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ABBREVIATIONS AND ACRONYMS

AB	Authorized Body
ADB	Asian Development Bank
BLIs	Baseline Indicators
CFAA	Country Financial Accountability Assessment
CPAR	Country Procurement Assessment Report
CPS	Country Partnership Strategy
e-GP	Electronic Government Procurement
GOA	Government of Armenia
IAS	International Accounting Standards
ICB	International Competitive Bidding
IMF	International Monetary Fund
ISA	International Standards on Auditing
<i>Marz</i>	Armenia's 10 regional units of the central government (<i>marzapets</i> , appointed governors; <i>marzpetaran</i> , regional administrations).
MCA	Millennium Challenge Account
MOF	Ministry of Finance
OECD-DAC	Organization for Economic Cooperation and Development- Development Assistance Committee
PEFA	Public Expenditure and Financial Accountability
PER	Public Expenditure Review
PFM	Public Financial Management
PPL	Public Procurement Law
PPRD	Procurement Process Regulation Department
SPA	State Procurement Agency
SOE	State-Owned Enterprise
TI	Transparency International
UNCITRAL	United Nations Commission on International Trade Law
WTO	World Trade Organization

**REPUBLIC OF ARMENIA
COUNTRY PROCUREMENT ASSESSMENT REPORT**

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EXECUTIVE SUMMARY

BACKGROUND

This assessment reviews the current status of public procurement in Armenia and makes recommendations for further improvements. It also provides an update of the Country Procurement Assessment Report (CPAR) carried out in May 2004. The report includes an action plan to assist the Government of Armenia (GOA) in moving the procurement reform agenda forward. The assessment was carried out jointly with the counterpart team appointed by the Minister of Finance.

The major procurement legislation and other procurement-related laws and decrees, and documents were analyzed and interviews were conducted with procuring entities, suppliers, contractors, consulting firms, civil society, and government officials. The team benefited from the involvement of other donors currently active in the country. It utilizes the framework of the recently developed OECD-DAC/World Bank methodology in order to benchmark the Armenian public procurement system and practices with indicators of best practices and international standards.

The benchmarking report provides a reference point for the GOA to monitor and measure improvements in the public procurement system, and to formulate a capacity development plan to move towards a sound procurement system that leads to economy and efficiency in public expenditure. Donors can use these results to develop strategies for assisting in procurement capacity building and to mitigate risks in their individual operations.

In order to further broaden the perspective on the public procurement functions in Armenia and also to focus on certain specific areas of concern, case studies have been carried out on public procurement in health and transport sectors. In light of the GOA's interest in introducing e-GP, the team has also prepared a special study on the subject, using the readiness assessment guide of the Multilateral Development Banks' e-GP Working Group. Case studies have also been prepared on anti-corruption measures, and public-private partnership, given the importance of these topics to public procurement.

MAY 2004 CPAR ACTION PLAN – STATUS OF IMPLEMENTATION

The GOA has implemented several recommendations from the May 2004 CPAR action plan.The public procurement legislative framework in Armenia includes the **Public Procurement Law (PPL) in effect since January 2005 and several GOA and Ministry of Finance (MOF) decrees.** The PPL and the decrees that currently govern the conduct of procurement were established according to principles of international practice using the UNCITRAL model law, relevant European Union directives, World Bank procurement guidelines, and some advanced countries' procurement systems.

Public procurement is primarily organized through the MOF, which serves as the Authorized Body (AB). The MOF-affiliated State Procurement Agency (SPA) is

responsible for conducting procurement in coordination with procuring entities, including line ministries. The system is essentially centralized. Procuring entities' role is limited to providing technical specifications, setting up tender committees, and supervising contract performance. Through its representative in tender committees, the SPA exercises full control over finalization and distribution of bidding documents; receipt, opening and evaluation of bids; and signing of contracts. A few elements of public procurement are decentralized—for example, procurement carried out by non-commercialized bodies remains delegated to those entities without SPA's intervention.

Estimated contract prices are no longer disclosed in tender notices, and the use of the single-source method has been significantly (though not sufficiently) reduced. The role of procuring entity in bidding process has been enhanced, although it is still limited to preparation of technical specifications, establishing tender committees, and supervising contract performance. Public disclosure policy of procurement processes was introduced and included in the widely published MOF Official Procurement Bulletin.

An e-GP action plan has been developed and approved. There is general agreement among stakeholders that the Authorized Body in the MOF should lead the e-GP agenda in Armenia. A government decree on e-GP strategy was approved in January 2006. Besides enhancing the website www.procurement.am to advertise procurement opportunities, e-GP has been initiated to develop e-tendering and e-purchasing systems, which are in the early stages of development. Nevertheless, the progress in the introduction of e-GP has been slow compared to original plans.

The current CPAR assessment has identified several key recommendations from the May 2004 CPAR Action Plan, which have not been implemented. The most important are: the scope and coverage of the PPL; further decentralization of procurement authority to procuring entities; clearer provisions in the PPL relating to bid evaluation criteria and shortlisting of consulting firms; further reduction in the use of single-source procurement; alignment of budget formulation and execution to strengthen the competitiveness, effectiveness, and transparency of public procurement; collection, analysis and maintenance of procurement statistics; and improvement in internal and external audit mechanisms. The May 2004 CPAR action plan included recommendations for building procurement capacity in line ministries, which remain to be implemented.

