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Acronyms and Abbreviations

ANLC	National Anti-Corruption Association
ARMP	Public Procurement Regulatory Agency
CCMP	Consultative Commission on Public Procurement
CNR	National Regulatory Council
CPAR	Country Procurement Assessment Report
CRD	Dispute Settlement Committee
DGCF	General Directorate of Financial Control
DGCMP	General Directorate of Public Procurement Control
GACC	General Administrative Conditions of Contract
GCC	General Conditions of Contract
GDP	Gross Domestic Product
IGE	General Public Inspectorate
IGF	General Inspectorate of Finance
ITT	Invitation to Tender
JMP	Public Procurement Journal
MTEF	Medium-Term Expenditure Framework
OECD/DAC	Organization for Economic Cooperation and Development/Development Assistance Committee
OHADA	Organization for the Harmonization of Business Law in Africa
PEMFAR	Public Expenditure Management and Financial Accountability Review
PM	Prime Minister
PRSPM	Public Procurement System Strengthening Project
SIGFIP	Integrated Public Finance Management System
SMEs	Small and Medium Enterprises
WAEMU	West African Economic and Monetary Union

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NIGER
SECOND PUBLIC EXPENDITURE MANAGEMENT
AND FINANCIAL ACCOUNTABILITY REVIEW (PEMFAR II)

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1. INTRODUCTION

1.1. This review of the public procurement system in Niger is part of the “Second Public Expenditure Management and Financial Accountability Review of the Government 2009” (PEMFAR II). The objectives of this review are to: (i) take stock of the implementation of the recommendations made in the 2004 Country Procurement Assessment Report (CPAR); (ii) examine the success factors and constraints at play in implementing reform of the system; (iii) establish the baseline for measuring the impact of the reforms and the progress made in improving the public procurement system by using the baseline indicators of the methodology developed by the Organization for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC)¹ and the WAEMU Directives;² (iv) identify the risks associated with the weaknesses of the system; and (v) propose recommendations serving as the basis for government preparation of an action plan for addressing the problems identified. This report which constitutes Volume II of PEMFAR II was used to prepare the main report of the review, in particular its Chapter 5 assessing the public procurement system.

1.2. The review involved a detailed assessment of the progress made in implementing the action plan from the 2004 CPAR and the main constraints affecting its full implementation. This detailed assessment took account of the new developments with respect to the institutional framework for public procurement. The 2004 CPAR made it possible to: (i) confirm and update the major strengths and weaknesses of the public procurement system identified following the 1998 CPAR; (ii) assess the progress made in the implementation of the action plan from the 1998 CPAR and analyze the adequacy of the public procurement reform program financed under the Public Procurement System Strengthening Project (PRSPM); and (iii) define the possible actions and measures that could be taken to improve the system and continue the reform program. The 2004 CPAR recommendations pertained to actions aimed at: (i) facilitating the continuation of reform efforts; (ii) enhancing the transparency and effectiveness of the legal and institutional framework; (iii) improving operations; and (iv) strengthening the integrity of the system. The detailed recommendations are set forth in Chapter 3 of this report.

1.3. In order to assess the conformity of the system with the quality indicators defined by the OECD/DAC methodology, on the one hand, and WAEMU Directives 004/2005 and 005/2005 on public procurement and delegations of public services on the other hand, the review was based on the outcome of the national public procurement system review using the OECD/DAC methodology that was conducted by the Government in April 2008. The review thus began with validation of the conclusions and scores proposed in the OECD/DAC report prepared by the Government with the assistance of a private consulting firm (2AC), in conformity with existing national procedures and practices. This validation entailed examination of the explanations underlying the scores assigned. This assessment also made it possible to continue diagnosis of the gaps existing between the public procurement system in place and the system proposed by

¹ Document entitled “Methodology for the Assessment of National Procurement Systems,” Version 4, www.oecd.org/dac/effectiveness.

² The WAEMU Directives, adopted in December 2005, relate to: (i) the procedures for awarding, executing, and regulating public procurement contracts and delegations of public services (004/2005); and (ii) controlling and regulating public procurement contracts and delegations of public services (005/2005).

the WAEMU Directives, which was intended to be reflected in Nigerien national legislation by January 1, 2008 at the latest.

1.4. To conduct this review, a joint mission from the World Bank, African Development Bank, and United Nations Development Programme visited Niger from February 9 to 20, 2009, and worked in close collaboration with the Public Procurement Regulatory Agency (ARMP).³ One of the principal missions of this institution, created by Ordinance No. 2002-007 of September 18, 2002 setting forth the Public Procurement Code, is to define the national policy on public procurement. The missions of the ARMP, the composition of its management body (the Executive Secretariat), and the National Regulatory Council (CNR), a steering and decision-making body made up of seven representatives of the Central Administration, four representatives of civil society, and four representatives of the private sector, naturally make it a valuable participatory and technical framework for conducting reform implementation, replacing the Project Execution Unit initially established for carrying out the reforms of the 2004 CPAR.

1.5. The conclusions and recommendations of this review can be used by the Government to update its short- and medium-term action plans, while highlighting those actions that it would be desirable for the Government to implement on a priority basis.

2. CONTEXT

A. NATURE AND SCOPE OF PUBLIC PROCUREMENT IN PUBLIC EXPENDITURE

2.1. The 2004 CPAR estimated the share of public procurement in GDP as being 11-13 percent for 2003. The statistics gathered at the time by the Central Procurement Commission indicated 203 contracts during 2002 for a total amount of CFAF 47,897,764,036 and 65 contracts during 2003 for a total amount of CFAF 32,310,228,212. The total number of contracts awarded by competitive bidding came to 151 in 2002 and 35 in 2003, or 66 percent and 54 percent of the total, respectively. With regard to contract financing, the national budget accounted for 12.7 percent of total financing and 35.4 percent of the number of contracts awarded.

2.2. The statistics provided to the current mission by the General Directorate of Financial Control (DGCF), the only structure that is supposed to receive all contracts owing to its function of registration, which is mandatory for any contract, indicate a total amount of CFAF 60,215,160,464 for contracts awarded throughout 2008, of which CFAF 51,999,432,962 (86.4 percent) was financed against domestic resources and CFAF 8,215,527,202 (13.6 percent) was externally financed. These data are clearly incomplete for at least two reasons: (i) the investment budget, which normally supports the vast majority of contracts, is financed for the most part by external donors; and (ii) the total contract amount indicated represents scarcely 3 percent of GDP, equivalent to 28 percent of the investment expenditure executed by the

³ From February 6 to 20, 2009, Mr. Moustapha Lo, an international consultant financed by the United Nations Development Programme (UNDP), participated in this mission and prepared this report. The multi-donor mission was conducted by Messrs. Amadou Ibrahim (TTL, Economist) and Eric Yoboué (Co-TTL, Senior Procurement Specialist), both World Bank experts, and included Messrs. Ibrah Sanoussi (Procurement Specialist) and Mamadou Yaro (Senior Financial Management Specialist). The AfDB team was represented by Mr. Issa Faye (Country Economist). The team was supported by Ms. Rachidatou Madougou Idrissa (Program Assistant, World Bank).

Government in 2008.⁴ This share of public procurement is considerably smaller than it was in 2003 and below the average for the countries of the subregion.⁵

B. BREAKDOWN OF PUBLIC PROCUREMENT BY METHOD OF PROCUREMENT AND NATURE OF SERVICES

2.3. Analysis of the statistics provided by the DGCF reveals that the amounts of contracts awarded through limited competitive bidding and through directly negotiated contracts came to CFAF 5,012,262,774 and CFAF 15,197,051,731, respectively, or 8.3 percent and 25.2 percent of the total. Thus, a total of 33.5 percent of the contract amounts was awarded using procurement methods with little or no competition. If the analysis is confined strictly to contracts financed against domestic resources, we find that the amounts of contracts awarded through limited competitive bidding and through directly negotiated contracts account for 10 percent and 29 percent, respectively, of the total expenditure against such resources.⁶

2.4. These statistics, while not exhaustive, do demonstrate the continuing usage of procurement methods with no or limited competition. Moreover, the fact that the statistics are not exhaustive could well be explained by the failure of some structures such as NIGELEC to apply the Procurement Code.

C. ROLE OF THE CENTRAL ADMINISTRATION AND OTHER SUB-NATIONAL ADMINISTRATIONS

2.5. The regulatory framework normally makes all public contracting authorities subject to the Procurement Code, including legal entities under private law acting on behalf of the Government. The contracting authorities are sufficiently organized within the framework for implementing procurement operations, without undermining their responsibilities in respect of procurement and contract awards. The individual responsible for the contract opens the bids at a public session with the assistance of a bailiff and evaluates the bids with the assistance of a technical commission (Articles 23 and 24 of the Procurement Code). Orders Nos. 113 and 114 Cab/PM of October 10, 2006 regulate, respectively, the standard composition and powers of the bid evaluation commissions and the organization of the bid opening session.⁷ For the special case

⁴ The information obtained from the Government (DGCF) establishes the total public procurement in 2008 at CFAF 60.2 billion. Investment expenditure came to CFAF 217 billion in 2008 (source: *Journal Officiel*).

⁵ The registration of public contracts in the DGCF statistical database occurs after the approval of contracts by the relevant authorities, independent of the source of financing (internal or external). Procurement statistics discussed in this report relate mostly to domestically financed contracts. Regarding externally financed contracts, they are usually sent to the delegated accounting officer of external funds (DGF). These procurements are often performed, after approval, without prior registration of DGCF. As a consequence, these contracts are not included in the statistics reported. However, DGCF has been careful to draw the attention of users, in particular ARMP, to the incompleteness of statistics with regard to externally financed contracts.

⁶ Procurement by limited consultation and agreement are provided directly by the code of public procurement in Niger, in particular Articles 38 and 42. They are procurement methods the use of which is regulated by law. The limited consultation respects the principle of competitive tendering of at least seven (7) bidders. Procurement through direct negotiation is reserved for cases where advertising would not be compatible with security and other concerns.

⁷ Decrees 113 and 114 CAB / PM of 10/102006 were replaced by Decrees No. 0037/CAB/PM/ARMP of 03/02/2010 on the establishment, composition, type, responsibilities and operation of the ad hoc committee for the award of public contracts; No. 0079 CAB / PM / ARMP of 04/09/2010 on the establishment, composition,

of the bid evaluation commissions for the Central Administration, representatives of the Ministry of Finance and private sector organizations participate as members, while representatives of the legal professions and the financial partners may participate as observers. The internal control bodies engage in the oversight of contracts independently of the control carried out by the General Directorate of Public Procurement Control (DGCMP).

2.6. With regard to public establishments, government-owned corporations and mixed capital corporations other than the court bailiff, no member outside the supervisory bodies of these organizations participates in the bid opening sessions. However, in addition to the representatives referred to above in the case of the Central Administration, representatives of the supervisory ministry and of the Professional Banking Association (APB) participate as members and observers, respectively. For purposes of a priori control, the contracts of these corporations are subject to review by the DGCMP.

2.7. There is thus a special situation in Niger, consisting of private sector participation in the bid evaluation commissions. While this organizational approach was introduced with a view to enhancing the transparency of procurement operations, it nonetheless raises a few problems of conflicts of interest that the Government has not sufficiently taken into account. This initiative, while laudable in light of the objectives of its introduction, could be reorganized in the direction of citizen oversight to be exercised by the private sector and civil society in a form that would eliminate potential conflicts of interest.

D. LINKS WITH BUDGETARY AND CONTROL MECHANISMS

2.8. In Niger, budget preparation is based in principle on: (i) sectoral strategies; (ii) sectoral MTEFs and program budgets reflecting the priorities; and (iii) an interconnection with the poverty reduction strategy (PRS). However, while this approach to budget preparation is adhered to relatively well in the priority sectors (Education, Health, Rural Sector), in general the MTEFs and the program budgets associated with them lag behind the approved budgets. The main weakness in the current budgetary system is the lack of integration of the sectoral MTEFs with the overall public finance framework and an overall MTEF.

2.9. As soon as budgets are approved, the contracting authorities are supposed to prepare their contracts in conformity with the appropriations allocated and then launch procurement operations. All the structures subject to the Public Procurement Code are intended, in accordance with Article 16 of that Code, to inform the public of the procurement operations they intend to launch by competitive bidding during the year, this by means of publishing a general procurement notice. In addition, at the start of the year, a circular from the Prime Minister requests that all contracting authorities publish a procurement plan setting forth all the contracts to be awarded during the year, which is thus more exhaustive than the general notices.

2.10. Although this provision is not explicit in the Procurement Code, on the ground, the contracting authorities are required to document the availability of appropriations before launching any procurement process. This document constitutes, in principle, the interface

type, responsibilities and operation of the ad hoc committee for the award of contracts for procurement of state companies and mixed companies. The main innovations introduced by these texts are the exclusion of the private sector and the Jeune Chambre Internationale from the procurement award committee.

between the budget and the contracts to be awarded, even if it does not offer all the security required as regards setting aside payment appropriations. There is not yet any electronic interface between the budget and the contracts.

2.11. As regards control, the powers of a number of different governmental bodies are such that they are involved in procurement procedure control and audit operations. Financial Control is exercised within each public contracting authority and covers all expenditure without regard to the origin or the category of appropriations, as well as any possible revenues generated by the structures controlled. The Financial Controller verifies the legality, regularity, and ethical status of all expenditure proposed. The Finance Inspectorate investigates any question referred to it for review by the Minister of Finance on its own behalf, on behalf of the Prime Minister, or on behalf of any other Minister in sectors under his or her purview. The Court of Accounts has the highest jurisdiction for public finance oversight. It has judicial authority, oversight authority, and an advisory capacity. As for the control exerted by the General Public Inspectorate (IGE), its essential goals are to safeguard the interests of the State and the rights of persons, and to verify in all entities the observance of the laws, ordinances, decrees, regulations, and instructions governing its administrative, financial, and accounting operations. The a priori control of public procurement is exercised by the DGCMP, which is not yet operational and whose authority is currently being exercised on a transitional basis by Financial Control for contract amounts lower than CFAF 300 million. However, notwithstanding this arrangement, the effective control of procurement operations is not yet fully carried out. The DGCMP is not yet operational, and Financial Control—which acts in its stead below the above-mentioned threshold—does not have adequate human resources to address this workload. The Court of Accounts has the same human resource problems, which explains the lack of jurisdictional audit of procurement. Moreover, although the legal and regulatory provisions clearly indicate that the oversight bodies are prohibited from serving as members of the commissions that open and evaluate bids and award contracts, the practice on the ground is not in conformity with this Directive, in particular in the case of Financial Control.

A. PROCUREMENT SYSTEM AND ITS LINKS WITH THE REST OF THE PUBLIC SECTOR

2.12. The Procurement Code applies to all public persons. Article 2 of the Procurement Code defines contracting authorities as follows: the central government, subnational governments, public establishments, State corporations, companies with a majority public financial participation, and legal entities under private law acting on behalf of the State or legal entities under public law when they benefit from their financial assistance or guarantee. The definition of public procurement in the same article includes delegations of public service. There is thus no exemption from application of the Code by public persons within the context of their purchases.

2.13. This indicates the proper integration of public procurement within the scope of public expenditure. In order to better enhance the effectiveness of contracting authorities other than the central government, Article 44 of the Code provides that the various procurement methods will be adapted as necessary for the contracts entered into by rural communities. The procurement thresholds, contract award procedures, and control and approval procedures adapted for the contracts of subnational governments will be covered by regulatory provisions prepared by the Public Procurement Regulatory Agency (ARMP). Lastly, the procurement procedures of State

corporations and mixed capital corporations will be the subject of specific manuals of procedures prepared by the ARMP.

B. PROCUREMENT SYSTEM, KEY ACTORS, AND THEIR ROLE IN THE OPERATION OF THE SYSTEM

2.14. In its formal respects, the institutional arrangement for public procurement in Niger is consistent with the architecture recommended by WAEMU Directives, with a regulatory agency (ARMP) distinct from the administrative structure responsible for control (the DGCMP). In substance, the powers vested in the regulatory body by the WAEMU Directives are exercised by the ARMP: policy definition, addressing complaints, training, information, audits, and sanctions. However, certain provisions of the Procurement Code give the ARMP the prerogative to grant authorizations for recourse to exceptional procedures, such as directly negotiated contracts (Article 43), which constitutes a source of conflict of interest and nonconformity with the above-mentioned Directives. The Administration, the private sector, and civil society participate in the steering and decision-making body of the ARMP in accordance with the Directives, but the parity they recommend is not observed.

2.15. The ARMP includes the Dispute Settlement Committee (CRD), which receives bidders' appeals at the procurement stage and intervenes in the amicable settlement of disagreements arising from contract execution. Notwithstanding the obstacle raised by the conflict of interest referred to in the preceding paragraph, this Committee is independent in settling disputes. However, the interventions of the Dispute Settlement Committee are limited to bidders' complaints, and should be broadened to include disputes between structures of the administration in the procurement context, as recommended by WAEMU Directives.

2.16. The DGCMP is the administrative body responsible for the a priori control of procurement, but with its powers—as recommended by WAEMU Directives—curtailed in part by the issuance of the exemptions envisaged by the regulations, and for a posteriori control. This directorate is intended to have decentralized bodies at the central, regional, and departmental levels. The DGCMP's oversight is conducted without prejudice to that carried out by the Central Government's other supervisory bodies.

2.17. In the course of procurement operations, the contracting authorities are required to comply with all of the transparency and equity rules provided by the regulations, and are required to follow up on requests for relief brought by bidders.

2.18. The private sector and civil society are fully associated with the operation of the system, initially through their participation in the ARMP's National Regulatory Council (CNR) and, in the case of the private sector, through its participation in the bid evaluation and contract award commissions. Nevertheless, this private sector participation in these commissions remains a source of conflict of interest which it is important to correct.

