analysis for health care procurement and formulate a national strategy** for procurement of medical equipment, consumables, and pharmaceuticals with key focus on value for money, sustainability and integrity.
4. Undertake **annual review of the use of single source procurement awards**. All single-source procurement should be analyzed and its justifications fully audited.
5. Build the capacity of island and atoll councils to undertake needs analysis and procurement planning for island level infrastructure.
6. Organize a **Maldives Public Procurement Event** annually to get interaction with suppliers on latest technologies, machineries, applications, and market prices.
7. Increase the **transparency of USP systems and processes** through timely identification, prioritizing and planning of the government development needs (strategic development plans and spatial development plans, principles for private sector participation), issuing a public register of USPs and public communication of the successful USPs.

8. Issue **model procurement documents and procurement manuals** for procurement of goods, services, works, and consultants as required by PFR with clear guidance on payment terms, evaluation criteria and allowing sufficient time for preparation of documents.
9. Incorporate **comprehensive bidder registration** for suppliers, contractors, and consultants in the e-procurement portal.
10. Establish the national **Environmental, Social and Governance Risk Management Guidelines** for selection of contractors for projects financed by foreign grants or concessional loans.
11. Develop **standard model “Government of the Maldives” contracts** for different types of procurement (goods, services, works and consultancy) for different threshold values. Special attention is needed on standard contract conditions for liability, indemnity, insurance, and dispute resolution, including identifying instances at which arbitration/dispute resolution shall be adopted. Special emphasis should also be given to define a standard contract clause to cap aggregate liability and ensure indirect losses will not be entertained in public procurement contracts.
12. Enable **digital contract management** for contract oversight, monitoring and evaluation service in public procurement.
13. Undertake an in-depth study of **SOE procurement including capital allowances, share capital and loans to SOEs** from annual government budget in the context of implications on value for money and integrity of public procurement.



**ACCOUNTABILITY,
INTEGRITY AND
TRANSPARENCY**



07

Several countries have long established practices whereby a large range of stakeholders are involved in the procurement process, including civil society, the public, the media, private sector organizations, end-users, and anti-corruption offices. Recently, countries have started using direct social control by involving citizens at critical stages of the procurement process. This chapter assesses the procedures and practices for civil society and public engagement; internal and external audit controls; appeals and challenges; ethics; and anti-corruption measures for public procurement in the Maldives.

7.1

**TRANSPARENCY AND CIVIL SOCIETY
ENGAGEMENT**

A transparent and consultative process is not followed when formulating changes to the public procurement system. The procurement system is periodically reviewed by the Ministry of Finance through review of donor guidelines followed by discussions in internal review committee meetings. The decisions are then sent to ACC and AGO for their feedback. before proposing to President's Office. After integrating comments from ACC and AGO, the comments are sent to procurement entities for their feedback. The final changes are submitted to President's Office for endorsement. There is no evidence that the government considers the input, comments and feedback received from civil society and private sector in formulating policies and regulations on public procurement.

There are no regulatory requirements to ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation. There is no evidence to suggest that in actual practice, the public is provided with access to information and there is effective public participation in public procurement process improvement.

There is no evidence of direct participation of citizens in procurement processes through consultation, observation, and monitoring. There are no mechanisms for suppliers and business associations to actively support integrity and ethical behavior in public procurement. There are no codes of conduct for internal compliance measures for suppliers and contractors.

7.2

CONTROL AND AUDIT SYSTEMS

Laws and regulations establish a comprehensive control framework, including internal controls, internal audits, external audits, and oversight by legal bodies. The Audit Law came into effect in 2007. This law governs audits of all state entities and accounts, auditing of the state related business entities and sets the responsibilities of the Auditor General.

The Auditor General's Office (AGO) is the institution established for the purpose of enabling the Auditor General (AG) to discharge legal mandates. According to the Audit Law (4/2007) the functions mandated to the AG include: audit of all the government institutions, accounts and government trading bodies; promote public accountability and good governance and sound financial management in the administration of the government institutions, state owned enterprises and joint venture companies in which the state holds shares; set rules, regulations and standards governing the audit in the Maldives; and carry out any function conferred on the Auditor General by or under any other law of the Maldives.