The May 2004 CPAR recommendation to establish an independent complaint review mechanism is yet to be implemented. The current PPL provides for a complaint review mechanism both for bid and contract disputes. The AB performs the review functions. Remedies allow for the possibility of redirecting award, granting interim relief through suspension of actions and correcting the decision. Damages can also be awarded if decisions are rendered against the procuring entity. However, the AB, because of its current location and structure, is not considered an independent entity that would inspire confidence and ensure transparency in the conduct of the review. A review body should have no direct interest in the procurement process, should not report to the procurement agency and should ideally be a separate body. It should have a degree of autonomy that assures freedom from interference and conflict of interest. This is crucial as confidence in

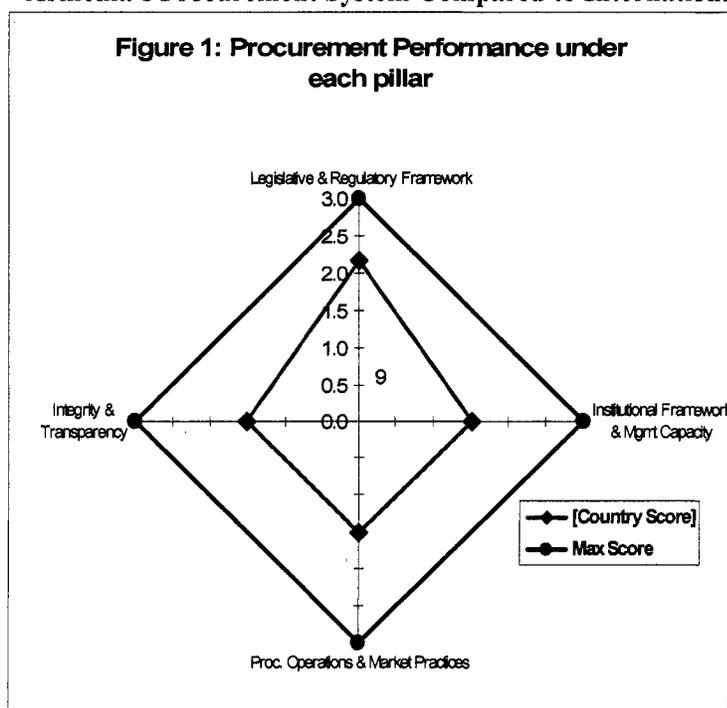
the procurement system is a great incentive for more participation and enhanced competition.

SUMMARY OF BENCHMARKING USING OECD-DAC/WORLD BANK METHODOLOGY

The Armenian public procurement system was benchmarked against international standards using “The Methodology for Assessment of National Procurement Systems - based on Indicators from OECD-DAC/World Bank Methodology”. This methodology is based on four “pillars” of sound procurement operations—(i) the country’s legislative and regulatory framework; (ii) its institutional framework and management capacity; (iii) purchasing operations, and market practices; and (iv) integrity and transparency of the public procurement system. Each pillar includes several baseline indicators (BLIs) and subindicators that describe formal and functional features of the system. A score of 0 to 3 is assigned to each subindicator. A zero indicates failure to meet the standard; 1 indicates the need for substantial work; a 2 indicates less-than-full achievement; and a 3 indicates full achievement of the standard.

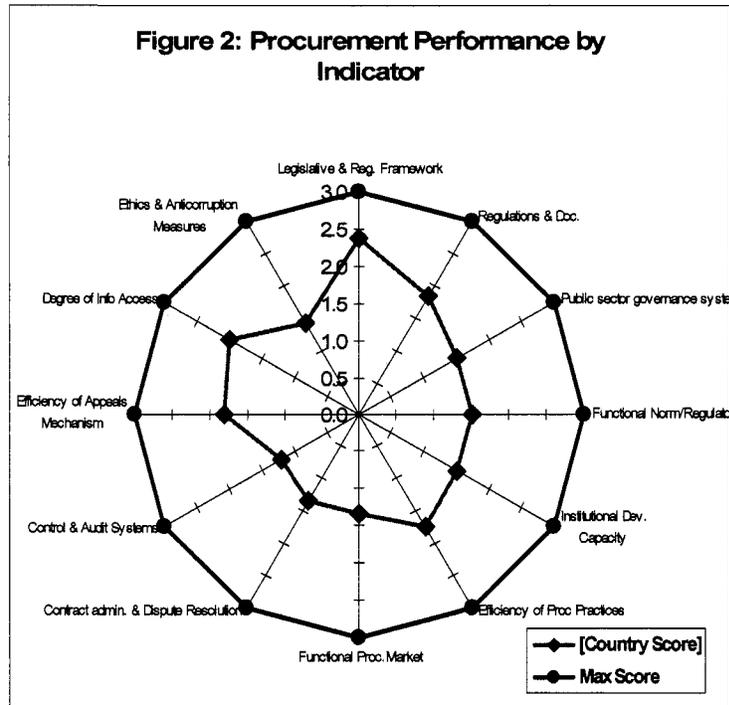
The public procurement in Armenia scored 2.0 for Pillar I , 1.7 for Pillar II, 1.5 for Pillar III and 1.7 for Pillar IV. These scores show that some progress has been made—but much remains to be done. The legislative framework for procurement (Pillar I) has evolved towards aligning with international standards in recent years. On the other hand, the summary scores for the other three pillars show that substantial improvements are still needed. In Figure 1, the outer diamond represents the international good practice, while Armenia’s actual performance against this standard is represented by the inner diamond. From the figure, it is clear that substantial improvements needs to be made in procurement management capacity, procurement operations and market practices, and integrity and transparency.

Figure 1 - Armenia’s Procurement System Compared to International Best Practice



The relatively lower composite scores on Pillars II, III and IV reflect generally weak subindicator scores in each of these areas. These are detailed in Appendix I of this report. Figure 2 below provides the summary of the procurement performance by the twelve indicators for the four pillars. It indicates the relative strength and weaknesses of the public procurement system in Armenia. The score for each of the twelve indicators are compared against each ideal situation.

Figure 2 - Summary of Procurement Performance by Twelve Indicators for the Four Pillars



CASE STUDIES AND THEIR RECOMMENDATIONS

Besides benchmarking, case studies were carried out to obtain an insight into the functioning of the public procurement system. These included Electronic Government Procurement (e-GP); public procurement in the health and transport sectors; mitigation and management of corruption in public procurement; and public-private partnership in procurement. These case studies are provided in Appendix 3. Each case study includes an action plan. Summaries of these case studies are given below.