3. GOVERNMENT REFORM PROGRAM

A. BACKGROUND OF THE REFORM PROCESS

3.1. In 2004, the World Bank, in collaboration with the Government of Niger, updated the analytical review of the procurement system (CPAR review)⁸ conducted in 1998. Following that 1998 review, a World Bank Institutional Development Fund was made available to the Government to support the execution of an action plan aimed at improving Niger's public procurement system.

3.2. While it did take note of progress in the legal and regulatory framework, the 2004 CPAR concluded that there were still major weaknesses in the system in terms of effectiveness, transparency, and promotion of the private sector. These conclusions were approved by the Government, and the principal recommendations aimed at making the necessary improvements to the system were formulated in an action plan that took account of the country context. The objectives of this action plan, arranged under the four strategic pillars of a sound procurement system, were aimed at the following:

- Under Pillar I, on the legislative and regulatory framework: (i) introducing a functional and operational legal framework in keeping with international and community standards, and (ii) ensuring efficient application of the law and greater control over procurement operations.
- Under Pillar II, on the institutional framework and management capacity: (i) effectively managing the public procurement reforms and conducting public procurement oversight, (ii) integrating public procurement operations into the public expenditure chain, and (iii) developing an institutional development capacity.
- Under Pillar III, on procurement operations and market practices: (i) ensuring the efficient and satisfactory management of public procurement by contracting entities, (ii) ensuring private sector competitiveness, and (iii) introducing a legal and regulatory framework in concert with the public and private sectors in order to promote dialogue and trust on the part of private operators and address the problems that are negatively affecting their environment, development, and competitiveness.
- Under Pillar IV, on the integrity and transparency of the procurement arrangements: (i) having an effective control and audit so as to ensure the proper conformity of practices and compliance with legal provisions, and (ii) eliminating fraudulent practices and corruption.

3.3. Execution of the action plan was envisaged through the Public Procurement System Strengthening Project (PRSPM), involving a Steering Committee chaired by a Representative of the Prime Minister and a Project Execution Unit. The participatory approach was used for implementation of the activities, including coordination with the management teams of the various donors involved.

⁸ CPAR: Country Procurement Assessment Report.

3.4. The paragraphs which follow take stock of the implementation of the various actions called for under the 2004 CPAR action plan for achieving each of the objectives sought.

B. REFORMS IMPLEMENTED SINCE THE 2004 CPAR

Pillar I - Legislative and Regulatory Framework

3.5. In connection with the objective to introduce a functional and operational legal framework in keeping with international and community standards, only one action had been included in the action plan, namely the preparation of standardized legal and regulatory provisions in harmony with WAEMU Directives. Ordinance No. 2002-007 of September 18, 2002 setting forth the Public Procurement Code of Niger was adopted and amended by Ordinance No. 2008-06 of February 21, 2008, with a view to transposing WAEMU Directives relating to public procurement.⁹ While the latter ordinance was rejected by Parliament, the Government made it effective and it currently governs public procurement. It calls for the creation of the DGCMP, the body responsible for the a priori and a posteriori control of the contracts awarded by the contracting authorities. Many implementing texts have been adopted:

- Decree No. 2004-190/PRN/ME/F of July 6, 2004, on the composition, organization, and operating modalities of the Public Procurement Regulatory Agency (ARMP).
- Decree No. 2004-192/PRN/ME/F of July 6, 2004, establishing the operating arrangements of the Disputes Settlement Committee (CRD).
- Decree No. 2004-193/PRN/ME/F of July 6, 2004, on the arrangements for paying the balance of certain categories of contract and making payments to small and medium enterprises.
- Decree No. 2004-194/PRN/ME/F of July 6, 2004, on the paperless implementation of procurement procedures.
- Decree No. 113/Cab/PM of October 10, 2006, on the standard composition and powers of the commissions evaluating public procurement tenders.
- Decree No. 114/Cab/PM of October 10, 2006, organizing the bid opening sessions for public procurement.
- Decree No. 2007/004/PRN/ME/F of January 17, 2007, updating the minimum and maximum prices for bidding materials and the rate of the flat rate fees for the award of government contracts.
- Decree No. 270/Cab/PM of October 24, 2007, setting procurement thresholds and deadlines for publicizing and accepting procurement tenders.
- Decree No. 2008-120/PRN/ME/F of May 9, 2008, on the organization and powers of the General Directorate of Public Procurement Control (DGCMP).
- Decree No. 180/Cab/PM/ARMP of September 29, 2008, approving the Standard Request for Proposals for the public procurement of intellectual services.
- Decree No. 181/Cab/PM/ARMP of September 29, 2008, approving the Standard Request

⁹ The WAEMU Directives were adopted in December 2005 and relate to (i) the procedures for awarding, executing, and paying for public procurement and public service delegation contracts (004/2005), and (ii) the control and the regulation of public procurement and public service delegations (005/2005).

for Proposals for the public procurement of works.

- Decree No. 182/Cab/PM/ARMP of September 29, 2008, approving the Standard Request for Proposals for the public procurement of supplies and current services.

3.6. These implementing provisions as well as the reference law (ordinance setting forth the Procurement Code) were put in place to make the public procurement system operational in conformity with WAEMU Directives. There are still some areas in which complete transposition of these Directives has yet to occur, and these will be examined in conjunction with the relevant pillars dealing with issues to which they refer in Chapter 4 of this report, assessing the quality of the procurement system.

3.7. In conjunction with the objective to ensure efficient application of the law and exercise greater control over procurement operations, two actions were envisaged: (i) disseminating the Public Procurement Code and the associated implementing provisions; and (ii) publishing and disseminating the manuals of procedures, annotated code, and contractual documents. To this end, compendia bringing together the various laws and regulations relating to public procurement were prepared and made available to the stakeholders in the system. Satisfactory dissemination of the regulations was thus achieved as envisaged in the CPAR action plan. This dissemination of regulations was carried out via information/public awareness seminars for the administrations, the private sector, and civil society that were held throughout the country. Standard requests for proposals for the procurement of intellectual services, supplies and services, and works were adopted by decree and disseminated. These materials are to a large extent in conformity with international standards, with the exception of a few provisions, such as the possible use of nonstandard scoring systems for supplies contracts, allowing national preferences in violation of community legislation, and some other clauses that are not in conformity with the Procurement Code. The analysis of the system contained in Chapter 4 of this report will highlight the points of these materials that are not in conformity. In contrast, the action relating to the preparation of a manual of procedures for the Procurement Code and providing it to stakeholders could not be completed. A manual was financed against a World Bank IDF. It has been available since January 2005 but has yet to be validated and is still in draft form. Moreover, the preparation of bidder and contract manager guides is under way with financing from Canada.

3.8. Review of the draft manual of procedures reveals that it was prepared on the basis of the 2002 ordinance, thus calling for an update in order to take account of the innovations introduced under the 2008 ordinance. This said, the manual is brief, user-friendly, and serves as a good guide for understanding the various articles of the Code. However, it needs to be supplemented in order to address in greater depth the procedures for the implementation of procurement operations by the contracting authorities. Indeed, many paragraphs are limited to the guidance set forth in the Code itself, whereas they should detail the procedures relating to the implementation thereof. For example, with regard to rating candidates, the manual is limited to replicating the wording of the Code, namely that “each candidate shall document his or her legal, technical, and financial capacities,” whereas what would be of value for the contracting authority would be to know how to reflect these requirements in an ITB. The manual would thus have to indicate, for example, the kinds of financial proofs required depending on the various types of contracts, as well as the allowable or acceptable proportions depending upon the amount of the contract. Another example relates to the selection criteria. Here, too, the manual replicates the Code in

stating that “other criteria may be indicated, such as usage costs, the completion period, and payment schedule,” but fails to indicate how to use these criteria in an ITB. Before adoption, the manual should therefore be supplemented in order to make it more operational for users.

3.9. Thus, with the exception of the effective introduction of a manual of procedures for the Code, all of the actions envisaged under Pillar I have been carried out.

Pillar II - Institutional Framework and Management Capacity

3.10. With regard to the objective of effectively managing the public procurement reforms and engaging in oversight of public procurement, two actions were envisaged: (i) adoption by the Government of a decree on the powers, composition, and operation of the ARMP and adoption by the ARMP of its internal by-laws; and (ii) the definition and establishment of the logistical and material resources of the ARMP in keeping with the guidelines in the decree on the ARMP. These two actions were carried out in their entirety. Decree No. 2004-190/PRN/ME/F of July 6, 2004, addresses the composition, organization, and operating procedures of the ARMP. Pursuant to the terms of this decree, the ARMP is composed of two bodies, the National Regulatory Council (CNR) and the Executive Secretariat (SE). The CNR, the steering and decision-making body of the ARMP, is composed of seven representatives from the Administration, four from the private sector, and four from civil society. The SE is the executive body. It is headed by an Executive Secretary and has three operational directorates. A decree on the internal by-laws of the CNR was adopted on May 11, 2007. However, examination of the text on the ARMP reveals two points that are not in conformity with WAEMU Directives. With respect to powers, the ARMP “is responsible for examining any exceptional waiver procedure relating to public procurement,” which constitutes a violation of the principle of separation of regulatory and control functions of regulation as recommended by WAEMU Directives. This activity means de facto the effective participation of the ARMP in procurement operations, thus contributing to an undermining of the necessary impartiality of the Dispute Settlement Committee in cases of appeals against the use of exceptional procurement modes. The second point of nonconformity relates to the composition of the CNR, which should have tripartite and equal membership from the administration, the private sector, and civil society, according to WAEMU Directives. The decree fails to reflect this parity. With regard to the second action, a contract is currently being financed by the European Union with a view to equipping the ARMP with vehicles. Information technology resources are in place, although they need to be supplemented. Moreover, the ARMP has indicated the need for a more functional head office, in anticipation of an increase in the volume of its activities.

3.11. With regard to the objective of integrating public procurement into the public expenditure chain, three actions were envisaged: (i) to prepare regulatory texts requiring that contracts already entered into be reflected in the budget, (ii) to electronically interconnect procurement planning and management with the computerized instruments for budgetary control and the public expenditure chain, and (iii) to interconnect the instruments for monitoring contract execution with those for cash flow management.

3.12. With regard to the first action, Decree No. 2004-193/PRN/ME/F of July 6, 2004, setting forth the payment modalities for the balances of specified categories of contracts and payments

to small and medium enterprises, contributed to ensuring the availability of appropriations relating to contracts already entered into.

3.13. Work on the two other actions has not yet begun. The result envisaged was to have an IT tool integrating contracts into the process of reserving appropriations formally authorizing expenditure, as well as integrating contract management with cash flow management. While the computerized public expenditure management system is available, it is not yet used by the various administrations. Similarly, no initiative has yet been taken to computerize the public procurement management chain, which constitutes a precondition for its integration with the public expenditure chain. Carrying out these actions remains paramount in order to ensure the proper control and security of the appropriations committed in public procurement.

3.14. Finally, as regards the objective of establishing an institutional development capacity, the action identified was to introduce a national framework for public procurement training at various levels for different targets. This activity has been carried out only partially through the information/public awareness seminars organized by the ARMP at the central and decentralized levels for the administration, and for the private sector and civil society. However, achieving the objective was to be underpinned by the definition of a genuine training strategy, which has yet to be done.

Pillar III - Procurement Operations and Market Practices

3.15. Three actions were identified in connection with the objective of ensuring the efficient and satisfactory management of public procurement by the contracting entities, namely: (i) the development of a training plan and modules on the management of public procurement for the contracting authorities; (ii) the selection of a professional supervisor with recognized qualifications; and (iii) development of a gradual program for building local government capacities in conjunction with the effective stages of decentralization and with needs. None of these actions has been fully carried out. The ARMP did develop modules that were used for improving the information/public awareness of the contracting authorities, including local governments. However, these modules do not constitute supports for genuine training in procurement management. It bears noting that Canada is currently supporting the ARMP for the development of suitably adapted training modules that could contribute to building the capacities of the contracting authorities. The second action, concerning the selection of a professional supervisor, assumes the development of training leading to qualification. This has not yet effectively been started, and realism suggests that that it will not be achieved until the medium or long term. Its feasibility will also depend on the initiatives taken in this area by the WAEMU and other countries of the subregion.

3.16. With respect to the objective of ensuring the competitiveness of the private sector, the actions envisaged concerned: (i) the organization of information and training campaigns, in particular concerning the rights of bidders; (ii) the creation and publication of a Public Procurement Journal, and (iii) the introduction of a legal and regulatory framework for concertation between the public sector and the private sector in order to promote dialogue and trust on the part of private operators and address the problems that are negatively affecting their environment, their development, and their competitiveness. These three actions were carried out, although the first needs to be strengthened by additional meetings more targeted toward the

private sector, in particular by focusing on enterprises in the same sector in order to be able to address the special characteristics of each sector. Indeed, when the Procurement Code entered into force, the ARMP organized several information/public awareness sessions for the private sector. The Public Procurement Journal (JMP) is published weekly under the aegis of the ARMP (No. 74 had just been published at the time of the mission's visit) and contains relevant information on contracts: procurement plans, special notices on calls for tenders, notices of contract awards, etc. As for the framework for concertation between the public and private sectors, the National Regulatory Council is the appropriate venue, as it offers even to the private sector a means of having an impact on public procurement and ensuring that its concerns are taken into account—in particular in the areas of training, efficiency, equity, and transparency—through its participation in the Dispute Settlement Committee.

Pillar IV - Integrity and Transparency of the Public Procurement System

3.17. In connection with the objective of having an effective control and audit system to ensure the proper conformity of practices and compliance with legal provisions, two actions were programmed: (i) to prepare terms of reference for the audit services of ex post review of procurement procedures and technical audits on conformity and quality control of works performed and supplies delivered; and (ii) to establish audit campaign programming. The first action was carried out with an audit covering fiscal years 2003 and 2004. The report was widely distributed and the majority of the recommendations were taken into account and incorporated into the updating of the texts. The terms of reference for the 2007 audit are available, but the ARMP does not yet have the resources necessary for performing the services. However, the ARMP has conducted several investigations on the basis of accusations or information published in the press. As for the second action, aimed at the introduction of a plan for ex post control and identifying the units and types of contracts with an indication of the control periods, it was not carried out. Such an activity would normally have been performed by the General Directorate for Public Procurement Control (DGCMP), which is not yet operational.

3.18. With regard to the objective of eliminating fraudulent practices and corruption, three actions were contemplated: (i) to designate an entity responsible for directing all efforts to combat corruption at the national level; (ii) to define a framework for following up on audit findings, determining a system of sanctions according to the types of violation of the Code or procedures; and (iii) to define a circuit leading to an objective judgment and its enforcement in accordance with the provisions of the Penal Code. In Niger, there exists a National Anti-Corruption Association (ANLC) and a Sectoral Committee for Coordination and Follow-up of the Anti-Corruption Campaign under the Threshold Program of the Millennium Challenge Account (MCA), established by Order No. 002/MJ/GS/SG of March 7, 2008 of the Minister of Justice. There is no special arrangement for public procurement. While their effectiveness has yet to be proven, these two structures are indicative of the Government's desire to put in place entities responsible for directing the fight against corruption. With regard to the second action, the action plan called for it to take the form of a ministerial directive (from Justice or Finance) explaining the measures to be taken for the application of sanctions. No such instruction has yet been issued, and no mechanism has yet been defined by the ARMP. Moreover, the Penal Code has not yet been revised so as to address certain offenses specific to public procurement. As for the third action, the Code envisages many sanctions imposed by the ARMP against bidders on

government contracts as well as administrative sanctions for civil servants. Currently, the sanctions imposed on bidders are published.

3.19. A Public Procurement Journal disseminating relevant information on government contracts has been created by the ARMP and is regularly published. Information/public awareness efforts have been organized for stakeholders. The actions that could not be taken have been taken over by the ARMP within the framework of an updated action plan, in particular: (i) the development of a genuine strategy for training and training leading to qualification, (ii) the integration of public procurement with the public finance management chain via an electronic connection, and (iii) the conduct of audits and the establishment of a framework for following up on them, and the campaigns to combat corruption.

C. REFORM: SUCCESS AND BLOCKAGE FACTORS

3.20. **The main success factors lie in the Government's commitment and the existence of the regional legal framework.** The political will of the Government, as reflected in the creation and operationalization in 2007 of the Public Procurement Regulatory Agency (ARMP), which is responsible for, among other things, defining the national policy as regards public procurement and addressing appeals by bidders, was a key factor in the successful implementation of the action plan. The ARMP, which is administered in a participatory manner by representatives of the Administration, civil society, and the private sector, has become the principal institutional framework for implementation of the reform. The active participation of the private sector and civil society in the Agency's activities is indicative of public support for the reform. In particular, the confidence of the private sector in the system is more and more pronounced following operationalization of the Dispute Settlement Committee of the ARMP, which in its eyes constitutes a guarantee of transparency in the implementation of procurement operations. Moreover, the public procurement regulation fee—benefiting the system with a view to ensuring the financial autonomy of the ARMP—should also be regarded as one of the success factors because it guarantees the survival of the Agency and provides assurance of the completion of important activities in favor of the system, such as the contract audits stakeholder training. Similarly, the effectiveness of the Government and donor concertation framework and the coordination of the reform efforts in the area of government procurement facilitated the mobilization of financial resources essential for the implementation of certain activities. Finally, the obligation to conform to WAEMU Directives relating to the harmonization of public procurement in the Member States of the Union was yet another important success factor. Indeed, these Directives, which are in line with international good practices and standards with respect to public procurement, are mandatory for all WAEMU Member States, which were obligated to transpose them into their national legislations by no later than December 2007.