Internal control and audit mechanisms and functions are not adequately developed to provide appropriate oversight of procurement. Stakeholders identified that there are no established procedures to report to management on compliance, effectiveness, and efficiency of procurement operations within procurement entities. Internal control mechanisms do not provide a proper balance between timely and efficient decision-making and adequate risk mitigation. The Ministry of Finance has established a State Internal Audit Committee in 2019 and appointed a Chief Audit Executive to develop the internal control and audit capabilities of governments (Ministry of Finance 2021).

Independent external audits provided by the AGO ensure appropriate oversight of the public procurement function. AGO undertakes periodic risk assessments and controls tailored to risk management. The audit reports provided by the AGO are reviewed by the parliament and they determine appropriate actions to be taken by the authorities responsible for public finance governance. Clear mechanisms exist to ensure that there is follow-up on the respective audit findings.

There are no written standards, procedures, and manuals for conducting compliance and performance audits of procurement. Standard procedures for procurement audits are essential to facilitate coordinated and mutually reinforcing auditing.

External audits are carried out at least annually. There is evidence of annual audits and other established written standards that are complied with. Clear and reliable reporting lines to relevant oversight bodies exist.

Audit recommendations have a good standing in the governance framework and among civil society. According to stakeholders, audit recommendations are responded to and implemented. However, audit recommendations take time to implement and are not completed within the time frames established.

There are no programmes to train internal and external auditors to conduct high-quality procurement audits, including performance audits. AGO identified that lack of qualified auditors to undertake performance audits of key sectors such as health, energy and environment is a challenge to prevent corruption and improve performance quality. There are no procurement specialists or consultants in the country to support the auditors who lack procurement knowledge.

7.3

PROCUREMENT APPEALS MECHANISM

The procedures for submission and resolution of complaints are clearly defined and publicly available. Articles 17.11 and 17.12 of the PFR stipulate the procedures for submission and resolution of complaints.

The PFR specifies that the first review of appeals shall be carried out by the procurement entity. According to Article 10.53 (b) the first review is to be carried out by the government agency responsible for the procurement. Unless a contract has already entered into force, the complaint shall in the first instance be submitted in writing to the accountable officer of the government agency responsible for the said procurement. A timeframe of five working days from the date of notification of contract awardee is provided for tenderers to request a review.

An Independent Review Committee oversees reviewing decisions of the first review. Where the accountable officer of the relevant procurement agency does not issue a decision within the specified period, or the tenderer is not satisfied with the decision of the accountable officer, or a contract has already entered into force, then the tenderer can seek administrative review. The administrative review application is to be submitted to the Ministry of Finance.

The Independent Review Committee is established as the independent appeals body. The rules provide for a standing review panel that consist of members with no direct or indirect involvement in any capacity in procurement transactions or in the process leading to contract award decisions. For each application for administrative review, the Ministry of Finance is required to constitute an Independent Review Committee, composed of five members from the review panel. The members of the Independent Review Committee are required to declare they do not have a conflict of interest in relation to the application being heard. The Ministry of Finance is required to designate staff to provide secretariat services to the Independent Review Committee. Staff of the Procurement Policy Section are not permitted to be included in the standing review panel or be selected as a member of the independent review committee (PFR, Article 17.12).

The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process. However, the time frame makes an appeal unrealistic. A time frame of 10 working days is provided for appeals from the date of issue of the accountable officer's decision or the date by which the accountable officer should have issued a decision (PFR Article 17.11b).

The Independent Review Committee does not charge fees that inhibit access by concerned parties. Tenderers seeking an administrative review are not required to pay a fee. International best practices requires that fee shall be sufficient to deter frivolous complaints but shall not be so high to discourage genuine complaints of appeals.