Electronic Government Procurement (e-GP)

Building on the GOA's strong interest and commitment in this area, it is recommended that the MOF continues to take the lead in e-GP adoption. The study recommends an updated strategy with a less ambitious implementation approach. The implementation plan should be managed in phases with clearly defined actions, roles, and milestones. It should also address the need for capacity building among procuring entities and private sector. The e-

GP component under the Public Sector Modernization Project should be limited to the design and implementation of an e-tendering component.

Public Procurement in Health Sector

The case study reviewed the procurement institutional arrangements, capacity and practices in the health sector. Since the procurement process (preparation and distribution of bidding documents, receipt, opening and evaluation of bids, contract award and signature) is centralized in the SPA both for periodic (framework) and targeted tenders, the MOH and other procuring entities in the health sector has little or no incentive to develop their own procurement capacity. Particularly, at the Marz and community levels, there is a lack of awareness of the requirements of the PPL, which has led to uneconomic and inefficient procurement. Use of poor quality technical specifications for the procurement of pharmaceuticals combined with the lowest price as the major award criterion, is resulting in procurement and distribution of poor quality and ineffective medicines. Finally, internal and external controls, including the AB oversight of procurement, are weak which adversely affects accountability of public officials involved in procurement.

The case study recommends that procurement authority should be decentralized to the MOH and other health sector procuring entities which should develop their own capacity to conduct procurement. There is need for clarity in procurement audit rules and for strengthening audit bodies' capacity to conduct procurement. In light of users' complaint about the quality of pharmaceuticals, the study recommends that a more detailed review of the procurement of pharmaceuticals should be carried out.

Public Procurement in Transport Sector

On procurement capacity, this case study has findings similar to those for the health sector (See above), i.e., due to centralization of procurement in the SPA, the transport sector, including the MOTC, has not adequately developed its procurement management capacity. The main recommendation therefore, is that the procurement authority should be decentralized to the MOTC and other transport sector procuring entities. Procuring entities like the MOTC, which have large volume of procurement work, should establish a procurement unit staffed with qualified and experienced procurement specialists, while procuring entities with small procurement volume could use advisory services of the SPA but should nevertheless be fully accountable for their procurement decisions. The case study also recommends streamlining of procurement audit rules and regulations and strengthening the capacity of the relevant audit bodies to carry out procurement audit in a more effective manner. Finally, given the keen government interest in moving forward with its e-GP agenda, it is recommended that the MOTC should design and implement a pilot for introducing e-GP in the transport sector. The pilot can begin with advertisement of transport sector procurement notices and contract awards, and for dissemination of procurement regulations and good practices.

Mitigation and Management of Corruption in Public Procurement

The case study recommends that a network or council of interested parties and stakeholders be established in order to encourage feedback, confidence, civil society's participation, and oversight. A review of the PPL provisions on civil society engagement

is also needed. It is recommended that an appeals system be set up which is totally independent of the MOF, AB, SPA and government entities, operates in an environment free from a perception of conflict of interest, builds confidence from participants, and would be efficient, is effective in providing timely and meaningful remedies. Portals are needed where allegations of fraud and corruption can be reported and followed up. Code of Ethics, asset reporting and disclosure and conflict rules should be implemented in the procurement sector. Appropriate information systems and freedom of information regimes are needed to be vigorously implemented to promote transparency. There is need to tighten requirements for sole sourcing on the basis of urgent need or emergency, including the use of registry of the State Commission for the Protection of Economic Competition (Anti-Monopoly Commission) as a proxy for justifying sole sourcing on the basis of lack of competition. Rules of accountability need to be clearer. References should be included in the PPL to criminal laws and to setting out responsibilities and accountabilities of persons involved. Tender, contract and other model documents should be developed and should include provisions which address corruption, fraud, conflict of interest and unethical behavior. The relevant provisions should also set out the consequences and sanctions for such behavior. Debarment and blacklisting system under the PPL needs to be clarified with articulation of applicable procedures and principles to ensure fairness and prevent abuse.

Capacity building and awareness-raising on fraud and corruption in procurement is also essential. This will ensure that employees engaged in procurement have practical understanding of fraud and corruption schemes. The effectiveness of audit mechanisms is questionable in most cases, undermining the intent of the PPL provisions. Furthermore, having undifferentiated, and multiple entities performing “audits”, with no clear demarcation of responsibilities, might provide possibilities for multiple facilitation payments. Similarly, there is generally confusion or overlap of what is considered “audit” and what is “control”, which further undermines the quality and effectiveness of audit. It is recommended that functions of various bodies be reviewed and redefined to exclude unwarranted interference in the procurement process and that pertinent laws or regulation be amended accordingly.

The government must devise a systematic and targeted policy and enforcement mechanism for detection and prevention of certain practices (e.g., collusion, pre-determined winner, anti-competitive behavior, bogus disqualifications). Among others, procurement officials should be trained to focus on red flags indicating unusual bid patterns such as: distinct bids by a systematic or uniform percentage; bids inexplicably too close or too far apart; losing bid prices are rounded or of unnatural numbers; unexplained inflated bid prices; losing bidders become subcontractors; apparent rotation of losing bidders; unusual repeated extension of bid security; delay in completing BER or contract award signing indicating efforts to negotiate corrupt terms; cartel like behavior in the market; and a general scheme of coordination of preparation of bids by designated winner. Overlapping and excessive audits and control mechanisms should be streamlined and made more effective with meaningful follow-up enforcement measures.

Public-private partnership in public procurement

The study recommends the following: (i) in the short term, adopt a public-private partnership (PPP) act and incorporate PPP provisions in the public procurement law; design a PPP strategy and action plan; establish a PPP unit in one of the ministries, such as the Ministry of Economy, with qualified personnel to develop policies, procedures and monitor the implementation of the strategy and action plan; (ii) in the medium term, create an enabling environment for the development of an association of private sector and citizen groups to function as independent oversight institutions over all aspects of public procurement; design and implement a continuous public awareness, education and training program in PPP for the staff of the PPP unit as well as the private sector and institutionalize the training program in a recognized national university/training institutions.