3.21. **However, constraints of an institutional, social, and financial nature have affected implementation of the 2004 CPAR action plan, which had difficult beginnings.** The effective establishment of the ARMP occurred three years after adoption of the 2004 CPAR conclusions of the 2004 CPAR because of the constraints associated with, on the one hand, the absence of the resources needed to make this institution operational, and, on the other hand, the exceptional regulatory provisions requiring the members of the Regulatory Council to take an oath of office before assuming their functions. Moreover, the hierarchical level at which the Code was established—namely, the legislative level—has raised and will continue to raise problems with

regard to updating provisions that should be set forth in regulations. It is recommended that the legislative body focus on formulating the basic principles to govern public procurement and leave it to regulations to determine the implementing provisions for these principles. The constraints associated with the redeployment or recruitment of civil servants within the new entities in the institutional framework constitute a blockage factor that the reform strategy will need to take into account. The General Directorate of Public Procurement Control, which has just been created, is not yet operational for lack of personnel. However, its role is paramount in the context of the execution of procurement operations by the various contracting authorities. Because of this situation, the DGCMP is performing a priori control only on contracts in amounts equal or greater than CFAF 300 million, thus cutting off the internal control mechanism at the level of the Administration from its principal stakeholder for a substantial share of contracts entered into. The same situation is observed with regard to the Court of Accounts which, for lack of human resources, is unable to perform jurisdictional audits of procurement operations.

4. ASSESSMENT OF THE QUALITY OF THE PROCUREMENT SYSTEM

A. OVERALL ASSESSMENT OF THE SYSTEM

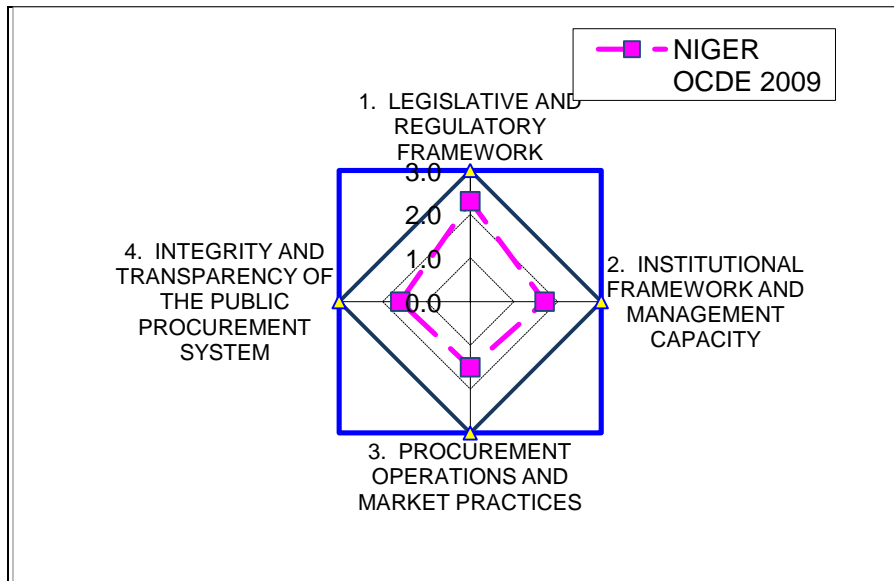
4.1. Remarkable improvements have been made to the public procurement system in Niger since the 2004 CPAR. The Government carried out the majority of the key actions envisaged in the CPAR action plan. The creation and operationalization in 2007 of the Public Procurement Regulatory Agency (ARMP)—which is responsible for, among other missions, defining the national policy as regards public procurement and addressing appeals by bidders, and is administered in a participatory manner by representatives of the Administration, civil society, and private sector—was a success factor in the implementation of the action plan. This efficient institutional framework that has some degree of independence in its decision-making made it possible to carry out a number of key activities under the action plan, including the development of implementing provisions and specimen procurement files to facilitate the proper application of the Code, the publication of a public procurement journal containing information on opportunities and on the results of contract awards, the ongoing development of electronic information and statistical management systems, and public awareness and training seminars for the staff of the Administration, the private sector, and civil society.

4.2. Satisfactory progress in the implementation of the 2004 CPAR action plans attests to the Government's desire to establish a system that is in conformity with international standards. The creation and setting up of a public procurement regulatory agency (the ARMP) that is administered in a participatory way made a substantial contribution to accelerating implementation of the reform and imparting greater transparency to the public procurement system. The introduction of a procurement regulation fee that benefits the system and ensures the financial autonomy of the ARMP was a factor in the successful implementation of the reform activities. Moreover, the Government's establishment in 2007 of a framework for concertation with donors active in public procurement was a decisive success factor behind the progress made, in particular by facilitating the mobilization of resources (EU, CIDA, etc.) and the coordination of reform activities in Niger. Finally, the Government initiated a process of transposing WAEMU Directives into national legislation, thereby contributing to enhancing the

transparency and efficiency of the public procurement procedures and practices and their harmonization at the level of the Member States of the Union.

4.3. **However, there are important challenges still to be met, as shown by the results of the joint assessment of the public procurement system.** While public procurement reform in Niger clearly made progress, the preliminary conclusions set forth in the next paragraph indicate that there are still major weaknesses in the system, both on the level of the legal and institutional framework and on the level of internal and external audit practices and effectiveness, and these could well undermine the efforts made by the Government to improve the transparency and efficient management of public procurement. According to the data collected by the mission, public procurement accounts for scarcely 3 percent¹⁰ of GDP, equivalent to 28 percent of capital expenditure executed by the State in 2008. Although these data are not exhaustive, as evidenced by the low¹¹ rate of the amount of such contracts by comparison with the investment budget, as a general rule public procurement constitutes a sizable component of public expenditure, and transparent and efficient contract execution is essential in order to contribute to establishing acceptable financial governance and to ensure adequate “value for money” for public expenditure. It would therefore be essential for the Government to take measures to maintain the pace of the reforms, enhance the transparency of the legal framework, and to make the internal controls and audits of public procurement effective and efficient. Similarly, efforts still need to be made to finalize the process of transposing WAEMU Directives and definitively bringing public procurement legislation and regulations into line with the international best practices recognized in this area.

Figure 4.1: Public Procurement - Score Aggregated by Pillar



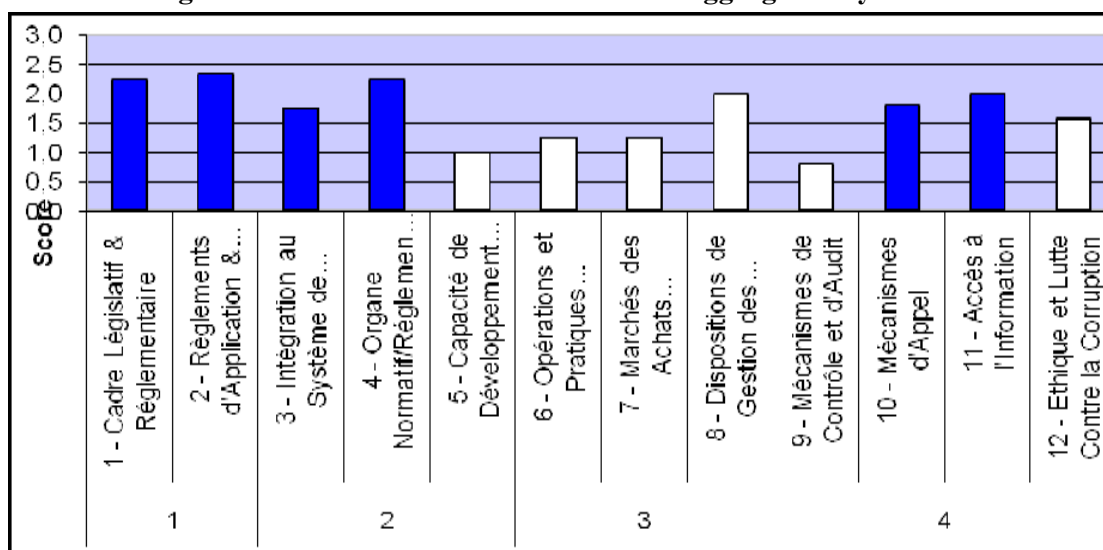
¹⁰ Information obtained from the Government (DGCF) establishes the total amount of government contracts awarded in 2008 at CFAF 60.2 billion. Investment expenditure in 2008 came to CFAF 217 billion. Source: *Journal Officiel*.

¹¹ Generally, public procurement amounts to 60 to 80 percent of the investment budget, depending on the country.

4.4. **Overall, the public procurement system in Niger is just above average.**¹² Despite having a legal framework that has been improved in terms of its structure and contents in order to conform to international and regional standards (Pillar I, average score of 2.3 out of 3), there are still weaknesses affecting the principles of transparency and efficiency and which could considerably undercut the genuine efforts made by the Government to improve the public procurement system. The persistent problems with introducing an institutional framework for functional control, the relative weakness of capacities, and measures ensuring the integrity of the system are reflected in the roughly average scores obtained at the level of Pillar II (1.7 out of 3), Pillar III (1.5 out of 3), and Pillar IV (1.6 out of 3). Figures 4.1 and 4.2 below show the results of the joint assessment, aggregated by pillar and by indicator, respectively, in accordance with OECD/DAC methodology and using a calculation formula based simply on the averaging of the scores.

4.5. **Analysis of the indicators clearly confirms the existence of significant risks with regard to the institutional framework, operations, and integrity of the system.** Beyond the revisions that need to be made to the current Code to bring it into conformity with good practices and WAEMU Directives, the implementing texts relating to the level of delegation of responsibilities to the contracting authorities fail to take account of the risks associated with their management capacities (Baseline Indicator [BI] 5 scored well below average at 1 out of 3, and BI 6 is also below average at 1.3 out of 3). These problems are accentuated by weakness of the controls of services rendered and of the alternative dispute resolution mechanisms (BI 7 is scored below the average). The weakness of internal and external control and the nonexistence of public procurement audits had a considerable impact on the score for BI 9 (0.8 out of 3). Finally, the absence of measures to frame the principles on ethics and conflicts of interest at the level of the governmental stakeholders and the absence of operational mechanisms for combating corruption in public procurement also resulted in an average score for BI 12 (1.6).

Figure 4.2: Public Procurement - Score Aggregated by Indicator

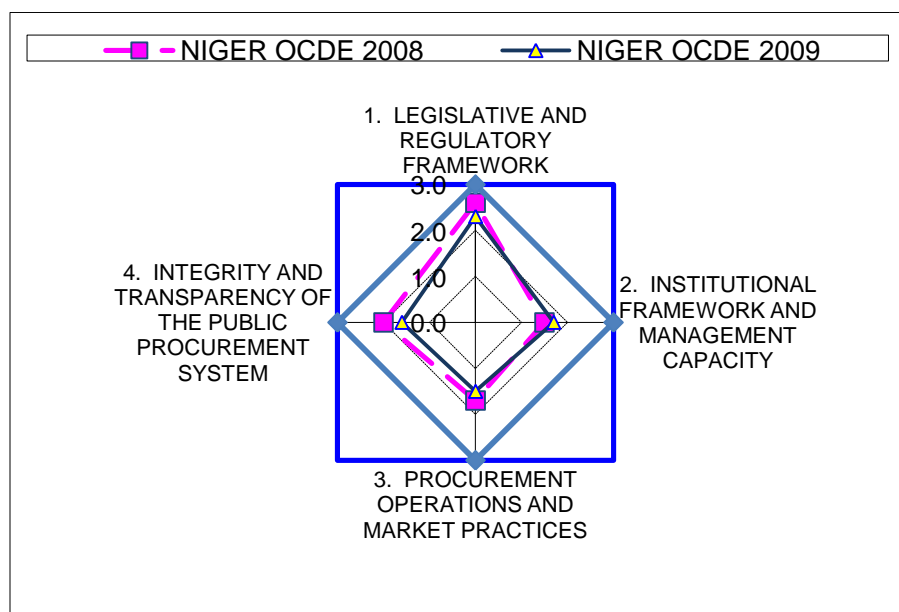


¹² The review resulted in an overall score of 1.8 for the quality of the current public procurement system, which is just above the average of 1.5, corresponding to the average of the scores adopted by the OECD.

4.6. Overall, there are some differences between the assessment conducted by the joint review and the one performed by the Government in 2008. The results of the assessment performed by the review scores the overall quality of the system at an average of 1.8/3, as compared to the 2.2/3 assigned by the Government. Figure 4.3 below graphically presents the discrepancies observed for each pillar. While the details justifying these discrepancies are provided in the assessment table using the OECD methodology, the major factors explaining these discrepancies by pillar may be summarized as follows:

- **For Pillar 1**, the systematic authorization of recourse to restricted bidding, the discriminatory nature of the National Invitation to Bid restricted solely to nationals, and inconsistencies found between the Code and its implementing texts.
- **For Pillar 2**, the conflicts of interest generated by authorizations of directly negotiated contracts issued by the ARMP, private sector participation on the contract award commissions, the nonoperational status of the information gathering system, and the absence of a training strategy adapted to the current institutional framework.
- **For Pillar 3**, the failure to take account of the risk associated with the management capacities of contracting authorities in conjunction with the responsibilities delegated to them, and the lack of managerial staff and regulation of the delivery and supervision of civil engineering works.
- **For Pillar 4**, the ineffectiveness of the audit system of audit and attendant risks, the lack of reliable procurement statistics on contracts, the incomplete treatment of conflicts of interest in the legal and regulatory texts, and the lack of an ethics mechanism.

Figure 4.3: Comparative Public Procurement Scores from the 2008 and 2009 Reviews



4.7. **The detailed results of this review are presented in Section B below, in accordance with the four pillars defined by the OECD/DAC methodology**, namely: (i) the Legislative and Regulatory Framework; (ii) the Institutional Framework and Management Capacity; (iii) Procurement Operations and Market Practices; and (iv) the Integrity and Transparency of the Public Procurement System. The indicators and sub-indicators are reviewed in detail under each pillar.

B. DETAILED ASSESSMENT BY PILLAR

Pillar I - Legislative and Regulatory Framework

4.8. The existence of a clear and transparent procurement regulatory framework constitutes one of the foundations of a procurement system that helps achieve the objectives of efficient governance of the use of public funds. This requirement is expressed through the baseline indicators in Pillar I of the OECD/DAC methodology. Pillar I includes two indicators and covers all the relevant legal instruments from the Public Procurement Code itself to implementation and procedural regulations, as well as standard documents used. These indicators are themselves evaluated through sub-indicators or benchmarks that are scored separately.

4.9. The procurement regulatory framework of Niger is characterized as follows:

Indicator 1: Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations

4.10. In Niger, the Public Procurement Code in force is set forth by Ordinance No. 2008-06 of February 21, 2008, amending Ordinance No. 2002-007 of September 18, 2002. The 2002 Ordinance already transposed a substantial share of WAEMU Directives Nos. 4 and 5 relating to government contracts and public service delegations in the Union, in particular by creating a body responsible for regulation. The 2008 Ordinance improves the status of transposition of WAEMU Directives, and especially provides for an administrative body in charge of control. Several implementing texts have been introduced to clarify and fine-tune the conditions for application of the Ordinance. Although its ratification was rejected by the Parliament, the Government made application of the ordinance effective.

4.11. The 2008 Ordinance considerably improves the public procurement system. The scope of application includes all the public contracting authorities as well as private persons benefiting from public financing or acting on behalf of public persons. The ordinance makes contracting authorities subject to many obligations aimed at enhancing the transparency of the system, in particular in the areas of planning, the equality of treatment of bidders, publicity, and greater objectivity in qualification and evaluation operations. However, to be complete, the scope of application should make specific reference to public service delegations. Moreover, even though open competitive bidding was established as the normal procurement method and cases of recourse to the other methods were restricted, there are still discriminatory public procurement procedures that are not in conformity with international good practices and WAEMU Directives, and these should be eliminated. The cases in point are national competitive bidding restricted solely to Nigerien companies, the restricted invitations to tender, and direct consultation of suppliers below a threshold that is set above the level of the competitive bidding threshold.

4.12. Sub-indicators 1(a), 1(c), 1(e), 1(f), and 1(h) obtained the maximum score of 3, as the legal framework was evaluated as being in conformity with the criteria required for the observance of these sub-indicators. With regard to sub-indicators 1(b), 1(d), and 1(g), the factors at the origin of the nonobservance of the associated criteria are discussed in the paragraphs which follow.

4.13. Sub-indicator 1(b) on the public procurement methods did not obtain a score of 2. Indeed, while open competitive bidding is identified as the normal procurement method, the Ordinance allows recourse to two modes of procurement that are noncompetitive and not in conformity with international good practices and WAEMU Directives, namely restricted invitations to tender used systematically between CFAF 20 million and CFAF 55 million for works and between CFAF 20 million and CFAF 40 million for supplies, and direct consultation of suppliers for amounts between CFAF 10 million and CFAF 20 million. In practice, these procedures only contribute to removing a substantial share of contracts reaching the competitive bidding threshold (CFAF 10 million) from the competitive bidding procedure. This said, the non-exhaustive statistics gathered from the General Directorate of Financial Control do not make it possible to identify the exact situation with respect to the contracts entered into by these procedures.

4.14. Sub-indicator 1(d) on the rules concerning participation was given the lowest score (0) for three reasons: (i) the Ordinance defines a national competitive bidding limited to individuals or legal entities with their domicile or head office in Niger; II) it fails to define the rules for the participation of public entities in calls for competitive bidding, provisions which are contrary to WAEMU Directives and international practices; and (iii) production of a certificate of qualification is required of public works and construction firms without mention of a waiver benefiting non-Nigerien companies.

4.15. Indicator 1(g) received a score of 1, because the regulation makes no provision for the responsibility for or the location of filing of contract-related documentation by the contracting authorities. The implementing texts should explicitly mention these functions among the duties of entities in charge of the control or centralization of procurement on the part of the contracting authorities.