The appeals body has legal authority to suspend procurement proceedings and impose remedies. Upon receipt of an application for administrative review, the Independent Review committee is required to inform the government agency immediately and prohibit the government agency from awarding a contract prior to resolution of the appeal. The committee is required to issue a written decision within 14 working days after the submission of the application. (PFR, Article 17.13a2)

The procedures for appeals stipulate that decisions are based on information relevant to the case and are balanced and unbiased in consideration of the relevant information. The rules specify that in selecting members for the Independent Review Committee, a balance of relevant knowledge and experience of procurement rules and technical knowledge of the subject of the contract shall be ensured. The Independent Review Committee is required to immediately launch an investigation and they have the power to access any information, documents, records, and reports in respect of any aspect of the procurement process subject to the investigation. The Independent Review Committee has authority to summon witnesses and examine witnesses and parties concerned (PFR, Article 17.12).

Procedures for governing the decision-making process of the appeals body result in remedies, if required, that are necessary to correcting the implementation of the process or procedures. The remedies include: prohibit the government agency from acting or deciding unlawfully or from following an unlawful procedure and require the government agency to act or to proceed in a lawful manner or to reach a lawful decision; annul in whole or in part or revise an unlawful act or decision of the government agency or substitute its own decision for such a decision, other than any act or decision bringing a contract into force; require the payment of compensation for any reasonable costs incurred by the tenderer submitting the complaint in connection with the procurement proceedings and any loss of profit as a result of an unlawful act or decision of the government agency; order that the procurement proceedings be terminated; recommend to the government agency that a contract be terminated; recommend to relevant budgetary, oversight and law enforcement bodies that specific action be taken (PFR, Article 17.14).

The PFR requires the appeals body to issue decisions that are binding on all parties. Upon receiving a complaint or application for an administrative review, the accountable officer of the government agency is required to notify all the tenderers who participated in the procurement proceedings to which the complaint or review is related to. The information shall include notification of the complaint or request for review and the substance of it. Any such tenderer or any other party whose interests are or could be affected by the review proceedings has the right to participate in the review proceedings as a complaining party. A tenderer who fails to participate in the review proceedings is barred from subsequently making the same type of claim.

The decisions of the appeals body are not published on the centralized government online portal. There is no requirement in the regulation to publish the decisions of the appeals body within specified timelines. There is no restriction limiting the submission and management of cases through online portal.

7.4

ETHICS AND ANTI-CORRUPTION MEASURES

The Anti-Corruption Commission (ACC) investigates matters of fraud and corruption in public procurement. The relevant laws and regulations include: Anti-Corruption Commission Act 2008; Prevention & Prohibition of Corruption Act 2000; and the General Regulation of ACC.

The definitions of fraud, corruption, and other prohibited practices in procurement, are given in Article 14 of the Prevention & Prohibition of Corruption Act 2000. The offence of assigning work, procuring for the government and using government property for personal gain is defined as follows: It is an offence for any government employee to procure, rent, receive or obtain, in contravention of government regulations, for the employees place of work or for a place which the employee is responsible for administering, personal property or property belonging to a person the employee is in partnership with, or an enterprise which confers benefits to the employee or an enterprise in which the employee holds share in. Additionally, it is an offence for any government employee to allot work required for the employees' place of work or for a place which the employee is responsible for administering, in contravention of government regulations, to an entity owned by the employee or which confers benefits to the employee or where the employee holds share in.

The law provides the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption, or other prohibited practices in procurement. The law prohibits hiding of information, destroying evidence, destroying documents and defines the offences of giving wrong information, and failure to appear for investigation. The law provides for protecting the informant, and authority to check bank accounts. The law does not provide any definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.

The legal/regulatory framework does not specify a mandatory requirement to include provisions on prohibited practices in procurement documents and contracts. The areas related to public procurement in the Prevention and Prohibition of Anti-corruption Act (2000) include Article 2: the corruption related to offering and accepting bribery by government, Article 12: obtaining undue advantage by government employees, and Article 14: Offence of assigning work, procuring for the government, and using government property for personal gain. These articles provide definitions of offence and do not specify any procedures. The laws and regulations do not require provisions on fraud, corruption, and other prohibited practices to be included in procurement and contract documents. There are no precise instructions on how to incorporate the matter in procurement and contract documents.

Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this. There is evidence that the reporting system is systematically applied, and reports are consistently followed up by law enforcement authorities.

The system for suspension, penalties and due process is not consistently applied. Stakeholders expressed concern that the laws on fraud, corruption and other prohibited practices are not being enforced in the country. The lack of application of stated penalties is a major weakness. Stakeholders identified that lack of enforcement is one of the major factors that drive corruption in public procurement.