KEY RECOMMENDATIONS

The May 2004 CPAR updated action plan and a prioritized action plan based on the findings of this assessment are included in Annexes 1 and 2, respectively. The key recommendations are summarized below.

- In the short term and as a priority, there is need for an amendment to the current PPL to address, among others, the following issues identified in this report:
 - Expansion of the PPL's application to public enterprises and utility companies;
 - Reduction in the use of Single Source method of procurement through better definition of criteria for its use; procurement of civilian goods for defense and security purposes through open tenders; and discontinuation of the use of certificates issued by the Anti-Monopoly Committee for justifying Single Source procurement;
 - Redefinition of the AB's oversight and support role;
 - Decentralization of procurement function to procuring entities;
 - Establishment of an independent complaint review system that is free from real or perceived conflict of interest and that would build confidence as a result of its transparent, efficient and responsive resolution of complaints and provision of meaningful remedies;
 - Inclusion of provisions relating to rules of ethics in procurement, asset reporting and disclosure, and conflict of interests. In this regard, clear references to the other laws, such as the criminal law, anti-corruption law, should be included in the PPL.
 - Establishment of a council representing public procurement stakeholders, such as procuring entities at central and local levels, oversight bodies, civil society, to ensure their engagement in public procurement.

- Immediately after the adoption of the PPL, a comprehensive implementation regulation and standard bidding documents for goods, works and services should be finalized and widely disseminated for mandatory use by procuring entities. A comprehensive implementation regulation providing more details on important

- subjects, including preparation of bidding documents, technical specifications, evaluation criteria, etc., should be developed
- Based on the revised PPL, a capacity building plan should be designed and implemented for procuring entities both at central and local levels as well as for providers of goods, works and services with a view to raising their awareness of the requirements of the PPL. This will improve economy and efficiency of public procurement, and would lead to improved competition and better quality of bids and increased response from domestic and international bidders.
 - In order to ensure public officials' accountability, existing rules of internal and external audit of procurement should be examined and improved, and capacity of audit bodies to carry out effective audit of procurement needs to be strengthened in the short term.
 - The action plans included in the case studies on e-GP, procurement in health and transport sector, anti-corruption measures in public procurement, and public and private partnership in procurement should be initiated with the prioritized actions included in each of these studies.

IMPLEMENTATION OF ACTION PLANS

The AB should implement the remaining actions in the Updated Action Plan of May 2004 CPAR and the recommendations of this assessment. The recommendations contained in the case studies should also be implemented by AB, except for the case studies on public procurement in the health and transport sectors, which need to be implemented by the Ministry of Health and the Ministry of Transport and Communication in close collaboration with the AB. In addition to seeking budgetary funds for implementing the action plans, the AB would need to explore with multilateral and bilateral donors active in Armenia the possibility of obtaining financial support for this purpose. As a first step, the MOF has expressed its interest in applying for an IDF grant from the World Bank for implementation of the short term recommendations of this assessment.

1. INTRODUCTION

BACKGROUND

1.1 **Public procurement of goods, works and services in Armenia constitutes a major proportion of the total government expenditure, at around 15 Percent of GDP, estimated at US\$12 billion equivalent in 2008, and is expected to increase in coming years.** Making public procurement transparent, economic, efficient, and competitive have been the key elements of Armenia's country assistance strategy and reform agenda.

1.2 **The Government launched its public procurement system with independence and the transition from a centralized to a market economy in 1991.** Reform began in earnest in 2000 as emphasis shifted toward improving the overall business environment and creating an enabling framework for domestic and foreign investment. The transparency, efficiency, and competitiveness of public procurement emerged as a key element in the World Bank's country assistance strategy for Armenia (2004-2008) and the corresponding agenda for reform.

1.3 **The World Bank completed a detailed Country Procurement Assessment Report (CPAR) in May 2004.** This first CPAR set forth an action plan to transition Armenia to best practices in international procurement. An Institutional Development Fund (IDF) Grant of US\$247,000 was provided to the government for procurement reform in August 2003. The objectives of this Grant were, first, to initiate an e-Government Procurement System (e-GP) and, second, to build capacity in procurement in state bodies and among bidders. An e-GP strategy and an action plan were developed, including catalogues with technical specifications for goods, works and services that are commonly procured. A strategy was devised for training and accrediting procurement specialists.

1.4 **The Armenia Country Financial Accountability Assessment Report (CFAA) was completed in May 2005.** The CFAA included several recommendations on bringing the public financial management system in line with international standards and practices. The Programmatic Public Expenditure Review (PPER) in 2006 dealt with procurement in Public Financial Management (PFM).

OBJECTIVE OF CPAR UPDATE

1.5 **The objective of the present CPAR Update is to provide the Government with feedback on how well the public procurement system (including e-Government Procurement) is functioning, with recommendations for corresponding improvements.** The Update includes a review of the progress on procurement reforms since May 2004; based on the results of this review, a prioritized action plan for further changes in the legislative framework, institutional arrangement for the implementation of the PPL; procurement practices; role of procuring entities; and measures that ensure integrity of the procurement system. The Update also includes a study of the current status of the introduction of e-GP in Armenia recommendations on moving forward with this important public procurement tool taking into considerations the achievements so far. The

Minister of Finance fully endorsed the need for updating the assessment, and established a counterpart team¹ to make it collaborative.

ASSESSMENT METHODOLOGY

1.6 **A systematic assessment methodology was adopted.** Procurement legislation and procurement-related laws and decrees were analyzed as a first step. The progress made in public procurement since the May 2004 CPAR was studied. Interviews were then conducted with procuring entities, suppliers, contractors, consulting firms, civil society, and government officials. The team benefited from involvement of other donors. The team used the recently developed OECD-DAC/World Bank methodology in order to compare the Armenia public procurement system with international standards. The methodology includes capacity development as a core objective and the process is dependent on country ownership and commitment to manage the capacity development plan.