Indicator 2: Existence of implementing regulations and documentation

4.16. Many implementing texts have been adopted which contribute to improving the transparency and efficiency of the system, but in some cases consistency with the reference text needs to be improved.

4.17. Sub-indicators 2(b), 2(c), 2(d), and 2(f) obtained the maximum score of 3, because the legal framework was evaluated as being in conformity with the criteria required for the respect of these sub-indicators. With regard to sub-indicators 2(a) and 2(e), the factors at the origin of the nonobservance of the associated criteria are discussed in the paragraphs which follow.

4.18. Sub-indicator 2(a) received a score of 1 because many inconsistencies remain between the ordinance and its implementing texts. This is the case for the bid opening commissions which, although called for in the ordinance, in the absence of any provision referring back to an

implementing text, are the subject of an implementing order that specifies a different composition. Similarly, a Prime Minister’s circular makes it mandatory to publish procurement plans bringing together all the contracts which the contracting authorities envisage awarding, whereas the ordinance refers to the publication of general publicity notices containing only the contracts to be awarded by competitive bidding. The standard acquisition files contain clauses that are not in conformity with the Code, such as the possibility of using an unrestricted points system and opening bids in two stages in the case of the standard supplies file, inconsistency with regard to the provisions on variants, and the possibility of using a points system in the case of the standard works file.

4.19. Sub-indicator 2(e) received a score of 1 because there is no manual of procedure or code application manual, even though some structures, within the framework of their own activities, do have manuals of procedures.

4.20. The Table below presents a detailed assessment for Pillar I.

Table 4.1: NIGER - Joint Assessment of OECD/DAC Indicators Ocde/Dac - Pillar I

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
Pillar I: Legislative and Regulatory Framework				
(1) Public Procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.				
1(a) Scope of application and coverage of legislative and regulatory framework The legislative and regulatory body of norms complies with all the following conditions: <ul style="list-style-type: none"> (a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, and procedures) and precedence is clearly defined. (b) All the laws and regulations are published and easily accessible to the public at no cost. (a) It covers goods, works, and services (including consulting services) for all procurement using national budget funds. 	The framework complies with criteria (a) to (c). This assessment is also consistent with the one proposed by the Government. However, Article 1 of the Public Procurement Code setting forth its scope of application should be supplemented by addressing public service delegations.	3	3	
1(b) Procurement Methods The legal framework meets all the following conditions: <ul style="list-style-type: none"> (a) Allowable procurement methods authorized are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which 	Although open competitive bidding is considered to be the normal public procurement method (Article 15 of the Public Procurement Code), noncompetitive procedures that are not in conformity with international standards and WAEMU Directives are authorized by the Code (Articles 38 and 41) and its implementing orders. These	3	2	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>each method may be used, including a requirement for approval by an official that is held accountable.</p> <p>(b) Competitive procurement is the default method of public procurement.</p> <p>(c) Fractioning of contracts to limit competition is prohibited.</p> <p>(d) Appropriate standards for international competitive tendering are specified and are consistent with international standards.</p>	<p>are: (i) automatic recourse to restricted competitive bidding for works in the amount of CFAF 20 million to CFAF 55 million, and for supplies in the amount of CFAF 20 million to CFAF 40 million; and (ii) automatic recourse to directly negotiated contracts between the amount of CFAF 10 million and CFAF 20 million.</p> <p>The non-exhaustive statistical data received by the review do not make it possible to evaluate the share that these contracts actually represent in the annual volume of contracts awarded.</p>			
<p>1(c) Advertising rules and time limits</p> <p>The legal framework meets the following conditions:</p> <p>(a) It requires that procurement opportunities other than sole source or price quotations be publicly advertised.</p> <p>(b) The publication of opportunities provides sufficient time, consistent with the method, nature, and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. Such timeframes are extended when international competition is sought.</p> <p>(c) Publication of open tenders is mandated in at least a newspaper of national circulation or on a unique Internet official website where all public procurement opportunities are posted and readily accessible.</p> <p>(d) The content of publication includes sufficient information to enable potential bidders to determine their ability to bid and interest in so doing.</p>	<p>The framework meets criteria (a) to (d).</p> <p>This assessment is also consistent with the Government’s proposal.</p>	3	3	
<p>1(d) Rules on participation</p> <p>The legal framework meets the following conditions:</p> <p>(a) Establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements, requires the use of pass/fail basis for determining qualifications to the extent possible: limits the domestic</p>	<p>The Government was of the view that it met criteria (a) to (c).</p> <p>In the opinion of the review, in addition to not meeting criterion (d), criterion (a) is also not satisfied.</p> <p>Indeed, Article 11 (bis) of the Public Procurement Code defines national competitive bidding as being limited to individuals or legal entities with their domicile or head office in Niger, which is contrary to WAEMU Directives on</p>	2	0	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>price preferential, if allowed, to a reasonable amount (for example, 15 percent or less); and requires justification for set asides that limit competition.</p> <p>(b) Ensures that registration, if required, does not constitute a barrier to tenders and does not require mandatory association with other firms.</p> <p>(c) Provision for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process, or prohibition from commercial relations.</p> <p>(d) Establishes rules for the participation of government-owned enterprises that promote fair competition.</p>	<p>public procurement.</p> <p>In addition, Article 11 of the Public Procurement Code requires a certificate of qualification from businesses in conjunction with works contracts, without clarifying arrangements for non-Nigerien firms.</p>			
<p>1(e) Tender documentation and technical specifications</p> <p>The legal framework meets the following conditions:</p> <p>(a) Establishes the minimum content of the tender documents and requires that the content is relevant and sufficient for tenderers to be able to respond to the requirement.</p> <p>(b) Requires the use of neutral specifications, citing international standards when possible.</p> <p>(c) Requires recognition of standards that are equivalent when neutral specifications are not available.</p>	<p>The framework meets criteria (a) to (c).</p> <p>This assessment is also consistent with the Government’s proposal.</p>	3	3	
<p>1(f) Tender evaluation and award criteria</p> <p>The legal framework mandates that:</p> <p>(a) The evaluation criteria are relevant to the decision and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents.</p> <p>(b) Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible.</p> <p>(c) The evaluation of proposals for consulting gives adequate</p>	<p>The Government was of the view that the framework meets criteria (a) to (d).</p> <p>This assessment is also consistent with the Government’s proposal.</p>	3	3	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>importance to quality and regulates how price and quality are considered.</p> <p>(d) During the evaluation period, information relating to the examination, clarification, and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process.</p>				
<p>1(g) Submission, receipt, and opening of tenders</p> <p>The legal framework provides for the following conditions:</p> <p>(a) Public opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.</p> <p>(b) Records of proceedings for bid openings are retained and available for review.</p> <p>(c) Security and confidentiality of bids is maintained prior to bid opening and disclosure of specific sensitive information during debriefing is prohibited.</p> <p>(d) The modality of submitting tenders and receipts by the government is well defined to avoid unnecessary rejection of tenders.</p>	<p>The Government was of the view that the framework meets criteria (a) to (d).</p> <p>The review maintains that sub-indicator (b) is not met, as there is no provision in the Code or in any of its implementing provisions to identify those responsible for filing contract documents or making such filing mandatory, as well as authorizing their review by the public.</p>	3	1	
<p>1(h) Complaints</p> <p>The legal framework provides for the following:</p> <p>(a) The right to review for participants in a procurement process.</p> <p>(b) Provisions to respond to a request for review at the procuring agency level with administrative review by another body independent of the procuring agency that has the authority to grant remedies and includes the right for judicial review.</p> <p>(c) Establishes the matters that are subject to review.</p> <p>(d) Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.</p>	<p>The Government was of the view that the framework meets criteria (a) to (d).</p> <p>This assessment is also consistent with the Government's proposal.</p>	3	3	
Existence of Implementing Regulations and Documentation				

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>2(a) Implementing regulations that provide defined processes and procedures not included in higher-level legislation</p> <p>There are regulations that supplement and detail the provisions of the procurement law that meet the following requirements:</p> <p>A. They are clear, comprehensive, and consolidated as a set of regulations available in a single and accessible place.</p> <p>B. They are updated regularly.</p> <p>C. The responsibility for maintenance is defined.</p> <p>D. They are clear and detailed.</p>	<p>The Government was of the view that the framework meets criteria (a) to (c).</p> <p>The review is of the opinion that there are discrepancies between the law and the implementing regulations.</p> <p>Article 16 of the Public Procurement Code obliges the contracting authorities to publish a general advertising notice setting forth contracts awarded by competitive bidding, whereas a Prime Minister’s circular requires the publication of procurement plans listing all contracts to be awarded.</p> <p>Article 23 of the Public Procurement Code precisely defines the composition of the bid opening commission and does not reference any implementing provision, whereas Order No. 000114/CAB/PM of 10/10/06 organizing the bid opening session calls for a different composition.</p> <p>The standard procurement documents contain clauses that are not in conformity with the Code, such as the possibility of using an unstructured points system and of opening bids in two stages in the case of standard tenders for supplies; the possibility of using a points system and inconsistency in the provisions relating to variants in the case of standard tenders for works. The preference extended to nationals of Niger runs counter to the Community preference called for by Article 36 of the Code.</p>	3	1	
<p>2(b) Model tender documents for goods, works, and services</p> <p>(a) There are model invitation and tender documents provided for use for a wide range of goods, works, and services procured by government organizations.</p> <p>(b) There is a standard mandatory set of clauses or templates that are reflective of the legal framework for use in documents prepared for competitive tendering.</p> <p>(c) The documents are kept up to date with responsibility for preparation and updating clearly assigned.</p>	<p>The framework meets criteria (a) to (c).</p> <p>This assessment is also consistent with the Government’s proposal.</p>	3	3	
<p>2(c) Procedures for pre-selection</p> <p>Procedures exist that define pre-</p>	<p>The Government was of the view that only criteria (a) and (c) were met.</p>	2	3	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>selection which:</p> <p>(a) Provide for limitations on the content of pre-selection criteria that are based on needs of the specific procurement.</p> <p>(b) Specify the use of pass/fail for application of qualification criteria.</p> <p>(c) Provide guidance on when to apply a pre-selection procedure.</p>	<p>The review is of the opinion that criterion (b) is in fact met, as the Government's assessment confused pre-selection with pre-qualification.</p>			
<p>2(d) Procedures suitable for contracting of services or other requirements in which technical capacity is a key criterion</p> <p>The legal framework and its implementing regulations provide for the following:</p> <p>(a) Conditions under which selection based exclusively on technical capacity are appropriate and when price and quality considerations are appropriate.</p> <p>(b) Clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.</p>	<p>The framework satisfies criteria (a) and (b).</p> <p>This assessment is also consistent with the Government's proposal.</p>	3	3	
<p>2(e) User's guide or manual for contracting entities</p> <p>(a) There is a unique procurement manual detailing all procedures for the correct administration of procurement regulations and laws.</p> <p>(b) The manual is regularly updated.</p> <p>(c) The responsibility for maintenance of the manual is clearly established.</p>	<p>The Government's assessment found that there was no manual of procedures for procurement.</p> <p>The review finds that while there is no manual, there are some institutions that do have manuals in the context of their own activities.</p>	0	1	
<p>2(f) General Conditions of Contract (GCC) for public sector contracts covering goods, works, and services, consistent with national requirements and, when applicable, international requirements</p> <p>Both of the following apply:</p> <p>(a) There are GCCs for the most common types of contracts and their use is mandatory.</p> <p>(b) The content of the GCC is generally consistent with international accepted practice.</p>	<p>The framework satisfies criteria (a) to (c).</p> <p>This assessment is also consistent with the Government's proposal.</p>	3	3	

Pillar II - Institutional Framework and Management Capacity

4.21. Pillar II assesses the operationality and efficiency of the regulatory mechanism, particularly at the institutional level. The three indicators assessed here relate to institutions and management systems considered to be integral parts of good governance of the country's public sector. Indicator 3 relates to the integration of procurement into the public financial management system. Indicator 4 determines whether there is a regulatory body, its mission and powers, and Indicator 5 assesses the extent to which the country has evaluation and capacity development systems and systems for measuring the quality of procurement.

4.22. The outcomes of Pillar II evaluation are summarized as follows:

Indicator 3: The public procurement system is mainstreamed and well integrated into the public sector governance system

4.23. All in all, the public procurement system of Niger is not sufficiently integrated with budgetary and financial management and the security of the funds committed for contracts is not effective. However, the budgetary system allows, on the basis of commitment vouchers which are unique for a given contract, to take stock of the execution of large contracts with a view to the possible reallocation of residual appropriations. Also, only sub-indicator 3(d) met all the relevant assessment criteria and is thus the only one of the four sub-indicators under indicator 3 to have obtained the maximum score of 3. For the other sub-indicators, namely 3(a), 3(b), and 3(c), the factors at the origin of the nonobservance of the associated criteria are discussed in the paragraphs that follow.

4.24. Sub-indicator 3(a) received a score of 1. In effect, the integration of public procurement into the public expenditure circuit (contracting plan, availability of appropriations, etc.) is not yet effective. There is no electronic interface between procurement planning and budgetary programming. The linkages with budgetary planning are insufficient, and there is no formal requirement that procurement plans must necessarily correspond to the available budget ceiling. This situation explains the weak score for sub-indicator 3(a).

4.25. The review could not obtain reliable statistics on contract commitment and payment lags. The discussions held with the Government's representatives revealed that payments are generally made outside the standard deadlines prescribed in the Procurement Code and the contracts. It bears recalling that the commitment and payment operations are primarily manual. Consequently, sub-indicator 3(b) received a score of 1.

4.26. The budget regulation system prohibits the launching of consultations in the absence of available appropriations, even though the Procurement Code does not formally stipulate this obligation. Nevertheless, dysfunctions with regard to the security of the appropriations committed for contract execution of the markets remain, because there is nothing in the current system that makes it possible to guarantee formally that the funds are secured until payment of the balance of a contract entered into. This explains the score of 2 assigned to sub-indicator 3(c).

Indicator 4: The country has a functional normative/regulatory body

4.27. Niger set up a public procurement regulatory system with the creation of the Public Procurement Regulatory Agency (ARMP) by Article 122 of the Public Procurement Code. That article defines the missions of the ARMP, consisting of: (i) drawing up regulations; (ii) training staff; (iii) disseminating information; (iv) conducting audits; (v) preparing CCAGs and coordinating the drafting of CCTGs; and (vi) imposing sanctions. These missions are in conformity with independent regulation as prescribed by law. In addition, Decree No. 190/PRN/MEF of July 6, 2004 on the composition, organization, and operating modalities of the ARMP vests in it the responsibilities necessary to perform regulatory functions under good conditions. The ARMP is situated at a high level of the Administration (Office of the Prime Minister) and its financing is guaranteed primarily by an annual allocation from the State budget and a regulatory fee levied on each contract awarded. The amount of this fee is one percent of the amount of each contract. This explains the maximum score of 3 assigned for three of the sub-indicators under indicator 4, namely sub-indicators 4(a), 4(b), and 4(c).

4.28. However, sub-indicator 4(d) scored at 0 because, while it has the necessary powers for this purpose, the ARMP will unfortunately not be able to exercise independent regulation owing to its involvement in procurement operations through its issuance of authorizations to resort to directly negotiated contracts as conferred on it by Article 43 of the Procurement Code. The ARMP, which encompasses the non-jurisdictional appeal body at the procurement stage, is thus in a conflict of interest situation, especially since the contracting mode used constitutes a grounds for appeal. This explains the score assigned to this sub-indicator.

Indicator 5: Existence of institutional development capacity

4.29. Although responsibilities are clearly laid out in general, Niger has not yet established systems to support and control the operation of the public procurement system as a whole, and thus does not have a reliable basis for formulating and carrying out plans for improvement. Accordingly, none of the four sub-indicators making up indicator 5 could obtain the maximum score of 3.

4.30. There is currently no electronic site that can provide exhaustive information on contracts. The Public Procurement Journal (JMP) published under the auspices of the ARMP does provide information on contracts (PPMs, notices of calls for competitive bidding, contract award letters, etc.), but access to it remains limited. This explains the score of 2 for sub-indicator 5(a).

4.31. The ARMP is normally responsible for the establishment of a computerized information system on public procurement. To this end, it has begun the design of an integrated system for gathering statistics on contracts. This system is not yet operational. The General Directorate of Financial Control (DGCF), which is responsible for the contract registration window, is not organized for providing statistical data on contracts and during the review could not produce exhaustive statistics on the contracts awarded. In the final analysis, Niger does not yet have a system of data-gathering and statistics on public procurement. This explains the score of 1 granted for sub-indicator 5(b).

4.32. During 2007, the ARMP organized 15 information/public awareness seminars, including one government seminar. The objective of these seminars was to enhance stakeholders' awareness of the legislation on government contracts, exchange views with them on possible implementation problems, and to listen to their contributions. Seven seminars were organized at the central level for nearly 395 people, and another seven were held at the regional level for almost 755 people. Meetings were also organized with professional organizations. The modules used as support for these seminars were prepared by the ARMP. They were focused training sessions in response to the information needs of stakeholders on the new public procurement legislation. Nevertheless, the ARMP does not yet have any true training strategy based on an exhaustive census of needs and structured at various levels and by the various types of stakeholders (administration, civil society, private sector). Canada is currently supporting the development of training modules. Consequently, sub-indicator 5(c) received a score of 1.

4.33. The ARMP, whose prerogative it is, being responsible for ensuring the quality of the procurement system, has not yet set up standards of quality assurance or performance evaluation of the personnel involved in the operations of procurement. Such devices are essential to assess the procurement system and to carry out the readjustments necessary. Their installation will have to constitute one priorities of the ARMP in the medium term, at least. This is why the indicator 5 (d) was noted 0.