The Maldives has in place a comprehensive anti-corruption framework to prevent, detect and penalize corruption in government. The Anti-Corruption Commission (ACC) has the mandate to ensure honesty and integrity in the operations of the State. that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.

Within the anti-corruption framework, there is no special programme for public procurement. There is no mechanism to systematically identify corruption risks and for mitigating these risks in the public procurement cycle. There are no special measures in place for the detection and prevention of corruption associated with procurement.

As part of the anti-corruption framework, ACC compiles statistics and publishes annual reports. The website of ACC includes information on corruption-related legal proceedings. However, there is no source of information on convictions.

Special integrity training programmes are offered by ACC. The mandate of ACC includes identifying training needs, design & production of training materials, anti-corruption training sessions for public officials, conducting training of trainers for anti-corruption training, and producing television and radio programmes. ACC has developed a special 6-hour duration training programme for prevention of corruption in procurement. The ACC organizes training programs for public officials engaged in procurement.

There are secure, accessible, and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior. The government has established a corruption reporting portal www.whistleblower.gov.mv as a confidential and secure channel to report cases of fraud and corruption. The ACC website also provides secure and accessible channel to report cases and provide information.

There are legal provisions to protect whistle-blowers. The Act on Protection of Whistleblowers was passed by the Parliament on 08th October 2019 and ratified by the President on 17th October 2019. The ACC has utilized a protocol on the protection of whistleblowers since October 2016. There are no evaluations yet of the implementation of the Act to determine effectiveness.

7.5

SUBSTANTIVE GAPS

The government does not consult civil society, suppliers, contractors and business associations in formulating policies and regulations on public procurement. There are no regular awareness programmes offered to ensure sustained awareness on the changes to procurement rules and how to address the implementation issues.

There are no provisions in the regulatory and policy framework to allow citizens to participate in the different phases of the procurement process, as appropriate. International best practices allow citizens to engage in consultations for procurement planning, observe bid proposal opening, observe bid evaluation, observe contract awarding and to monitor contract management and completion.

There are no written procedures that prescribe requirements for internal controls for procurement. Internal audit mechanisms are not adequately developed to provide appropriate oversight of procurement in government agencies. There are no established procedures to report to management on compliance, effectiveness, and efficiency of procurement operations within procurement entities.

There is limited technical capacity to undertake performance audits for key sectors. The Auditor General's Office (AGO) is responsible to undertake performance audits of major procurements. However, they lack technical capacity to undertake performance audits of key sectors such as health care, energy, and environment.

The absence of an effective and efficient appeals and complaints mechanism for public procurement is a major gap. The Tier 1 appeals and complaints mechanism in PFR is not functional. Since the appeals mechanism is outlined in Chapter 17 of the PFR, while all other rules of procurement are in Chapter 10 of the PFR, the awareness levels on appeals mechanism appears to be low. As a result, procurement related administrative reviews and appeals get lodged to ACC to be investigated under corruption law.

There is no harmonized code of ethical conduct for government officials, with provisions for those involved in public financial management. There is no definition of accountability for decision making, and decision makers are not subject to specific financial disclosure requirements. Since there is no mandatory code, there are no administrative or criminal consequences of any failure to comply. However, circular 13-K/CIR/2018/01 of Ministry of Finance dated January 2018 refers to a code of conduct for procurement related officials.

There are no requirements for systematic filing of conflict-of-interest statements, financial disclosure forms and information on beneficial ownership. As a result, information is not easily accessible for decision makers and civil society organizations to prevent corruption risks throughout the public procurement cycle.

There are no strong and credible civil society organizations that exercise social audit and control. There is no enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government. As a result, civil society is not able to contribute to shape and improve integrity of public procurement.