1.7 **This assessment provides a basis upon which the country can formulate a capacity development plan to improve its procurement system;** donors can use the results of the assessment to develop strategies for assisting the capacity development plan and to mitigate risks in individual operations that they decide to fund; and the country can use the information to monitor the performance of its system and the success of the reform initiatives in improving performance.

SCOPE AND OUTPUTS

1.8 **Based on consultations with the government agencies, donors, and private sector,** the assessment included the following tasks:

- a) Review of progress since the May 2004 CPAR, and update of its action plan;
- b) Measurement of progress in the area of public procurement reform under each of the four key pillars:(i) legislative and regulatory framework; (ii) institutional and management capacity; (iii) procurement operation and market practices; and (iv) integrity and transparency of public procurement system;
- c) Elaboration of an action plan including next steps that the GOA should take to move towards the use of the public procurement system in Bank-financed projects.
- d) Assessment of overall risk of public procurement environment in Armenia;
- e) Review of current e-GP status and recommendations on actions for the continued implementation of e-GP;

The counterpart team comprised the following: ¹ Karen Brutyan, Ministry of Finance, Head of department of procurement process regulation and budgets implementation methodology; Karen Arustamyan, Control Chamber, Head of Department of Methodology; Tigran Kankanyan, Chief Specialist, Supervision Department of Administration of the President; Vardan Barsekhyan, Chief Specialist of the Department of Economy, Administration of Government; Vanik Manukyan, Head of Division of Economy, Ministry of Urban Development, Anna Mxitaryan, Head of the Division of Procurement Process Regulation, Ministry of Education and Science; Manya Mxitaryan, Chief Specialist of the Department of Economy, Ministry of Health, Artur Arakelyan, Deputy Head of the State Procurement Agency; and Hayk Galstyan, Head of Finance, Economics, Programming and Analysis Department, Ministry of Territorial Administration.”

- f) In order to obtain an insight in the actual functioning of the public procurement system at different levels of government, the following case studies were carried out:
- E-Government Procurement; Organization, procedures and processes being used in public procurement in the health and transport sectors;
 - Mitigation and Management of Corruption in Public Procurement. In view of persistent concerns and perception challenges in the area of integrity, the team conducted a short study of the pressing issues and possible mitigation measures for and management of risks of leakage, waste and corruption in the procurement system; and
 - Public-private partnership with reference to public procurement.

1.9 This report summarizes the findings and recommendations of the assessment of the public procurement system carried out using the OECD-DAC/World Bank benchmarking methodology, and the case studies referred to in paragraph 1.10 above.

2. GOVERNMENT ORGANIZATION, ECONOMIC CONTEXT, AND PUBLIC FINANCIAL MANAGEMENT

GOVERNMENT ORGANIZATION

2.1 **The Government has a two-tier structure with most administrative powers exercised by the central government.** The *marzes* (regional units) are subdivisions of the central administration, not separate tiers of government. Marzes lack elected officials, independent assembly bodies, or separate budgets. The marzes are governed through a system of central administration. The Government appoints and dismisses *marzpets* (regional governors) to carry out defined duties with the assistance of *marzpetaran* (regional administrations). Armenia is divided into ten marzes. The capital city is Yerevan, which has the status of a marz. Marzes are further divided into *hamainkner* (rural and urban communities) while Yerevan is divided into districts. Marzes vary greatly in terms of their territory, population, number of communities, and level of economic development..

COUNTRY ECONOMIC CONTEXT

2.2 **Armenia has benefited from several years of sustained reforms in transitioning from a centrally planned to a market oriented economy.** The World Bank has supported the reform process in public procurement, governance, social policy and spending, regulation and competition, and the rural economy through a series of four Poverty Reduction Support Credits (PRSCs, 2004–07) and investment projects. The Bank is preparing a series of development policy operations that will start in mid 2009. For the past several years, Armenia has led the policy reform rankings among all IDA countries.

2.3 **Economic** growth has averaged above 12 percent per year during the period 2004 to 2008, which has been a result of a highly favorable external environment, macro-economic stability, and improvements in economic governance. Poverty has fallen from 55 percent to 25 percent over the past decade. Inflation remained in the single digits despite fuel and food price shocks, which was assisted by a prudent fiscal stance (deficits averaged 1.5% of GDP over the period 2004-2008), but the underlying structural fiscal position did not show improvement due to weak tax administration.

2.4 Since the last quarter of 2008, the economy is facing a marked slowdown in remittances, especially from Russia, weakening export revenues due to sharp declines in world prices of non-ferrous metals and falling external demand due to global recession. Unemployment has risen sharply in recent months with the closing of several gold and molybdenum mines, construction industry has slowed down, and migrants are returning back to Armenia due to lack of unemployment opportunities outside the country. Agricultural growth also slowed substantially toward the end of 2008. GDP growth rate for Armenia is expected to decline significantly in 2009. Income per head is projected to

decline from about US\$3980 in 2008 to about US\$2980 in 2009, before picking up in early 2010².

PROCUREMENT IN PUBLIC FINANCIAL MANAGEMENT

2.5 Procurement is often seen as separate from core Public Financial Management (PFM). Procurement is more than a process for executing transactions; it constitutes an integral part of the mechanism through which budget entities use public money. Procurement links directly to service delivery (since budgets get translated into services in large part through the operation of the procurement system). Procurement, therefore, is a key element of the resource management process within any PFM system.

2.6 Reforms to develop internal controls and audit systems are closely linked with procurement reforms in Armenia. The decentralized internal audit system adopted in the public sector will significantly improve the procurement system. The Chamber of Control (the Armenian Supreme Audit Institution), another key PFM element, is moving toward more professional auditing delivery and increased coverage over procurement. The Chamber of Control as an independent audit institution provides important assurance on how public money is being spent.