4.34. The Table below gives a detailed evaluation for Pillar II.

Table 4.2: NIGER - Joint Evaluation of OECD/DAC Indicators - Pillar II

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
Pillar II: Institutional Framework and Management Capacity				
(3) The public procurement system is mainstreamed and well incorporated into the public sector governance system.				
3(a) Procurement planning and associated expenditures are part of the budget formulation process and contribute to multi-year planning. There is a regular planning exercise instituted by law or regulation that: (a) Starts with the preparation of multi-year plans for the government agencies, from which annual operating plans are derived; (b) Is followed by annual procurement plans and estimation of the associated expenditures; and (c) Culminates in the annual budget formulation. Procurement plans are prepared in support of the budget planning and preparation process.	The Government found that the majority of procurement plans are drawn up on the basis of annual and multi-year operating plans, independently from budget allocation, but are revised in order to correspond to multi-year budget estimates for the sector or budget ceilings assigned to agencies that commit expenditure. The review considers that the links with budget planning are inadequate: it is only formally required that the procurement plans must necessarily correspond to the available budget ceiling.	2	1	
3(b) Budget law and financial procedures support timely procurement, contract execution, and payment. (a) Budget funds are committed or appropriated within a week from the award of the contract to cover the full	The procedures in place take more time than called for under criterion (a), while criteria (b) and (c) are generally not met. This assessment is also consistent with the Government's proposal.	1	1	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>amount of the contract (or amount needed to cover the portion of the contract to be performed within the budget period).</p> <p>(b) There are published business standards for processing of invoices by the government agencies that meet obligations for timely payment stated in the contract.</p> <p>(c) Payments are authorized within four weeks following approval of invoices or monthly certifications for progress payments.</p>				
<p>3(c) No initiation of procurement actions without existing budget appropriations.</p> <p>The following measures should be in place:</p> <p>(a) The law requires certification of the availability of funds before solicitation of tenders takes place.</p> <p>(b) There is a system in place (e.g., paper or electronic interface between the financial management and procurement systems) that ensures enforcement of the law.</p>	<p>The system meets condition (a), but condition (b) is not always fully observed.</p> <p>Indeed, the budget programming system does not formally guarantee the securing of the amounts committed for contract execution.</p>	2	2	
<p>3(d) Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.</p>	<p>The procurement system is sufficiently integrated into the financial and budgetary management systems to be able to obtain information on completion of all large contracts.</p> <p>This assessment is also consistent with the Government's proposal.</p>	3	3	
<p>(4) The country has a functional normative/regulatory body</p>				
<p>4 (a) The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.</p>	<p>There is a normative or regular body, or the functions are clearly assigned to various units within the administration, and these provisions are laid out unequivocally in the legal or regulatory framework without any omissions or overlapping.</p> <p>This assessment is also consistent with the Government's proposal.</p>	3	3	
<p>4(b) The body has a defined set of responsibilities that include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • Providing advice to contracting entities • Drafting amendments to the legislative and regulatory framework and implementing regulations • Monitoring public procurement • Providing procurement information • Managing statistical databases • Reporting on procurement to other parts of government • Developing and supporting 	<p>The system meets the criterion.</p> <p>This assessment is also consistent with the Government's proposal.</p>	3	3	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>implementation of initiatives for improvements of the public procurement system</p> <ul style="list-style-type: none"> • Providing implementation tools and documents to support training and capacity development of implementing staff <p>All of the above eight functions and others are assigned to the regulatory body and the control body.</p>				
<p>4(c) The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities assigned.</p>	<p>The regulatory body is at a sufficiently high echelon within the administration, and its financing is guaranteed by the legal and regulatory framework.</p> <p>This assessment is also consistent with the Government’s proposal.</p>	3	3	
<p>4(d) The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.</p>	<p>The Government had found that the ARMP is not responsible for procurement activities and is sheltered from other possible conflicts (arising from, for example, being a member of the evaluation committees, etc.).</p> <p>The review found that the ARMP does effectively participate in procurement operations through the authorizations it issues for awarding directly negotiated contracts. This conflict of interest is all the more a real one in that the procurement method used constitutes grounds for appeal (Article 116 of the Code).</p>	3	0	
<p>(5) Existence of institutional development capacity</p>				
<p>5(a) The country has a system for collecting and disseminating procurement information including tender invitations, requests for proposals, and contract award information.</p>	<p>The Government found that there is an integrated information system that provides, at a minimum, up-to-date information that is accessible to all parties concerned free of charge or at a minimum cost. The responsibility for its management is clearly defined.</p> <p>The review considers that even though the ARMP does publish a Public Procurement Journal that provides information on contracts, access to this information remains limited.</p>	3	2	
<p>5(b) The country has systems and procedures for collecting and monitoring national procurement statistics.</p>	<p>The system meets criterion (a) only.</p> <p>This assessment is also consistent with the Government’s proposal.</p>	1	1	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>The production of national procurement statistics meets the following conditions:</p> <p>(a) There is a system in operation for data collection.</p> <p>(b) The system collects data on procurement by method used, duration of different states of the procurement cycle, awards of contracts, unit prices for most common types of goods and services, and other information that allows for analysis of trends, levels of participation, efficiency and economy of the purchases, and compliance with requirements.</p> <p>(c) Reliability of the information is high (verified by audits).</p> <p>(d) Analysis of information is routinely carried out, published, and fed back into the system.</p>				
<p>5(c) A sustainable training strategy capacity exists to provide training, advice, and assistance to develop the capacity of the government and private sector participants to understand the rules and regulations and how they should be applied.</p> <p>There is a training and capacity building strategy that provides for:</p> <p>(a) Substantive permanent training programs of suitable quality and content for the needs of the system.</p> <p>(b) Evaluation and periodic adjustment based on feedback and need.</p> <p>(c) Advisory service or help desk to address questions by procuring entities, suppliers, contractors, and the public.</p>	<p>According to the Government’s assessment, there is a training and capacity building strategy that meets the criterion set forth under (a).</p> <p>The review finds that there is still no genuine training strategy. Ad hoc training has been organized, but there is still no stratified plan prepared on the basis of an assessment of real needs and supported by a package of suitably adapted modules.</p>	2	1	
<p>5(d) Quality control standards are disseminated and used to evaluate staff performance of the workforce and address capacity development issues.</p> <p>(a) Provide quality assurance standards and a monitoring system for procurement processes and products.</p> <p>(b) Provide for a staff performance system based on outcomes and professional behaviors.</p> <p>(c) Ensure that operational audits are carried out to monitor compliance with quality assurance standards.</p>	<p>The system does not provide for quality assurance mechanisms or staff performance appraisal mechanisms.</p> <p>This assessment is also consistent with the Government’s proposal.</p>	0	0	

Pillar III - Procurement Operations and Market Practices

4.35. Pillar III assesses the operational effectiveness and efficiency of the procurement system at the level of the contracting authorities. It also examines the operation of the public procurement market itself as one of the means of assessing the quality of the system. Pillar III comprises three indicators. Indicator 6 assesses the effectiveness of the country’s procurement

operations. Indicator 7 assesses the functionality of the public procurement market. Indicator 8 deals with measures focused on procurement administration and dispute resolution.

4.36. The findings for Pillar III are summarized as follows:

Indicator 6: The country's procurement operations and practices are efficient

4.37. None the sub-indicators making up indicator 6 received the maximum score of 3. This indicates the continued existence of weaknesses in the system, including shortcomings with respect to the training program and capacity building, the lack of structuring of delegations of power with respect to procurement, and weaknesses in the archiving of contract records. The factors explaining the scores awarded for the various sub-indicators are discussed in the paragraphs that follow.

4.38. In Niger, the job profiles for the posts of procurement specialists are defined with reference to administrative classification of the government employees, and not with reference to skills in the procurement area. For example, for the procurement division chief positions, category A is required. However, the Code authorizes recourse to external experts outside the contracting authorities for the evaluation of bids. This explains the score of 2 for sub-indicator 6(a).

4.39. Sub-indicator 6(b) received a score of 1 because it was observed that there is not yet any genuine training strategy or program designed for the various stakeholders specifically. The training already conducted by the ARMP occurred in a context in which the new public procurement system was not yet in place, and was aimed primarily at information/public awareness activities rather than capacity building in procurement per se. Such training no longer corresponds to the current context.

4.40. With regard to the availability of information and files covering procurement actions, the regulations do not yet include provisions clarifying the responsibilities as regards the filing of records relating to public procurement. The Procurement Divisions just created at the level of the contracting authorities owing to the diversity of their powers in the procurement chain are still not responsible for filing all of the documentation relating to procurement. This explains the score of 1 for sub-indicator 6(c).

4.41. On a purely transitional basis, pending the operationalization of the DGCMP, Circular Letter No. 215 of July 26, 2007 from the Prime Minister confers responsibility for the oversight of contracts for less than CFAF 300 million on the Procurement Divisions (DPMs), with Financial Control exercising its control at the approval stage. This decision leaves the contracting authorities with a sizable responsibility margin in respect of procurement, which is not always adapted to their capacities and to the associated risks. Indeed, in certain ministries some DPMs are responsible for the award of all contracts or participate in the work of the evaluation and award commissions. Similarly, employees of Financial Control take part in the work of the same commissions. Moreover, owing to insufficient human resources, the Financial Control Directorate has problems fulfilling its basic duties. As a result, contracts for less than CFAF 300 million are awarded without any genuine control. In addition, the legislation does not restrict approval by the contracting authority of the award proposals of the bid evaluation commission.

The Code does not codify cases in which the award proposals of the bid evaluation commission can be rejected by the contracting authority, which thus has full latitude for final awards. This explains the score of 1 for sub-indicator 6(d).

Indicator 7: Functionality of public procurement market

4.42. As in the case of indicator 6, none the sub-indicators of indicator 7 obtained the maximum score of 3. Indeed, while there is a public/private partnership through the National Regulatory Council, the private sector is still not receiving adequate support for the capacity building of SMEs, no pre-established and functional legal framework is yet in place for the public/private partnership, and international competitive bidding processes are not clearly defined. The factors explaining the scores awarded for the various sub-indicators are discussed in the paragraphs that follow.

4.43. The National Regulatory Council (CNR) of the ARMP, comprised inter alia by members of the administration and private sector, is one example of a formal mechanism established by the Government to improve the governance of the procurement sector. The National Infrastructure Council constitutes another example. However, (i) the public authorities' participation in capacity building efforts for the private sector remains marginal; and (ii) formal public/private partnership mechanisms have yet to be set up in the absence of a legal text structuring public service concessions. This explains the score of 1 for sub-indicator 7(a).

4.44. Sub-indicator 7(b) received a score of 2 because, while the private sector is relatively high-performing, competition for obtaining major contracts is limited to a relatively small number of companies.

4.45. Several constraints make private sector access to government contracts difficult, such as the high cost of guarantees, the time required for issuance of tax certifications, and excessively long payment lags noted. This explains the score of 2 for sub-indicator 7(c).

4.46. Sub-indicator 7(d) received a score of 0 because the legal framework does not establish clear rules with respect to international competitive bidding. Article 11(a) of the Public Procurement Code provides that "the call for candidates is international when it is addressed to individuals or legal entities without particular reference to their domicile or the location of their head office." The rules for international competitive bidding as well as the related thresholds were not specified in the Code. Moreover, exemptions from the application of certain provisions of the Code, such as the production of certificates of qualification for works, are not indicated in the Code.

Indicator 8: Existence of contract administration and dispute resolution provisions

4.47. Only sub-indicator 8(a) received a maximum score of 3. Indeed, there are many regulations making it possible to enforce the rulings emerging from dispute settlement proceedings. In contrast, however, some important provisions are not fulfilled: the certification of services rendered is not sufficiently structured to make it possible to ensure that they have been performed; the supervision of civil engineering works is not covered by any regulation to ensure that it is carried out by independent firms or qualified governmental inspectors; the law

contains no provision relating to international arbitration in the context of international competitive bidding.

4.48. Sub-indicator 8(a) received a score of 1 for the following reasons: (i) the absence, at the level of the mechanism governing public finance, of provisions making it possible to attest services rendered in order to guarantee their actual performance; (ii) there is no legal or regulatory provision on the publication of contracts or codicils in the national press and/or the Public Procurement Journal; (iii) there are no texts regulating the supervision of civil engineering works and clearly defining the conditions for recourse to independent engineering firms or qualified government inspectors; and (iv) delays in the final payments for services relating to public procurement.

4.49. In Niger, the OHADA Uniform Act on arbitration entered into force on June 11, 1999, and this law is quite in conformity with the generally accepted practices concerning the neutrality of arbitrators, the regular application of the law, and the timeliness and enforceability of the ruling. The provisions relating to alternative dispute settlement methods are included in the standard ITBs and are in conformity with those generally contained in the standard files of international financial institutions. In contrast, international arbitration for international competitive bidding is not explicitly provided for in the Code or in the standard bidding materials. This explains the score of 2 for sub-indicator 8(b).

4.50. Niger ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on October 14, 1964. The OHADA Uniform Act on arbitration, which is in force in Niger, makes it possible for the victor in a dispute to request enforcement of the award by judicial seizure, and the administrative and economic law in force makes it possible to properly ensure the enforcement of this aspect of contracts. This explains the score of 3 for sub-indicator 8(c).

4.51. The table below provides a detailed assessment for Pillar III.

Table 4.3: NIGER - Joint Assessment of OECD/DAC Indicators OCDE/DAC - Pillar III

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
Pillar III: Procurement Operations and Market Practices				
(6) The country's operations and practices are efficient.				
6(a) The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.	The system satisfies criteria (a) and (c). This assessment is also consistent with the Government's proposal.	2	2	
(a) There are defined skill and knowledge profiles for specialized procurement jobs.	In Niger, the profiles for procurement specialist positions are defined in relation to an administrative classification of government employees. For example, Category A is required for positions as Procurement Division Chiefs.			
(b) There is systematic matching of skills against requirements for competitive recruitment.				
(c) Staff required to undertake procurement activities on an ad-hoc basis have the knowledge they need to undertake the activity or have access				
	The Code also allows for calling on ad hoc expertise in connection with bid			