7.6

RECOMMENDATIONS

1. Establish **rules for civil society engagement** in the public procurement process and include provisions for external stakeholder consultations on procurement plans.
2. Establish **rules for citizen's and civil society observations** in bid opening, evaluation and contract awarding stages.
3. Develop **protocol for internal audit for key procurement sectors** such as health care, infrastructure, energy, transportation, and environment.
4. Establish mechanisms to **enable Performance Audits by AGO** for all public procurement components above defined thresholds and strengthen the performance audit capacity of AGO to undertake performance audit of procurement. Publish public procurement related audit recommendations on Ministry of Finance website.
5. Establish a functional **independent complaint handling mechanism such as a procurement tribunal** for public procurement and bring the necessary changes to ensure that procurement related complaints are not received by the ACC.
6. **Harmonise the codes of conduct** for civil service, political appointees, uniformed officials, councils and public enterprises with regard to integrity in public procurement
7. Establish **a system for filing** conflict of interest, financial disclosure, and information on beneficial ownership for all procurement officials.
8. **Build the capacity** of civil society organizations to become active in prevention of corruption in public procurement.

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ANNEX 1: Terms of Reference (TOR)

SCOPE

Anti-corruption is one of the key guiding principles for Transparency Maldives. As an organization working towards a corruption-free society, TM focuses on key areas that are prone to the scourge of corrupt practices. As such, a review of the public finance system that assesses the practical and legal gaps that perpetuate the cycle of corruption would inform advocacy efforts of Transparency Maldives, as well as key stakeholders.

The report will highlight, through a literature review of existing legislation and regulations as well as in-depth consultation with stakeholders, practical and legislative gaps that currently exist and the necessary recommendations required to make the public finance system more resilient to corruption. The consultant is expected to:

- Conduct a comprehensive desk review. The review is expected to include but not necessarily limited to a review of procurement policies of the government, independent institutions as well as how procurement occurs in state-owned enterprises (SOEs), the functioning of the Tender Board and a review of audit reports and case laws.
- Conduct focus group discussions to understand the practical issues in the existing regulations and their implementation. The information gathered from these FGDs will be key to the understanding of how the legal system is practically implemented on the ground and the gaps that exist in that implementation.
- Conduct interviews with state and non-state stakeholders who might be able to provide key information into the functioning of the public finance system.

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- Conduct a validation workshop with stakeholders to present the findings and to address issues and inaccuracies. The validation workshop will allow for any final amendments to the report and a corroboration of the information included in the review.
- Write a position paper (no more than four pages) based on the findings of the review for advocacy purposes.

A methodology for undertaking this research should be submitted by the consultant and should be approved by TM, which may be modified by the research team in consultation with TM if required. The verification of information collected is the responsibility of the consultant.

The review should include:

- A brief background of the existing laws and regulations relating to public finance.
- An assessment of the procurement practices in the government, SOEs, independent institutions and the role of the Tender Board.
- Assessment of the existing public finance system through information from state and non-state stakeholders.
- An analysis of gaps and inconsistencies in the existing legal framework, governance system and other relevant factors that contribute to corruption in public finance.
- Key changes brought to the public procurement systems during the past 10 years.
- An analysis of the role of USPs in the current procurement system.
- Policy recommendations on reforming and strengthening the existing public finance system and recommendations towards increasing transparency of the public procurement system.

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ANNEX 2: List of Stakeholders consulted

Auditor General Office (AGO)

Anti-Corruption Commission (ACC)

Tender board secretariat (Ministry of Finance)

CTL Strategies & Prudent Chartered

Maldives Ports Limited (MPL)

Dhiraagu

Bar council

Privatization and Corporatization Board (PCB)

Local Government Authority (LGA)

National Social Protection Agency (NSPA)

Aasandha Corporation

Male' Water and Sewerage Company (MWSC)

Housing Development Corporation Ltd. (HDC)

State Trading Organization PLC. (STO)

Ministry of Education

Ministry of Health

Maldives Airports Company Limited (MACL)

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ANNEX 3: Detailed Government Budget Expenditures

Recurrent Expenditure 2018 and 2019 (with selected details of subcategories)