2.7 Inadequate planning (especially during budget formulation) and unavailability of funds until late in the fiscal year seriously impedes efficient, economic and transparent procurement. Budgets therefore are not effectively translated into goods, works and services. The PER of 2006 concluded:

“...Armenia’s procurement systems still do not facilitate the level of competition and transparency considered ‘critical’ in a PFM system. It is no wonder that the systems also fall short of characteristics one could ascribe to more strategic settings where procurement processes are controlled, but also allow strategic engagements between government purchasers and private sector providers. There are weaknesses with regard to the adherence to procurement procedures in Armenia—in particular a large number of agencies are not subject to procurement regulations and there is no effective audit function to ensure adherence to procedures. The procurement system is also falling short of facilitating cost and time efficiency in procurement dealings. Its most serious weaknesses relate to deficiencies in procurement planning and the lack of incentives for efficient and accountable procurement...”

This situation described in 2006 essentially remains unchanged in 2009, and therefore puts the public procurement environment in mid to high risk category.

2.8 The Public Financial Management Performance Report of 2008 assigned a strong (A) rating to public procurement for competition, value for money, and controls in procurement (Indicator 19). Deeper analysis in this area carried out during

² World Bank. 13 April, 2009. Country Partnership Strategy for the Republic of Armenia for the period of FY 09-FY12. Draft. South Caucasus Country Department, Europe and Central Asia Region.

this assessment (See Section 4 on benchmarking) points to shortcomings in public procurement legislation and in practices that undermine competition and lead to higher bid prices. Although comprehensive data are not available, the use of single-source procurement appears to be higher in Armenia than generally accepted international norms (norm: 10% in number 5% in value). Similarly, the present mechanism for complaint resolution needs to be made more independent, effective, and trustworthy.

PUBLIC PROCUREMENT AND EXPENDITURE ON GOODS, WORKS, AND SERVICES

2.9 **The public procurement legislative framework in Armenia includes the Public Procurement Law (PPL) of January 2005 and several Government and Ministry of Finance decrees.** Public procurement is primarily organized through the Ministry of Finance (MOF), which serves as the Authorized Body (AB), and affiliated State Procurement Agency (SPA). The public procurement system is essentially centralized. The SPA procures goods, works, and services in coordination with line ministries. The role of line ministries is, however, limited to providing technical specifications, setting up tender committees, and supervising contract performance. Through its representative in tender committees, the SPA exercises full control over finalization and distribution of bidding documents; receipt, opening and evaluation of bids; and signing of contracts. A few elements of public procurement are decentralized. For example, procurement carried out by non-commercialized entities remains delegated to those entities without SPA intervention.

2.10 **Public procurement of goods, works, and services constitutes a major share of the total government expenditure.** About 15 percent of GDP (estimated at over US\$9.2 billion equivalent in 2007 and US\$12.0 billion equivalent in 2008) was spent on public procurement, and this amount is expected to increase in coming years. The table below shows the expenditure on goods, works and services during the last three years.

Table 1 - Public Expenditure on Goods, Works, and Services, 2006–08

	2006		2007		2008	
	AMD millions	%	AMD millions	%	AMD millions	%
Goods	14,586	23.5	23,485	12.3	20,426	18.4
Works	45,026	72.9	100,122	77.6	86,039	77.7
Services	2,173	3.6	5,324	4.1	4,293	3.9
Total goods, works, services	61,785	100	128,931	100	110,758	100
Total budget	481,183		634,734		822,054	

Source: Government of Armenia, World Bank Estimates (Poverty Reduction and Economic Management Unit, Europe and Central Asia Region, 2009)

DONOR SUPPORT FOR PUBLIC PROCUREMENT REFORM

2.11 **Bilateral and international donors have actively supported Armenia’s efforts to improve public procurement.** Donor organizations helped to review the draft PPL and subsequent decrees relating to public procurement. They also financed study tours for the AB and SPA to visit Italy, Poland, Slovakia, South Korea, the United Kingdom, and the United States. Donors’ observations and recommendations are contained in the following documents:

- “Assessment of Institutional Standing in the field of Public Procurement,” Armenian–European Policy and Legal Advice Centre (AEPLAC), July 2007.
- “Monitoring Report, 2007, on MCA Armenia Procurement” and “Mapping the Procurement System in Armenia,” Transparency International Armenia, 2007.
- “Overview of Public Procurement in Armenia” and “Analysis of the Armenian Public Procurement Law and Implementing Decree vis-à-vis the EC Public Procurement Directives and Agreement on Government Procurement,” OECD/SIGMA under financial assistance of the European Union, December 2008.

In addition, USAID financed (i) development of the official procurement web site, (ii) seminars and workshops to introduce the PPL to the officials from line ministries and other procuring entities, and (iii) preparation of the Draft Implementation Strategy in 2005.

COUNTRY PARTNERSHIP STRATEGY AND LINKAGE TO PUBLIC PROCUREMENT

2.12 **Support for a sound public procurement has been a key element of the World Bank’s past and current country assistance strategy and reform agenda.** Following the initial transition period from a centralized system to a market economy, public sector procurement reform began in earnest in 2000, when the emphasis shifted to improving the overall business environment and creating an enabling framework for domestic and foreign investment. The jointly formulated Country Assistance Strategy (CAS) of May 2004 (2004-2008) supported these initiatives. The CAS identified several procurement-related issues that hindered Armenia’s ability to achieve its long-term goals. These, among others, included: (i) lack of transparency in public procurement system; (ii) high rate of single-source contracts; (iii) and lack of predictability and transparency in decision making processes on awards of contracts. The Bank has been supporting the GOA through financial and technical assistance to resolve these issues and to improve competitiveness, transparency, and efficiency in public procurement.

2.13 At the time of this writing, the Country Partnership Strategy (CPS) for 2008–2012 was under preparation. The CPS focuses on two main goals—first, reducing vulnerability, and second, improving competitiveness and growth. Continuing support to improvements in the PFM in general and public procurement in particular are key element of the CPS.