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
to professional staff that can provide this knowledge.	evaluation (Article 24 of the Code).			
<p>6(b) The procurement training and information programs for government officials and for private sector participants are consistent with demand.</p> <p>(a) Training programs’ design is based on a skills gap inventory to match the needs of the system.</p> <p>(b) Information and training programs on public procurement for the private sector are offered regularly, either by the Government or by private institutions.</p> <p>(c) The waiting time to get into a course (for public or private sector participants) is reasonable, say one or two quarters.</p>	<p>The Government found that the training programs were satisfactory as regards their contents and frequency (waiting period) for participants from the administration, but there are few information programs for private sector stakeholders.</p> <p>In turn, the review found that there is still no genuine training strategy nor programs prepared for particular stakeholder groups, and that the training activities already carried out were conducted in a context in which the new public procurement system was not yet in place and were focused basically on information and public awareness, not on the development of procurement capacities proper. Such training no longer matches the current context.</p>	2	1	
<p>6(c) There are established norms for the safekeeping of records and documents related to transactions and contract management.</p> <p>(a) The legal and regulatory framework establishes a list of procurement records that must be kept at the operational level and detailing what is available for public inspection, including conditions for access.</p> <p>(b) The record should include: (i) public notices of bidding opportunities; (ii) bidding documents and addenda; (iii) bid opening records; (iv) bid evaluation reports; (v) formal appeals by bidders and outcomes; (vi) final signed contract documents and addenda and amendments; (vii) claims and dispute resolutions; (viii) final payments; (ix) disbursement data (as required by the country’s financial management system.</p> <p>(c) There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles.</p> <p>(d) There are established security protocols to protect records, either physical or electronic.</p>	<p>The Government found that the procurement system fulfilled criterion (a), but not the others.</p> <p>The review finds that there are still no provisions in the regulations that unequivocally clarify responsibilities in respect of filing documentation on public procurement. The Procurement Divisions recently created at the level of the contracting authorities, given the wide range of their powers in the procurement chain, are not always responsible for filing all documents relating to contracts.</p>	1	1	
<p>6(d) There are provisions for delegating authority to others who have the capacity to exercise responsibilities.</p>	<p>The Government found that the system satisfies all conditions (a) to (c).</p> <p>The review finds that criteria (a) and (c)</p>	3	1	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>(a) Delegation of decision-making authority is decentralized to the lowest competent levels consistent with the risks associated and the monetary sums involved.</p> <p>(b) Delegation is regulated by law.</p> <p>(c) Accountability for decisions is precisely defined.</p>	<p>are not met.</p> <p>Temporarily, pending the operationalization of the DGCMP, the Prime Minister's circular letter No. 215 of July 26, 2007 confers responsibility for the control of contracts in amounts of less than CFAF 300 million to the Procurement Divisions (DPMs), with Financial Control exercising its control at the approval stage. This decision leaves the contracting authorities with a considerable margin of responsibility in procurement, which is not always in line with their capacities, with all the attendant risks. Indeed, in some ministries some DPMs are responsible for awarding all contracts or participate on the bid evaluation and award committees. Likewise, the staff of Financial Control participate in the work of these commissions. Moreover, the Financial Control Directorate informed the review that it is suffering from a shortage of human resources, preventing it from carrying out its original tasks efficiently. The result is that contracts for less than CFAF 300 million are awarded without any genuine control.</p> <p>With respect to criterion (c), the mission finds that there is no structuring of the approval, by the contracting authority, of the award proposal of the bid evaluation commission. The Code does not codify the rejection of the award proposal of the bid evaluation commission by the contracting authority, which thus has complete latitude for the final award.</p>			
(7) Functionality of the Public Procurement Market				
<p>7(a) There are effective mechanisms for partnerships between the public and private sectors.</p> <p>(a) Government encourages open dialogue with the private sector and has established and formal mechanisms for open dialogue through associations or other means.</p> <p>(b) The Government has programs to help build capacity among private companies, including small businesses and training to help new entities into the public procurement marketplace.</p> <p>(c) The Government encourages public/private partnerships and the mechanisms are well established in the legal framework to make such</p>	<p>The Government found that the system met conditions (a) and (c).</p> <p>The review finds that only criterion (a) may be deemed satisfactory. The National Regulatory Council (CNR) of the ARMP, made up by, among others, members of the administration and the private sector, is one example of a formal mechanism established by the Government to improve the governance of the public procurement sector. The National Infrastructure Council is yet another example.</p> <p>In contrast, the participation of the public authorities in efforts to build private sector capacities remains</p>	2	1	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
arrangements possible.	marginal. Finally, formal public/private partnership mechanisms, such as a legal text structuring public service concessions, do not yet exist.			
7(b) Private sector institutions are well organized and able to facilitate access to the market.	The performance of the private sector is relatively high, but competition to obtain large contracts is limited to a relatively small number of firms. This assessment is also consistent with the Government's proposal.	2	2	
7(c) There are no major systemic constraints (e.g., inadequate access to credit, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market.	There are constraints inhibiting private sector access to the procurement market, such as the high cost of banking services, but the competition is sufficiently great. This assessment is also consistent with the Government's proposal.	2	2	
7(d) There are clear and transparent rules for determining the need to resort to international or national procurement, based on a sound assessment of commercial and development interest. The legal and regulatory framework addresses the following criteria: (a) The country has relatively clear rules for determining the need to resort to international or national procurement. (b) With regard to the participation of foreign companies, the country's rules are in accordance with good practices and do not create any barriers.	This sub-indicator was not considered in the Government's assessment, an omission arising from the version of the OECD/DAC paper used as the basis for the self-assessment. The review has assessed the sub-indicator, and finds that the legal framework does not lay down clear rules with regard to international competitive bidding. Article 11 (bis) of the Public Procurement Code does provide that calls for bids are international when addressed to individuals or legal entities without special reference to their domicile or the location of their head office. The rules for international competitive bidding as well as the related thresholds were not specified in the Public Procurement Code. The exemption from application of certain provisions of the code, such as the provision of qualification certificates for works, is not indicated in the Code.	Not scored	0	
(8) Existence of Contract Administration and Dispute Resolution Provisions				
8(a) Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner. Procurement management procedures meet the following criteria: (a) Procedures for acceptance of final	The GACCs, components of the standard invitations to tender now undergoing approval, contain aspects necessary for satisfying sub-criteria (a) to (d). On the other hand, it is noted that there is no legal or regulatory provision calling for the publication of amendments in the national press and/or the Public Procurement Journal. The review finds that: (i) the absence of provisions making it possible to attest to	2	1	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>products and for issuance of contract amendments are part of the legal/regulatory framework or are incorporated as standard clauses in contracts.</p> <p>(b) Clauses are generally consistent with internationally accepted practices.</p> <p>(c) Quality control (QC) procedures for goods are well defined in the model contracts/documents or in the regulations. QC is carried out by competent officers, inspections firms, or specialized testing facilities.</p> <p>(d) Supervision of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors.</p> <p>(e) Final payments are processed promptly as stipulated in the contract.</p>	<p>services rendered at the level of the mechanism governing public finances; (ii) the absence of texts governing the supervision of civil engineering works; and (iii) delays in the final regulations, do not make it possible to confirm the Government's assessment.</p>			
<p>8(b) Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract.</p> <p>(a) There is an arbitration law in the country.</p> <p>(b) The law is consistent with generally accepted practices for neutrality of arbitrators, due process, expediency, and enforceability.</p> <p>(c) The country accepts as a matter of course international arbitration for international competitive bidding.</p> <p>(d) Provisions for alternative dispute resolution (ADR) are standard in contracts.</p> <p>(e) ADR provisions conform to international standard wording.</p>	<p>The Government found that the provisions of the Public Procurement Code made it possible to meet sub-criteria (a) and (b) of the indicator. In contrast, while some contracts may contain ADR provisions, this does not constitute the general rule.</p> <p>The review finds that the provisions of the standard contracts make it possible to satisfy sub-criteria (d) and (e).</p>	1	2	
<p>8(c) Procedures exist to enforce the outcome of the dispute resolution process.</p> <p>(a) The country is a member of the New York Convention on enforcement of international arbitration awards.</p> <p>(b) The country has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts.</p> <p>(c) The country has a process to monitor this area of contract administration and to address performance issues.</p>	<p>The Government found that the country met criteria (b) and (c).</p> <p>The review further verified that Niger has effectively ratified the New York convention on enforcement of arbitration on October 14, 1964.</p>	2	3	

Pillar IV - Integrity and Transparency of the Public Procurement System

4.52. Pillar IV covers four indicators for measuring the degree of integrity of the system, the quality of controls to support its implementation in line with the regulatory framework, and the

effectiveness of the anti-corruption mechanism. Indicator 9 assesses the efficiency of the control and audit systems. Indicator 10 focuses on the mechanism for settling disputes. Indicator 11 relates to the quality of and access by the public to information on the procurement system, while indicator 12 evaluates the nature and scope of the anti-corruption measures adopted.

4.53. The outcomes of the assessment of Pillar IV are summarized as follows:

Indicator 9: The country has effective control and audit systems

4.54. There are laws and regulations governing the internal and external control of public expenditure and that of public procurement in particular. Internal control is provided mainly by the General Directorate of Public Procurement Control of the Government as regards a priori control and, temporarily and pending this structure becoming fully functional, by the financial controllers at the central level, by the heads of the sub-payment order authorization centers at the regional level and by revenue collection officers at the departmental level. For contracts of less than CFAF 300 million, internal control is carried out by the Public Procurement Divisions (DMPs). In practice, however, several DMPs are instead responsible for contract awards and the financial controllers are still part of the contract award commissions, despite the fact that this is prohibited by the legal framework. It would thus be advisable to improve the structuring of internal control through precise procedures accompanied by sanctions, such as the voiding of contracts in respect of which the designated controllers took part in the contract award operations. This explains the score of 2 for sub-indicator 9(a).

4.55. The independent audit system is not yet adequately functioning. Audits are conducted in an erratic manner. The last independent audit was completed in 2005 and related to 2003 and 2004. There have not subsequently been any audits, and the ARMP has not yet indicated any specific date for conducting other audits. In addition, the Court of Accounts, which has human resource problems, has yet to perform its proper role in the context of jurisdictional audits. This explains the score of 0 for sub-indicator 9(b).

4.56. While there are written standards with regard to internal control, in particular through the decree organizing the DGCMP, Prime Minister's Decree No. 000215 of 7/26/07 on the modalities for overseeing the conformity of government contracts, and the legal and regulatory texts governing the control bodies of the Government, no reference is made in the texts on public procurement control of established procedures for drawing up reports, thereby permitting efficient management of the contract award function by the contracting authorities. This is why sub-indicator 9(c) received a score of 1.

4.57. There is no audit and internal control manual, nor is there any organized preservation of information that auditors can use to ensure that the written procedures for internal control have been observed. This explains the score of 0 for indicator 9(d).

4.58. There is not yet any policy on developing a corps of public and private auditors in the area of public procurement. Apart from a few information/public awareness efforts, there has been no formal training on the provisions, principles, operations, laws and regulations, or procedures relating to procurement. This justifies the score of 1 for sub-indicator 9(e).

Indicator 10: Efficiency of appeals mechanism

4.59. Subject to a few improvements, the appeals mechanism in place is largely consistent with what is recommended by WAEMU Directives and international good practices. In order to enable the Dispute Settlement Committee (CRD) to become involved in dispute settlement without any potential conflict of interest, it is important that the ARMP no longer have the prerogatives relating to the issuance of the authorizations of procurement by directly negotiated contracts conferred on it by law. It is also necessary to supplement the system by introducing a mechanism for monitoring the application of CRD decisions.

4.60. The mechanism for independent appeal at the procurement stage is covered by the Procurement Code and has effectively been set as a body of the ARMP. It is the Dispute Settlement Committee and is made up of members of the Administration, the private sector, and civil society. The strategic positioning of the CRD confers all the authority necessary on it and brings together the prerogatives envisaged by WAEMU Directives. It has the capacity to issue binding decisions not subject to appeal and reasonable deadlines are indicated in the law for lodging and examining complaints as well as for issuing decisions. This is what justifies the maximum score of 3 for sub-indicator 10(a).

4.61. Even though the Code indicates that the persons responsible for procurement are the ones responsible for enforcement of such decisions by the CRD, no provisions were adopted to ensure the follow-up and the effectiveness of application of those decisions. This is what justifies the score of 2 for sub-indicator 10(b).

4.62. The authorizations granted by the ARMP for recourse to procurement by directly negotiated contracts affect the impartiality of CRD decisions in the event of an appeal against this procurement mode. Indeed, as the procurement mode constitutes one ground for appeal granted by the Code, a bidder lodging an appeal against a contracting authority (AC) for the adoption of a directly negotiated contract procedure could not receive a balanced decision from the CRD because of the prior approval already granted by the ARMP to the AC. This justifies the score of 2 for sub-indicator 10(c).

4.63. The Procurement Code does not explicitly require the publication of CRD decisions. As it happens, although the decisions are not published, they do remain accessible. The ARMP is waiting to define the legal form of decisions before beginning their complete publication. This is what justifies the score of 2 for sub-indicator 10(d).

4.64. Lastly, the score of 2 granted for sub-indicator 10(e) is justified by the conflict of interest engendered by the authorizations issued by the ARMP to engage in procurement by directly negotiated contracts.

Indicator 11: Degree of access to information

4.65. The assessment made it possible to take note of progress, but the information published is not yet exhaustive. For example, the statistics on contracts and the decisions of the CRD are not yet published. This is what justifies the score of 2 for sub-indicator 11(a).

Indicator 12: The country has ethics and anti-corruption measures in place

4.66. The legal and regulatory framework for combating corruption in public procurement is insufficient; it is not integrated into an overall anti-corruption strategy the contents of which could be implemented by reference to the mechanisms proposed by the international conventions on the subject (United Nations, African Union). The assessment failed to identify the slightest evidence of prosecutions and punishment for corrupt practices. This situation explains the weakness of sub-indicators 12(c), (d), (f), and (g), and is also related to the absence of sufficient account being taken of conflicts of interest. It would be advisable to involve the private sector and civil society more closely in the anti-corruption mechanism, which has not been the case so far.

4.67. Sub-indicator 12(a) received a score of 3 because, even though the system needs to be supplemented by an ethics mechanism that clearly states ethical and/or unethical behaviors, the law and regulations on public procurement include provisions on corruption, fraud, and conflicts of interest, and these elements are taken into account in the standard bidding documents. Bidding documents thus contain adequate provisions on fraud and corruption.

4.68. The legal and regulatory framework explicitly treats the issues of fraud and corruption. The Procurement Code defines corruption in procurement and specifies the individual liabilities and consequences for civil servants, private companies, or individuals found guilty of fraud or corruption in procurement, without prejudice to other provisions envisaged by criminal law. This is what justifies the maximum score of 3 for sub-indicator 12(b).

4.69. Legal and regulatory texts on corruption do exist, but scarcely any data attests that they are effectively applied. This explains the score of 1 for sub-indicator 12(c).

4.70. By Order No. 0026 MJ/GS/SG of March 7, 2008 of the Minister of Justice and Keeper of the Seals, the Government recently created a Sectoral Committee for the Coordination and Monitoring of the activity program of the Anti-Corruption Component of the Threshold Program of the Millennium Challenge Account. The powers of the Committee are primarily focused on supervision of the anti-corruption implemented by the Executing Agency of the MCA Niger. The Committee is made up exclusively of members of the Administration. This action was taken to meet specific needs of the MCA, although there is a National Anti-Corruption Association (ANLC), and therefore constitutes an isolated action. This shows that the program is not yet sufficiently functional, integrated, and effective. Consequently, sub-indicator 12(d) received a score of 1.

4.71. The active participation of the various stakeholders (private sector and civil society), in particular within the ARMP, is evidence of their commitment to creating a procurement market noted for its integrity and its respect of ethics, justifying the score of 3 for sub-indicator 12(e).

4.72. The law does not explicitly provide that denunciations can be lodged concerning violations of the law and/or ethics found in public procurement operations. In addition, there is no secure denunciation mechanism (such as a toll-free number) in the event of fraud, unethical behavior, and corruption, which can guarantee the anonymity of denunciations and protect the identity of those making them. This explains the score of 0 for sub-indicator 12(f).

4.73. Sub-indicator 12(g) also received a score of 0, as there is no code of conduct or ethics code in respect of public procurement. There is also no legal or regulatory text defining the obligations and responsibilities of stakeholders in the various situations.

4.74. The Table below presents a detailed assessment for Pillar IV.

Table 4.4: NIGER - Joint Assessment of OECD/DAC Indicators - Pillar IV

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
Pillar IV: Integrity and Transparency of Procurement System				
(9) The country has effective control and audit systems.				
<p>9(a) A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.</p> <p>The legal and regulatory system in the country provides for:</p> <p>(a) Adequately independent control and audit mechanisms and institutions to oversee the procurement function.</p> <p>(b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures.</p> <p>(c) Proper balance between timely and efficient decision making and adequate risk mitigation.</p> <p>(d) Specific periodic risk assessment and controls tailored to risk management.</p>	<p>The Government found that criteria (a) and (b) were met.</p> <p>The review confirms the Government's assessment, but finds that criterion (b) has been met only in part in the field, this with respect to the Public Procurement Divisions. Depending on the organization of the contracting authorities, they can be responsible for awarding contracts or for control.</p>	2	2	
<p>9(b) Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.</p>	<p>The Government found that audits are conducted annually, and that it can take up to one year for the auditors' recommendations to have an effect or be implemented.</p> <p>The review finds that audits are conducted sporadically. The last audit was carried out in 2005 and covered fiscal years 2003 and 2004.</p>	2	0	
<p>9(c) The internal control system provides timely information on compliance to enable management action.</p> <p>The following criteria are met:</p> <p>(a) There are written standards for the internal control unit to convey issues to management depending on the urgency of the matter.</p> <p>(b) There is established regular periodic reporting to management throughout the year.</p> <p>(c) The established periodicity and written standards are complied with.</p>	<p>There is no functional internal control.</p> <p>The review found that written standards do exist, in particular through the decree organizing the DGCMP, Prime Minister's Order No. 000215 of 7/26/07 on conformity control modalities for public procurement, and the texts governing Government's control body. However, criteria (b) and (c) are not met, as the texts relating to public procurement control make no reference to established procedures for drawing up reports.</p>	0	1	
<p>9(d) The internal control systems are sufficiently defined to allow performance audits to be conducted.</p>	<p>The Government found that the internal control system is poorly defined, if not to say nonexistent.</p>	0	0	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
	The review confirms this finding and notes that there are not yet any audit and internal control manuals.			
9(e) Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.	The Government found that it is mandatory for auditors to have a general knowledge of the principles, procedures, laws, and regulations governing procurement, but that they are not in general supported by procurement experts. This finding is consistent with the finding of the review.	1	1	
(10) Efficiency of appeals mechanism				
10(a) Decisions are deliberated on the basis of available information and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law. The system fulfills the following conditions: (a) Decisions are rendered on the basis of available evidence submitted by the parties to a specified body that has the authority to issue a final decision that is binding unless referred to an appeals body. (b) An appeals body exists which has the authority to review decisions of the specified complaints body and issues final enforceable decisions. (c) There are times specified for the submission and review of complaints and issuing of decisions that do not unduly delay the procurement process.	The country has a system that meets conditions (a) to (c). This assessment is consistent with that of the review. Articles 116 to 119 of the Public Procurement Code make it possible to meet criteria (a) to (c).	3	3	
10(b) The complaint review system has the capacity to handle complaints efficiently and the means to enforce the remedy imposed.	According to the Government, the complaint review system includes specific and reasonable modalities and deadlines for reaching decisions and clearly defines powers and arrangements for enforcing those decisions. The review notes the absence of mechanisms for ensuring the effective enforcement of decisions, even though the Code does indicate that the persons responsible for contracts are responsible for enforcing such decisions.	3	2	
10(c) The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information. The procedures governing the decision-making process of the review body ensure that decisions:	The system meets criteria (a) to (d). The review finds that criterion (b) is not met because, in the event of an appeal against the adoption by a contracting authority of a directly negotiated contract procedure as procurement method, the decisions of the Dispute Settlement Committee	3	2	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
(a) Are based on information related to the case at hand (b) Are balanced and reflect no prejudice of the information relating to the case at hand (c) Can be submitted for review by a higher authority (d) Give rise to corrective measures needed to correct the deficient application of the process or procedures	(CRD) may not be balanced owing to the prior authorizations granted by the ARMP for recourse to this procurement method.			
10(d) Decisions are published and made available to all interested parties and to the public.	The Government found that all decisions are published on an Internet website of the administration or posted at a location that is readily accessed. The review notes that the Public Procurement Code does not require the publication of decisions. In practice, decisions are not published, but they are accessible. The ARMP indicated to the review that it is waiting for a definition of the legal forms of decisions before proceeding to their complete publication.	3	2	
10(e) The system ensures that the complaint review body has full authority and independence for resolution of complaints.	The complaint review body is independent and autonomous in the resolution of complaints. The review finds that the ARMP is involved in contract award offers through the authorizations it issues for the award of directly negotiated contracts, thereby engendering a conflict of interest in cases of appeals against this procurement method.	3	0	
(11) Degree of Access to Information				
11(a) Information is published and distributed through available media with support from information technology, when feasible.	In the Government's view, information on contract awards is readily accessible in widely disseminated and accessible media. The information provided is centralized at a common location. The information is relevant and complete. The information makes it possible for concerned parties to understand the processes and provisions relating to procurement and to monitor outcomes and performance after those procedures are carried out. The review finds that the publications are not yet exhaustive: statistics on contracts and the decisions of the CRD are not yet published.	3	2	
(12) The country has ethics and anti-corruption measures in place.				
12(a) The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of	According to the Government's assessment, the law and regulations on procurement contain provisions on corruption, fraud, and conflicts of	3	3	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
<p>interest, and unethical behavior, and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.</p>	<p>interest. These matters are taken into account in the model invitations to tender. The bidding documents contain adequate provisions on fraud and corruption.</p> <p>This assessment is consistent with the findings of the review. However, the review notes the need to supplement the system by taking provisions relating to ethics more thoroughly into account.</p>			
<p>12(b) The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.</p>	<p>The legal and regulatory framework explicitly addresses fraud and corruption questions. It defines fraud and corruption in procurement and specifies the individual responsibilities and consequences for officials and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice to other provisions in criminal law.</p> <p>This assessment is consistent with the findings of the review.</p>	3	3	
<p>12(c) Evidence of enforcement of rulings and penalties exists.</p>	<p>The legal and regulatory texts exist, but there are scarcely any data attesting to their effective enforcement.</p> <p>This assessment is consistent with the findings of the review.</p>	1	1	
<p>12(d) Special measures exist to prevent and detect fraud and corruption in public procurement.</p>	<p>The public authorities have introduced a program to combat corruption, but it would be more effective if its coordination was improved or entrusted to a body at a higher level of authority. There is no special measure pertaining to procurement.</p> <p>This assessment is consistent with the findings of the review.</p>	1	1	
<p>12(e) Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end users) support the creation of a procurement market known for its integrity and ethical behaviors.</p> <p>The country meets the following conditions:</p> <p>(a) There are strong and credible civil society organizations that exercise social audit and control.</p> <p>(b) Organizations have Government guarantees to function and cooperation for their operation and are generally promoted and respected by the public.</p> <p>(c) There is evidence that civil society</p>	<p>The system meets criteria (a) to (c).</p> <p>This assessment is consistent with the findings of the review.</p>	3	3	