Table 1: Recurrent expenditure components of national budget 2018 and 2019

	%	2019	%	2018
TOTAL EXPENDITURE	100.00	30,459.80	100.00	28,165.30
Recurrent Expenditure	68.4	20833.8	64.9	18268
Salaries and Wages	15.1	4597.3	15.2	4278.4
Allowances to employees	12	3669.7	12.1	3398.4
<i>Service</i>	4.5	1371.6	4.4	1251.6
<i>Prohibition of second job</i>	1.6	472.4	1.6	439.7
<i>Living & family</i>	1.5	458	1.5	410
<i>Supporting co</i>	0.5	161.5	0.5	151.6
Pensions, Retirement Benefits & Gratuities	5.1	1539.2	5.3	1502.5
<i>Pensions</i>	3.6	1081.5	3.8	1078.6
<i>MRPS contribution</i>	0.8	235.1	0.8	219.8
<i>Retirement Benefits and Gratuities</i>	0.7	222.6	0.7	204.1
Travelling Expenses	0.7	216.7	0.6	175.50
<i>International travel</i>	0.3	92.8	0.2	68.6
<i>Domestic air travel</i>	0.1	42.5	0.1	31
<i>Domestic marine travel</i>	0.1	38.7	0.1	30.2
Administrative Supplies	2.3	702.1	2.20	621.30
<i>Tea, coffee, food</i>	1.1	346.9	1.2	329
<i>Fuel</i>	0.4	131.1	0.4	125.2
<i>Stationary</i>	0.2	73.3	0.2	65.6

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	%	2019	%	2018
Administrative Services	6.9	2,105.30	6.40	1,739.10
<i>Electric fee</i>	2	595.9	1.6	448.2
<i>Lease line, internet & phone</i>	0.6	200.6	0.7	183.6
<i>Consultancy, translation</i>	0.5	147.4	0.2	61.9
<i>Building rent</i>	0.4	122.3	0.3	88.5
Operational Consumables	3.40	1036.1	2.5	702.70
<i>Medical Supplies</i>	2.9	897.5	2.1	587.3
<i>Catering for inmates</i>	0.3	106.4	0.3	81.1
<i>Educational consumables</i>	0.1	13.2	0.1	12.9
Training Expenses	1.9	610.1	1.9	523.10
<i>Scholarships</i>	1.7	517.6	1.7	467.1
Repairs and maintenance	1.6	487.8	0.8	220.20
Financing and Interest costs	5.4	1,646.80	5.10	1,440.30
Aid, advertisements, and Subsidies	10.4	3168.9	12.4	3488.5
<i>Fuel Subsidies</i>	2	597.1	2	572.3
<i>Electricity subsidy</i>	1.1	324.8	1	283.9
<i>Food subsidy</i>	0.8	258.6	1.1	311.2
<i>Aasandha</i>	3.3	1001.8	5.6	1591
<i>Grants and Contributions</i>		1018		678.1
Losses & Write offs	3.5	1,053.70	0.40	124.00

Source: Ministry of Finance Annual Budget 2019 presented to Majlis

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Total Capital Expenditure 2018 and 2019

Table 2: Capital expenditure components of national budget 2018 and 2019

	2019	2018
Capital Expenditure	9,626.00	9,897.30
Development projects	2.3	60.3
Land reclamation and building	1,827.9	1,425.0
<i>Land reclamation</i>	912.9	130.7
<i>Commercial buildings</i>	669.0	1,181.5
<i>Residential buildings</i>	246.0	112.7
PSIP	4,179.4	5,262.6
<i>Airport</i>	1,655.0	2,444.0
<i>Sewerage and sanitation</i>	843.3	732.0
<i>Quay wall and harbor</i>	527.2	499.8
<i>Roads, jetty, and bridge</i>	296.9	936.3
<i>Electricity</i>	251.4	0.0
<i>Other PSIP</i>	605.6	650.6
Fixed assets for office	689.5	557.5
Expenses for economic gain	1,089.0	518.8
<i>Share purchase of SOEs</i>	66.5	–
<i>Capital allowance for SOEs</i>	1,000.9	508.0
<i>Capital for companies operated abroad</i>	21.6	10.3
Loan repayment	1,375.6	1,632.2
Loans	462.2	441.0
<i>SOE loans</i>	372.2	176.5
<i>Private loans</i>	90.0	53.1
<i>Other domestic loans</i>	–	211.4

Source: Ministry of Finance Annual Budget 2019 presented to Majlis