3. PUBLIC PROCUREMENT REFORM SINCE THE 2004 CPAR

KEY FINDINGS AND RECOMMENDATIONS

3.1 **The first comprehensive assessment of Armenia’s public procurement system was completed in May 2004.**³ The CPAR made several recommendations for improving the procurement system. The main areas covered were: (i) degree of centralization within the SPA; (ii) gradual transfer of experience and authority for procurement from Project Implementation Units to the line ministries; (iii) potential for electronic catalogues for periodic procurement and a strategy for other e-procurement uses; and (iv) introduction of open bidding procedures for civilian goods and works used for security and defense purposes. The CPAR made the following specific recommendations:

- Include in the PPL and implementation regulations (and decrees) clear provisions on qualification and bid evaluation criteria.
- Clarify that the PPL applies to all state entities using public funds.
- Use single-source procurement solely for urgent and emergency needs. Frequent delays in approving and providing budgetary allocations (related to poor budget and procurement planning) should be addressed by making funds available in a consistent flow from the first of the year, by revising the description of items to be purchased when the cost is changed, by making provision for carryover of funds from one quarter to the next within a fiscal year, and by developing a rolling multi-annual budget allocation plan.
- Discontinue the creation of monopolies through monopoly certificates. (Single-source procurement was justified by licensed providers or holders of monopoly certificates. Monopoly certificates could easily be obtained even by firms that did not qualify as sole providers).
- Empower procuring entities to prepare technical specifications.
- Limit SPA intervention to providing a secretariat for tender committees.
- Convert the current print catalogue for framework contracts of commonly purchased items into an electronic catalogue. Support the conversion to an electronic catalogue through introduction of automated internal systems for contract administration, management, and purchase order and payments.
- The AB should focus on its review function and refrain from involvement in approvals at the time of decision-making over awards.

³ “Republic of Armenia—Country Procurement Assessment Report,” Report number 29246-AM. Operations Policy and Services Unit. Europe and Central Asia Region, the World Bank. May 2004.

STATUS OF IMPLEMENTATION OF 2004 CPAR ACTION PLAN

3.2 The Government has implemented several recommendations of the May 2004 CPAR prioritized action plan. The action plan included in the May 2004 CPAR was also discussed at length in the Public Expenditure Review of 2006. The introduction of a new PPL, which came into force on January 1, 2005, was the main achievement following the May 2004 CPAR. Annex 2 shows the current status of implementation of the 2004 action plan.

3.3 The current PPL and decrees governing the conduct of procurement have been largely based on the principles of international practice. Sources include the UNCITRAL model law on procurement, relevant European Union directives, the World Bank procurement guidelines, as well as review of systems in countries such as Poland, Slovakia, United Kingdom, and USA. Estimated contract prices are no longer disclosed in tender notices; and it appears that the use of the single-source method has significantly decreased, although further reduction is needed. Public disclosure policy of procurement processes was introduced and included in the MOF Official Procurement Bulletin which is published and distributed to state government and to local self-government bodies.

3.4 An e-GP action plan has been developed and approved. There is general agreement among stakeholders that the AB in the MOF leads the e-GP agenda. A Government Decree (137-N) on e-GP strategy was approved in January 2006, providing a roadmap for the implementation. Besides using the website www.procurement.am to publically advertise procurement information, e-GP has been initiated to develop e-tendering and e-purchasing systems. An initial consultant assignment to design a full-fledged e-GP system under the Public Sector Management Project (PSMP) was cancelled because of the Government's delayed approval of the underlying procurement regulation.

3.5 Training programs were conducted. The programs improved procurement capacity of about 800 procurement specialists. Participants came from the line ministries, departments, marzes, the Yerevan district, urban communities, courts, and other bodies established under the law of private organizations.

3.6 The current assessment has identified several recommendations from the May 2004 CPAR Action Plan that have not been fully implemented. These include the scope and coverage of the PPL; decentralization of procurement; clearer provisions in the PPL relating to bid evaluation criteria and shortlisting of consulting firms; mechanisms for bid dispute resolution; further reduction in the use of single-source procurement; alignment of budget formulation and execution to strengthen the competitiveness, effectiveness, and transparency of public procurement; collection and maintenance of procurement statistics; and improvement in internal and external audit mechanisms. The recommendations relating to building procurement capacity of line ministries (see items 40-42 of the Updated Action Plan, Annex 2) are yet to be implemented. Some of the non-implemented recommendations are also discussed in the context of the benchmarking of the system in Section 4.

STUDIES OF PUBLIC PROCUREMENT BY OTHER DONORS

3.7 **The Armenian-European Policy and Legal Advice Center (AEPLAC) with EU support in 2007 and SIGMA** (Support for Improvement in Governance and Management, a joint initiative of the OECD and the European Union) **carried out reviews of public procurement in Armenia.** Transparency International Armenia (TI) prepared a 2007 report entitled “Mapping Procurement System in Armenia.” Findings and recommendations of these studies, briefly discussed in the following paragraphs, have been taken into consideration in designing the action plan presented in this document. The recommendations of this assessment are consistent with those of the OECD/SIGMA and other studies discussed below.

3.8 **The AEPLAC study (2007) was carried out in the context of the National Program (2006-2009) for implementation of Partnership and Cooperation Agreement between Armenia and the EU.** The study cited the January 2005 PPL being based on the UNCITRAL Model Law and WTO Government Procurement Agreement (GPA). Procurement methods and procedures described in the law were analyzed, as well as the organizational structure of the AB, the SPA, and other bodies responsible for public procurement. The AEPLAC study’s key recommendations were to: (i) adopt a training strategy for skills development and certification of procurement specialists; (ii) introduce e-procurement system; (iii) establish a permanent and independent complaint review body in the AB; (iv) prepare and disseminate a user-friendly procurement guide; and (v) improve interaction and partnership with the private sector.