Baseline Indicator	Summary Explanation	Govt. Score	Review Score	Government Comments
contributes to shaping and improving the integrity of public procurement.				
12(f) The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	<p>According to the Government, a mechanism is in place, but security and confidentiality cannot be guaranteed.</p> <p>The review finds that there is no secure mechanism (such as a toll-free number) for reporting fraudulent, corrupt, or unethical behavior. Moreover, the law does not make explicit provision for such reporting.</p>	1	0	
<p>12(g) Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision-making positions.</p> <p>The system fulfills the following criteria:</p> <p>(a) There is a code of conduct or code of ethics for governmental officials containing special provisions with respect to persons involved in the management of public finance, including procurement.</p> <p>(b) The Code defines responsibilities in respect of decision-making and makes decision-makers subject to specific provisions on disclosing financial information.</p> <p>(c) Observance of the Code is mandatory and the consequences are administrative or criminal in nature.</p>	<p>According to the Government, there is a code of conduct, but the definition of responsibilities lacks clarity.</p> <p>The review found that there is no code of conduct of code of ethics in respect of public procurement. There is also no legal or regulatory provision defining the responsibilities of stakeholders in various situations.</p>	1	0	

5. RISK ASSESSMENT

A. OVERALL

5.1. The lessons drawn from this review made it possible to identify a number of strengths and weaknesses of the system. The Government's political commitment to complete the reform is affirmed, but three major risks remain.

5.2. **The first is a regulatory risk associated with the hierarchical level of the text governing the Procurement Code.** The fact that this Code takes the form of a law posed an obstacle in the context of Niger, insofar as its adoption ran up against differences of opinion between the Parliament and the Government. It would be more appropriate for Niger, following the example of other countries of the subregion, to revise the legal framework by adopting a more summary law on public procurement, containing the major principles of WAEMU Directives, and propose by regulation a Code that sets forth the practical and dynamic implementing provisions of that law. This approach also has the advantage of making subsequent revisions of the Code easier.

5.3. **The second risk pertains to the Government's capacity to mobilize the resources necessary to improve the effectiveness and efficiency of the system,** in particular to supplement the tools needed for operation of the system (computerized management information system decentralized to the level of the contracting authorities with an interface with SYGFIP, manuals of procedures), providing the control bodies with the necessary human resources (DGCMP, DCF, and Court of Accounts), and a massive stakeholder training effort. The magnitude of the resources to be put into play points to the need of improved coordination with financial partners.

5.4. **The third risk involves the conflicts of interest observed in the system.** The authorizations of procurement by directly negotiated contracts issued by the ARMP considerably undermine the independence of the CRD, this more especially in that the procurement modality used constitutes grounds for appeal. The private sector's direct participation in the evaluation of bids and in contract awards also has a substantial impact on the transparency of contract award procedures.¹³

5.5. The risks associated with each pillar are discussed in the paragraphs below.

For Pillar I

5.6. **The regulatory risk remains high.** The fact that this entire Code takes the form of a law has been an obstacle in the context of Niger, insofar as its adoption runs up against political differences between the Parliament and the Government on matters that could have been

¹³ Decrees 113 and 114 CAB / PM of 10/102006 were replaced by Decrees No. 0037/CAB/PM/ARMP of 03/02/2010 on the establishment, composition, type, responsibilities and operation of the ad 'hoc committee for the award of public contracts; No. 0079 CAB / PM / ARMP of 04/09/2010 on the establishment, composition, type, responsibilities and operation of the ad 'hoc committee for the award of contracts for procurement of state companies and mixed companies. The main innovations introduced by these texts are the exclusion of the private sector and the Jeune Chambre Internationale from the procurement award committee.

addressed as part of the regulatory framework. It would be more appropriate for Niger, following the example of other countries of the subregion, to revise the legal framework by adopting a more summary law on public procurement, containing the major principles of WAEMU Directives, and adopt by regulation a Code that sets forth the practical and dynamic implementing provisions of that law. This approach also has the advantage of making subsequent revisions of the Code easier. Moreover, the fact that certain provisions of the current code are not consistent with good practices as regards procurement procedures poses substantial risks as regards the observance of the principles of transparency and equity, resulting in increased costs and even corruption. The use of restricted competitive bidding depending on the amount involved contributes to removing a substantial share of contracts from open competitive bidding, and consequently limiting access to public procurement by a substantial share of suppliers. The lack of a framework for the validation of the procurement commission's proposed contract award by the contracting authority leaves the latter free of any follow-up on the proposal, and may result in awards that are not in conformity with the criteria defined in the specifications. Finally, the definition of national competitive bidding limited solely to individuals or legal entities with their domicile or head office in Niger can contribute, contrary to the spirit of the WAEMU Directives, to limiting the access of Community enterprises to a substantial share of government contracts in Niger and to an increase in public procurement costs.

5.7. In view of the still insufficient capacities as regards procurement, the absence of manuals of procedures or guides to facilitate application of the Procurement Code can affect the efficiency of procurement operations. This is the case of the inconsistencies remaining between the Code and its implementing provisions. For example, the standard documents for the procurement of supplies make it possible to use a scoring system for the evaluation of bids and to open bids in two stages, which is not in conformity with good practices and engenders a risk of subjectivity in the evaluation of bids.

For Pillar II

5.8. The institutional risk is also high. The direct intervention of the ARMP in the award of directly negotiated contracts constitutes a risk to the effective independence of the CRD as regards the management of appeals. This situation in respect of the CRD is a source of conflicts of interest, in that Article 116 of the Code includes the procurement modality among the grounds for appeal. This power of the ARMP is not in conformity with international best practices, including those defined in the WAEMU Directives, which mandate the separation of the control and regulation functions. Moreover, the current public finance management system has no arrangement for ensuring the proper integration of public procurement with the public finance management, which constitutes a risk as regards the competitiveness of the private sector, insofar as the existing constraints on cash flow management do not make it possible to guarantee the effective availability of resources at the time when contracts are entered into and to guarantee proper contract execution. It is important that the process of integrating the public procurement management tool (SIGMAP) with the computerized budget management tool be finalized without delay in order to support the centralization, collection, and dissemination of statistics. Finally, the absence of a reliable public procurement management system means that it is not possible to have exhaustive data in this area and consequently to assess the level of effective conformity of the application of procurement rules and apply corrective measures to the system.

For Pillar III

5.9. **The operational risk is high.** The lack of capacity development strategies constitutes a genuine risk to the effectiveness and efficiency of a portion of public expenditure execution, which is sought through the introduction of the procurement system. This risk is all the more high in that enormous responsibilities have been shifted to the contracting authorities (a priori control of contracts for less than CFAF 300 million being carried out by Financial Control) and that the capacities of the Public Procurement Divisions are still unproven. A good procurement system entails a high-performance public sector that can perform procurement operations without bias by observing all the rules of transparency, equity, and economy required, as well as a private sector that is able to obtain public orders and provide quality products and services. Such objectives can be achieved only through an ongoing system of training that is continually adapted in response to regular performance assessments. The framework must also provide a reliable and exhaustive information system on public procurement that can enable the private sector to stay abreast of business opportunities and, in general, of all the aspects relating to contracts, including the relevant regulations.

5.10. **There are no procedures for international competitive bidding based on a proper appreciation of what is at stake commercially and with respect to development.** The legal framework does lay down clear rules with respect to international competitive bidding. Article 11 bis of the Public Procurement Code stipulates that “calls for bids are international when addressed to individuals or legal entities without particular reference to their domicile or the location of their head office.” The rules for international competitive bidding as well as the thresholds required and the related publicity rules are not specified in the Procurement Code so as to guarantee genuine price competition whenever the national environment does not make it possible to have a sufficient number of qualified bidders. The exemptions from the application of certain provisions of the code, such as the provision of qualification certificates for works, are not indicated.

5.11. **The lack of regulation of the principle of acceptance and supervision of civil engineering works constitutes a major obstacle to the reliability and quality of procurement.** The Procurement Code makes no reference to the procedures for accepting purchases, or to the obligation of the oversight of acceptance by qualified persons. In the field of civil engineering works, the Code does not regulate the supervision of civil engineering works, for example by making this mandatory under clearly specified conditions. These gaps constitute major obstacles not only to the reliability of actual acquisitions, but also to their quality and security. It would be desirable that steps be taken rapidly to introduce suitable clauses into the Code in order to address these concerns.

For Pillar IV

5.12. **The “integrity” risk is extremely high because internal and external controls are not effective.** Control constitutes the keystone of the system in that it guarantees effective application of the “rules of the game.” The procurement arrangement is characterized by an absence of effective internal control over most government contracts. This situation results from the combined effects of, on the one hand, the important responsibilities conferred on the contracting authorities even as the structures responsible within these authorities (the DGCF and

the DMPs) are generally involved in contract awards, and, on the other hand, the paucity of human resources at the DGCMP and in the control structures generally. This is compounded by the absence of a secure arrangement for the certification of services rendered, making it impossible to ensure that orders have effectively been executed. Moreover, external controls are also not conducted owing to the limited financial resources of the DGCMP and human resources of the Court of Accounts. This introduces a bias against the integrity and transparency of the system that it is important to correct. Lastly, the system does not have an ethics mechanism making it possible to prevent conflicts of interest and to ensure that sanctions are effective, thus considerably affecting its transparency. It is necessary that such a mechanism be put in place through an independent anti-corruption program that is efficient and coordinated with the public procurement management system. The mechanism should be periodically evaluated to ensure its effectiveness.

6. RECOMMENDATIONS

6.1. The recommendations of the review are specified and detailed in the paragraphs that follow and are presented in the form of actions to be carried out in the short and medium terms, at the level of each pillar. They are also presented in tabular form at the end of this section.

For Pillar I

6.2. **In the short term**, the Government should take measures to: (i) revise the draft ordinance on the Public Procurement Code to bring it fully into line with WAEMU Directives and in conformity with the implementing provisions of the Code¹⁴; (ii) re-examine the national standard invitation to tender for goods and works in order to bring it into line with WAEMU Directives; (iii) promulgate the implementing order to permit the creation of the Bid Opening and Contract Award Commission (COA) and the Technical Commission for Bid Evaluation (CTEO);¹⁵ (iv) establish the conditions for limited competitive bidding in conformity with WAEMU Directives and introduce a threshold for national competitive bidding that is in keeping with the capacities of local industry; (v) introduce a ceiling for competitive national bidding that takes into account local industry and ongoing practices in the WAEMU countries; and (vi) prepare manuals of public procurement procedures for governmental stakeholders.

6.3. **In the medium term**, the Government should take steps to propose a more summary public procurement law that replicates the major principles of WAEMU Directives, and to propose via regulatory channels a Code delineating the practical and dynamic provisions for implementing this law.

¹⁴ Ordinance N0 2010-57 of September 17, 2010 created the DGCMP and provided it with the responsibility for direct negotiations and the handling of exceptions.

¹⁵ Decrees 113 and 114 CAB / PM of 10/102006 were replaced by Decrees No. 0037/CAB/PM/ARMP of 03/02/2010 on the establishment, composition, type, responsibilities and operation of the ad 'hoc committee for the award of public contracts; No. 0079 CAB / PM / ARMP of 04/09/2010 on the establishment, composition, type, responsibilities and operation of the ad 'hoc committee for the award of contracts for procurement of state companies and mixed companies. The main innovations introduced by these texts are the exclusion of the private sector and the Jeune Chambre Internationale from the procurement award committee.

For Pillar II

6.4. **In the short term**, the Government should take measures to: (i) legally assign the control of conformity and suitability of directly negotiated contracts to the DGCMP while giving the ARMP—in particular the CRD—the right to intervene automatically in the event of any type of decision not in conformity with the regulations; (ii) specify the exclusive responsibilities of the ARMP with respect to any decision requiring an exemption from the legislation in force; (iii) introduce a regulatory provision mandating formal determination of the availability of budget appropriations before launching any competitive bidding; and (iv) draw up a provisional training program for all stakeholders in the public procurement chain before establishing a national capacity building strategy.

6.5. **In the medium term**, the Government should take measures to: (i) promote the development of a reliable tool for collecting information and statistics (SIGMAP) and link the information on the website with the integrated public procurement management information system (SIGMAP); and (ii) develop a comprehensive capacity building strategy in the area of public procurement, taking account of the roles and responsibilities of stakeholders in the public procurement process and the execution chain, while defining training needs, the appropriate modules, and training the trainers.

For Pillar III

6.6. **In the short term**, the Government should take measures to: (i) revise the threshold for approval by the contracting authorities from CFAF 300 million to CFAF 100 million, in recognition of existing capacities and the effectiveness of internal controls; (ii) focus the powers of the DMP on the quality control of public procurement operations, and ensure their independence with respect to the DRFMs involved in the award of government contracts; (iii) include in the Code a provision requiring international competitive bidding when the local market does not permit adequate competition; and (iv) implement the transitional training program.

6.7. **In the medium term**, the Government should take measures to: (i) ensure that training is provided for the various stakeholders (public sector, private sector, and civil society) on the basis of a comprehensive strategy; and (ii) develop clear regulations and punitive measures to guarantee the proper acceptance of services rendered.

For Pillar IV

6.8. **In the short term**, the Government should take measures to: (i) build the capacities of the DGCMP in connection with control missions; (ii) publish the CRD's decisions on complaints in the Public Procurement Journal; (iii) review the responsibilities of the units responsible for public procurement in order to harmonize them and assign them the ex ante quality control of the bids signed by contracting authorities; (iv) re-examine the composition of the bid evaluation and contract award commissions in order to end the involvement of the private sector; and (v) conduct an audit of government contracts for fiscal years 2008 and 2009 and publish the results on the ARMP website.

6.9. **In the medium term**, the Government should take measures to: (i) ensure that the ARMP regularly audits government contracts and publishes the results on the website and in the Public Procurement Journal; (ii) review the existing regulations in order to define reliable mechanisms for the management of conflicts of interest and the observance of ethical principles in public procurement; and (iii) adopt and disseminate a Code of Ethics on public procurement.

Assessment of The Public Procurement System

Table of Recommendations

Problem identified	Actions to be taken	Stakeholders responsible	Technical assistance required (Low, Medium, High)	Proposed implementation date	
				Short-term	Medium-term
Pillar I: Legislative and Regulatory Framework					
1 - The Ordinance on the Public Procurement Code does not fully transpose the WAEMU Directives	1 - Revise the draft ordinance on the Public Procurement Code to bring it fully into line with the WAEMU Directives and bring the implementing regulations into line with the Code	ARMP	High	2010	
2 - The standard procurement documents contain clauses not in conformity	2 - Bring the standard national bidding materials for goods and works into conformity with WAEMU Directives	ARMP	Medium	2010	
3 - The technical commissions responsible for opening bids and awarding contracts are not in place	3 - Promulgate implementing decrees to permit the creation of the Commission for Opening Bids and Awarding Contracts (COA) and the Technical Commission for Bid Evaluation (CTEO)	Government	Low	2010	
4 -The Code authorizes restricted competitive bidding which inadequately replaces National Competitive Bidding and is not consistent with WAEMU Directives	4 - Establish restricted bidding conditions in conformity with WAEMU Directives and introduce a threshold for national competitive bidding consistent with the capacities of local industry 5 - Establish a threshold for national competitive bidding taking into account local industry and the practices in place in the WAEMU countries	ARMP	Medium	2010	
5 - The detailed Procurement Code is at too high a hierarchical level (law)	6 - Propose a more summary law on public procurement, replicating the major principles of WAEMU Directives, and prepare by regulation a Code specifying the practical and dynamic provisions of implementing that law	ARMP	High		2012
6 -There are no manuals of procedure for use by contracting entities or guides for bidder use	7 - Prepare manuals of procedure on procurement for government stakeholders	ARMP	High		2011
Pillar II: Institutional Framework and Management Capacity					
1 - The ARMP issues	1 - Legally entrust control of	ARMP	Medium	2010	

Problem identified	Actions to be taken	Stakeholders responsible	Technical assistance required	Proposed implementation date	
authorizations for directly negotiated contracts	the conformity on directly negotiated contracts decisions to the DGCMP while giving the ARMP, particularly the CRD, the right of automatic hold on any type of decision not in conformity with regulations				
2 - The responsibilities of the ARMP with regard to waivers of legislation in force are not specified clearly	2 - Specify the exclusive responsibilities of the ARMP over any decision requiring a waiver from the legislation in force	ARMP	Low	2010	
3 - The current public finance management system does not sufficiently integrate procurement	3 - Adopt a regulatory text mandating formal determination of the availability of budget appropriations before launching any competitive bidding	MEF	Low	2010	
4 - Absence of training program for contracting authorities	4 - In cooperation with MCA-Niger, produce transitional training modules for contracting authorities	ARMP/MCA	High	2010	
5 - Absence of reliable and exhaustive statistics on public procurement	5 - Develop a reliable tool for collecting information and statistics (SIGMAP)	ARMP/MEF	High		2011
6 - The national statistics on public procurement are not exhaustive and not published	6 - Link website information to the integrated public procurement management information system (SIGMAP)	ARMP/MEF	Medium		2011
7 - There is no national strategy for building the capacities of stakeholders in the public procurement chain	7 - Develop a comprehensive capacity development strategy on public procurement, taking account of the roles and responsibilities in the chain and defining training needs, appropriate modules, and training of trainers	ARMP/MEF	High		2011
Pillar III: Procurement Operations and Market Practices					
1 – The contracting authorities can award contracts for up to CFAF 300 million without a priori control by the DCMPs	1 – Redefine the level of responsibility of the contracting authorities, lowering the CFAF 300 million threshold to CFAF 100 million, in order to take account of existing capacities and the effectiveness of internal controls	ARMP	Medium	2010	
2 – Most DMPs participate on procurement commissions	2 – Focus the powers of the DMPS on quality control of procurement operations, training, the coordination of information, the filing and storage of information, and ensure their independence from the DRFMs, which are institutions involved in the public procurement process	ARMP	Medium	2010	
3 – There are no procedures for appealing international bids based on the commercial and	3 – Review the Code to introduce the concept of international competitive	ARMP	Medium	2010	

Problem identified	Actions to be taken	Stakeholders responsible	Technical assistance required	Proposed implementation date	
development stakes at play	bidding when the local market does not permit sufficient competition				
4 – The contracting authorities are not sufficiently trained	4 – Implement the transitional training program prepared with MCA-Niger	ARMP	Medium	2010	
5 – The lack of a capacity development strategy constitutes a threat to the effectiveness and efficiency of the public procurement chain	5 – Develop training programs for the various stakeholders (public sector, private sector, and civil society) on the basis of an overall strategy	ARMP	High		2011
6 – Absence of regulation on the principle of acceptance and supervision of purchases	6 – Adopt a clear regulation and punitive measures to guarantee appropriate acceptances of services delivered	ARMP	Low		2011
Pillar IV: Integrity and Transparency of Procurement System					
1 – The DGCMP is not operational owing to insufficient resources for its missions	1 – Build the capacities of the DGCMP to enable it better to perform its control missions	ARMP	Medium	2010	
2 – The ARMP has not yet set up a dissemination system and efficient mechanisms for monitoring penalty decisions	2 – Publish the decisions of the CRD on complaints in the Public Procurement Journal (JMP)	ARMP	Low	2010	
3 – Lack of harmonization of the responsibilities of the staff responsible for public procurement and the ex ante control of bid quality	3 – Review the responsibilities of the staff responsible for public procurement in order to harmonize them, and entrust them with the ex ante quality control of bids signed by the contracting authorities	ARMP	Low	2010	
4 – The private sector participates directly in the work of the bid evaluation and award commissions	4 – Review the composition of the bid evaluation and award commissions in order to eliminate the direct participation of the private sector	ARMP	Low	2010	
5 – There is no audit report on government contracts	5 – Initiate audits of government contracts for fiscal years 2008 and 2009 and publish the results on the ARMP website 6 – Ensure that the ARMP regularly conducts audits of government contracts, specifically for 2008 and 2009, and publish the results on the website and in the Public Procurement Journal	ARMP	High		2011
6 – There is no ethics mechanism making it possible efficiently to prevent conflicts of interest	7 – Review the current regulations to define reliable mechanisms for managing conflicts of interest and ensure observance of ethical principles in public procurement 8 – Adopt and disseminate a Code of Ethics for Public Procurement	ARMP ARMP	High High		2011 2012

Appendix 1: Procurement - OECD/DAC Summary Table

OECD/DAC Baseline indicators		Scores by component								Total score	Average score (/3)
		A	b	c	d	e	f	g	h		
	Pillar I. Legislative and Regulatory Framework										
BI-1	Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations	3	2	3	0	3	3	1	3	18/24	2.3
BI-2	Existence of implementing regulations and documentation	1	3	3	3	1	3			14/18	2.3
	PILLAR I RESULT									32/42	2.3
	Pillar II. Institutional Framework and Management Capacity										
BI-3	The public procurement system is mainstreamed and well incorporated into the public sector governance system	1	1	2	3					7/12	1.8
BI-4	The country has a functional normative/regulatory body	3	3	3	0					9/12	2.3
BI-5	Existence of institutional development capacity	2	1	1	0					4/12	1.0
	PILLAR II RESULT									20/36	1.7
	Pillar III. Procurement Operations and Market Practices										
BI-6	The country's operations and practices are efficient	2	1	1	1					5/12	1.3
BI-7	Functionality of the public procurement market	1	2	2	0					5/12	1.3
BI-8	Existence of contract administration and dispute resolution provisions	1	2	3						6/9	2.0
	PILLAR III RESULT									16/33	1.5
	Pillar IV. Integrity and Transparency of Procurement System										
BI-9	The country has effective control and audit systems	2	0	1	0	1				4/15	0.8
BI-10	Efficiency of appeals mechanism	3	2	2	2	0				9/15	1.8
BI-11	Degree of access to information	2								2/3	2.0
BI-12	The country has ethics and anti-corruption measures in place	3	3	1	1	3	0	0		11/21	1.6
	PILLAR IV RESULT									26/54	1.6
	TOTAL RESULT									104/165	1.8

Appendix 2: List of Documents Consulted

A compilation of ARMP documents, consisting of the following:

- Decree No. 2004-190/PRN/ME/F of July 6, 2004, on the composition, organization, and operating modalities of the Public Procurement Regulatory Agency (ARMP).
- Decree No. 2004-192/PRN/ME/F of July 6, 2004, establishing the operating arrangements of the Disputes Settlement Committee (CRD).
- Decree No. 2004-193/PRN/ME/F of July 6, 2004, on the arrangements for paying the balance of certain categories of contract and making payments to small and medium enterprises.
- Decree No. 2004-194/PRN/ME/F of July 6, 2004, on the paperless implementation of procurement procedures.
- Decree No. 113/Cab/PM of October 10, 2006, on the standard composition and powers of the commissions evaluating public procurement tenders.
- Decree No. 114/Cab/PM of October 10, 2006, organizing the bid opening sessions for public procurement.
- Decree No. 2007/004/PRN/ME/F of January 17, 2007, updating the minimum and maximum prices for bidding materials and the rate of the flat rate fees for the award of government contracts.
- Decree No. 270/Cab/PM of October 24, 2007, setting procurement thresholds and deadlines for publicizing and accepting procurement tenders.
- Decree No. 2008-120/PRN/ME/F of May 9, 2008 on the organization and powers of the General Directorate of Public Procurement Control (DGCMP).
- Decree No. 180/Cab/PM/ARMP of September 29, 2008, approving the Standard Request for Proposals for the public procurement of intellectual services.
- Decree No. 181/Cab/PM/ARMP of September 29, 2008, approving the Standard Request for Proposals for the public procurement of works.
- Decree No. 182/Cab/PM/ARMP of September 29, 2008, approving the Standard Request for Proposals for the public procurement of supplies and current services.
- Letter No. 000028 SE/ARMP/DISE of January 12, 2009, on the preparation and transmission of general notices on the award of government contracts for 2009.
- Letter No. 000215/CAB/PM/ARMP of July 26, 2007, on the practical modalities for controlling the conformity of government contracts.
- Document of May 11, 2007 on the internal by-laws of the National Regulatory Council for Public Procurement.
- Progress report document of December 2008 on the reform action plan updated in March 2007.
- Status report on the public procurement seminars contracts organized in 2007.
- DGCF document providing a table of the contracts awarded in 2008.
- Summary table of the appeals examined by the Dispute Settlement Committee during 2008.
- Summary table of the investigations carried out by ARMP advisers in 2008.

- Standard bidding file – Public procurement for works.
- Standard bidding file – Public procurement for supplies and services.
- Standard Request for Proposal – Public procurement for intellectual services.
- Study on the design of a professional staff training and development program for public procurement (SEDES-ADIRA, October 2004).
- Manual of public procurement procedures - provisional report (Mahamane Sani BAKABE, legal consultant, January 2005).
- Constitution of the International Youth Chamber, (JCI).
- Order No. 0026/MJ/GS/SG of March 7, 2008, on the creation, powers, and composition of the Sectoral Committee responsible for Coordination and Follow-up of Anti-Corruption Efforts of the Threshold Program of the Millennium Challenge Account.

Appendix 3: List of Persons Contacted

PEMFAR – PUBLIC PROCUREMENT

List of Persons Contacted

Wednesday, February 11: Meeting with Public Procurement Division

No.	Full Name	Structure	Function	Contacts (Tel. /Email)
1	Eric Yoboué	B.M	S.P.M	
2	Ibrah Sanoussi	B.M	S.P.M	96 09 96 97 isanoussi@worldbank.org
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4	Mrs. Ali Fatouma	ARMP	SAYS	20 72 35 00
5	Wassalké.B	ARMP	S.E	20 72 35 00
6	Ibrahim A.Bachir	MI/SP/D	DAAF	20 72 39 70
7	Mahaman Lawali	MRS.	DAAF	20 73 65 26
8	Dan GAKI	MISP/D	DRF/DGP	20 73 98 36
9	Ibrahim Harouna	MI/SP/D	DMP	20 72 39 70 20 20 38 04
10	Hassane Harouna	MPF/PE	DRF/M	20 73 57 03 /96 96 76 52
11	Elh.Abba D.	MCN/LCVC	DRF/M	20 72 68 86/96 40 19 57
12	Oumarou Foamed B.	MI/SP/D	DRF/A	20 73 37 44/96 96 45 60
13	Col.Labo Foamed	MDM	DAF	20 72 25 54/96 26 34 98
14	Ado Issa	MEIA	DRF/M	20 73 31 32/96 96 48 32
15	Elh.Mahamadou	DMAT	MI/SP/D/DGPN	20 73 24 46/96 97 57 88
16	Zabeirou Saddi	DMP/MTAC	MT/AC	96 88 68 50
17	Mahamadou Soumana	DRF/M/MF/MC	MT/AC	96 99 03 78
18	Belko Boubacar		DMP/MESS/RH	90 43 23 74
19	Sidi Abdoulaye	DMP/MAT/DC		20 72 32 55/96 49 37 14
20	Lt Aba Bili Malam	CDMP/MDN	MAN	96 96 87 15
21	Zanguina Abdoulaye	Financier MCN/LCRE		96 47 48 47
22	Karimou Lamboni	DMP/MEF/T	DMP	96 50 92 89/93 93 29 35
23	Boucar Abdoulaye	DRF/M/MCRIR		96 87 34 64/20 72 59 57

No.	Full Name	Structure	Function	Contacts (Tel. /Email)
24	Jean Bino	DMP/MT/A	C/DMP	96 87 73 34/20 73 65 23
25	Abdou Souleymane	DGE/CCE/MEF		20 72 41 38
26	Mrs. Bello Ramatou	DMP/MFPT	Division chief	93 81 98 00/90 31 71 18
27	Morou Moussa	MMFP/T	Director RFM	20 73 20 43
28	Mourtala Pacachatou	MCRIR	Division chief	20 72 59 52/96 48 10 51
29	Adamou Kane	ARMP	Director of Legal Affairs	20 72 35 00
30	Mahamadou Halidou	ARMP	Tech director	20 72 35 00/96 53 16 01
31	Maman Ousseini	Water Supply Min	A M Publics	96 97 23 00
32	Matti Moussa	MCAR/AH	DRF/M	96 87 80 62
33	Ibrahim Oumani	MCAR/AH	DM Publics	96 35 35 40
34	Amadou Malik	MIA/NE	DRFM	96 70 75 31
35	Harou Adamou	DMP/MDA	Division chief	96 97 97 12
36	Keita Mahamadou	Ministry of Communication	DRFM	93 91 44 15
37	Mrs. Imini Rahamatou	MUH/C	DAAF	20 20 31 15/96 43 48 68
38	Mrs. Fatouma Garba	MAE/C	DRFM	20 20 37 20/ 96 99 13 35
39	Madou Yahaya	ME/F	DMP	96 88 7150
40	Boukar Sedick	MAE/C	DIV CHECHMATE	96 98 41 88
41	Mrs. Sahabi	MFPT	DRFM	96 49 80 55
42	Abdouo Sayo Farmo	MSP	DRFM	96 59 84 01
43	Abdou Djika	DMP/MSP	Cef div	93 92 51 81
44	Issoufou Gand	M.Justice	C/DFM	96 19 60 12
45	Maazou Salissoou	MCAL/PEA	DRFM	96 96 10 10
46	Souleymane Yacouba	DRFM/DRFM/ME	DPM	96 97 21 62
47	Mrs. Moussa Halimatou	DPM/DRFM/ME	DPM	96 49 15 05
48	Ousmane Sanda Garza	DMP/MUH/C	C/DMP	96 98 31 44
49	Maman Yahaya	MCAL/PEA	DRFM	96 13 57 09/20 72 60 68
50	Ali Seydou	MC/DRM/DMP	DMP	96 32 17 61/20 72 60 73

No.	Full Name	Structure	Function	Contacts (Tel. /Email)
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52	Idi Dilli Sani	MAT/DC	Rep DAAF	96 18 71 85/20 72 32 55
53	Souley Djibo	MP/RS/DRFM	DRFM-A	96 56 83 65
54	Hamadou Moumouni	MT/A	DAI/T	96 97 86 90
55	Mrs. Moussa Dizik	MT/A/DAAF	DAAF	96 88 95 40
56	Adamou D.	MH/DRFM	DRF	96 87 38 52
57	Amadou Zeinou Moustapha	MJ/S	DMP	96 49 54 30
58	Mrs. Haiballa Laila	DRFM/MF	ORFM	97 32 20 20

PEMFAR - PUBLIC PROCUREMENT

List of Persons Contacted

Wednesday, February 11 OECD/ARMP Assessment / 15:00

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PEMFAR - PUBLIC PROCUREMENT

List of Persons Contacted

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PEMFAR-PUBLIC PROCUREMENT
List of People Contacted
February 19th: Meeting with ARMP-DGCMP-WB

No	Last and First Name	Structure	Function	Contacts (Tel. /Email)
1	Adamou Kane	ARMP	DAJ	20 72 35 00
2	Mrs. Ado	MEF /DGE	Statistician	96 26 50 13
3	Mrs. Ali Fatouma	ARMP	SAYS	20 72 35 00
4	Mahamadou Halidou	ARMP	DAT	20 72 35 00 /96 53 16 01
5	Eric Yoboué	WB	SPM	97 43 75 02
6	Ibrah Sanoussi	WB	SPM	96 09 96 97
7	Lo Moustapha	UNDP	SPM	90 51 37 23
8	Yahouza Sani	DGCMP		96 10 85 36
9	Lompo Felix	DGCMP		96 98 25 43
10	Chaibou Daouda	DGCMP		96 40 68 05
11	Aliou Moussa	DCR /DGCMP	Lawyer	94 25 23 61

PEMFAR - PUBLIC PROCUREMENT:
List of People Contacted
February 16: Meeting with the private sector at Chamber of Commerce

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3	Sani dan Mirriah	Ets DMAS		96 96 50 35
4	Maman Aoudi Elhadji	SONIHY		96 96 63 39
5	Dr. Diallo Moustapha	APSP		96 28 51 31
6	Yerima Abdoulaye Agnamey	CETI Technology		96 97 00 49
7	Ibrahim Dandled	CNPN		96 99 57 98
8	Mrs. Ali Fatouma	ARMP	SAYS	20 72 35 00
9	Yero Famba	ARMP	PCNC /MP	96 97 92 96
10	Maigana Fatima	CCAIAW		
11	Chaibou Laouli	SG /CCAIAN		96 97 70 70
12	Toudou Boubacar	CCAIAN		96 97 29 29
13	Mahamadou Nabasser	Ent NASOMA		96 87 81 05
14	Ibrah Sanoussi	WB	SPM	96 09 96 97
15	Lo Moustapha	UNDP	SPM	90 51 37 23
16	Eric Yoboué	WB	SPM	97 43 75 02

**PEMFAR-Public Procurement: List of People Contacted
February 18th: Summary Meeting**

No	Last and First Name	Structure	Function	Contacts (Tel. /Email)
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3	Mrs. Ali Fatouma	ARMP	SAYS	20 72 35 00
4	Mahamadou Halidou	ARMP	DAT	20 72 35 00 /96 53 16 01
5	Wassalké Boukari	ARMP	SE	20 72 35 00
6	Ibrah Sanoussi	WB	SPM	96 09 96 97
7	Lo Moustapha	UNDP	SPM	90 51 37 23
8	Yahouza Sani	DGCMP		96 10 85 36
9	Lompo Felix	DGCMP		96 98 25 43
10	Chaibou Daouda	DGCMP		96 40 68 05