3.9 **Transparency International (TI) assessed the Armenian public procurement system with a methodology comprising 139 indicators.** Representing an “ideal” system, the indicators are grouped in four categories—institutional arrangements, perception, performance, and context. Compared to this ideal, the study concluded that public procurement in Armenia was at medium risk in institutional arrangements, primarily because of the high risk of corruption in this area. Context and perception were assessed as at “high risk”. The key TI recommendations were to: (i) improve procurement planning and transparency of budgetary processes, especially at the early stages; (ii) identify red flags signaling possible corruption; (iii) avoid conflicts of interests; (iv) prohibit preferential treatment in which some bidders have selective access to state-owned information such as geological or seismological data or maps; and (v) make proper use of all procurement methods.

3.10 **The OECD/SIGMA reports⁴ (December 2008) made recommendations aimed at improving the public procurement system in Armenia and alignment with EU directives.** Key recommendations, among others, were to: (i) amend (or adopt a new) public procurement law to harmonize with EU, including in its scope all entities (including private) operating in the utilities sectors on the basis of special or exclusive rights granted by competent authority.; (ii) establish an independent review body; (iii) redefine SPA’s

⁴ “Public Procurement in Armenia—Overview,” December 2008; and “Analysis of the Armenian Public Procurement Law and Implementing Decree vis-à-vis the EC Public Procurement Directives and the Agreement on Government Procurement,” WTO.

role for sharper focus on assistance and less direct involvement in actual conduct of procurement; (iv) empower procuring entities to carry out their own independent procurement; (v) restrict centralized procurement (periodic tenders) to the relatively few items where benefits of aggregation have been widely accepted; (vi) build capacity within SPA and AB; and (vii) prepare manuals, guidelines, and standard bidding documents that include contracts and technical specifications.

3.11 The recommendations included in this assessment are consistent with those of the OECD/SIGMA and other studies discussed above.

4. BENCHMARKING PUBLIC PROCUREMENT USING OECD-DAC/WORLD BANK METHODOLOGY

BENCHMARKING AGAINST INTERNATIONAL STANDARDS

4.1 **The World Bank and the counterpart teams, including the AB and the SPA, jointly analyzed the Armenian public procurement system.** They benchmarked the system against international standards as described in the July 17, 2006, “Methodology for Assessment of National Procurement Systems Based on Indicators from OECD-DAC/World Bank.”⁵ In carrying out its assignment, the joint team reviewed the PPL of January 2005 and other procurement-related decrees and documents in depth; consulted with relevant government agencies; and interviewed private firms, including construction contractors, consulting firms, and suppliers of goods. The benchmarking exercise was expected to provide all parties with a more objective assessment of actual performance by the public procurement system, while establishing a framework for measuring progress toward reform.

4.2 **The assessment provides the GOA with information to monitor the performance of its procurement system and the success of reform initiatives in improving performance.** Identifying weak links in the current system also provides donors with information to better determine risks to the funds they provide to a partner country. This benchmarking has been conducted using the baseline indicators (BLIs) related to the formal and functional features of the existing system. The compliance/performance indicators (CPIs) that deal with monitoring to determine the level of compliance with the formal system have not been used because procurement data was lacking.

4.3 **The OECD/DAC methodology is based on four pillars.** These support sound procurement operations through (i) the country’s legislative and regulatory framework; (ii) its institutional framework and management capacity; (iii) purchasing operations, and market practices; and (iv) integrity and transparency of the public procurement system. Each pillar includes several baseline indicators (BLIs) and subindicators that describe formal and functional features of the system. A score of 0 to 3 is assigned to each subindicator, with 0 indicating failure to meet the standard, 1 indicating the need for substantial work, 2 indicating less-than-full achievement with need for improvement, and 3 indicating full achievement of the standard. Appendix 1 to this report provides detailed information on the 54 subindicators that comprise the composite scores in each of these four areas.

⁵ This methodology also includes compliance/performance indicators (CPIs), which require monitoring data to determine adherence to the formal system. The CPIs were not used in this assessment because of insufficient data.

BENCHMARKING RESULTS

4.4 **Benchmarking of the Armenian public procurement system uses the BLIs discussed above.** This benchmarking provides a snapshot that compares a country’s actual system of procurement against an “ideal” picture defined by international standards of best practice. Summary scores for the four pillars the Armenian public procurement system, are shown in Table 2.

Table 2 - Summary of Benchmarking Scores by Pillar

Pillar	Overall score	Interpretation
Pillar 1: Legislative / Regulatory Framework	2.0	Substantial but less than full achievement
Pillar 2: Institutional Arrangements	1.7	Needs substantial improvements
Pillar 3: Procurement and Market Practices	1.5	Needs substantial improvements
Pillar 4: System Integrity and Transparency	1.7	Needs substantial improvements

4.5 **These scores show that progress has been made but much remains to be done.** The legislative framework for procurement (Pillar I) has evolved toward achieving international standards in recent years. On the other hand, the scores of the other three pillars show that substantial improvements are needed to achieve these standards.

ASSESSMENT OF THE PROCUREMENT SYSTEM USING OECD-DAC/WORLD BANK INDICATORS

4.6 The following paragraphs include a detailed discussion of the findings and recommendations for each Pillar.

Pillar 1: Legislative and regulatory framework (Overall score: 2.0)

Scope of coverage

4.7 The PPL is applicable to all procurement carried out with budgetary resources, but it is unclear whether private entities receiving fiscal resources (grants and subsidies) should also be subject to its provisions. The PPL does not have specific provisions on concession contracts, rent, and lease; utility companies are not specifically mentioned in the PPL; and procurement of civilian items for national security and defense, is excluded from open tendering. The PPL includes vague references to other procurement-related laws and decrees, such as the civil code and the criminal code.

- **Recommendation.** The PPL needs amendments to include provisions for public enterprises, such as utility companies, (in accordance with international best practice. See, for example, the EU Directive which provides coverage for private utilities which operate on the basis of special or exclusive rights granted by a competent authority); procurement of civilian items for national security and defense procurement (such as uniforms, boots, food, medicine, capital construction, etc); and concession contracts and public-private partnership agreements. The amended PPL should contain all procurement rules and references to other laws and decrees should be specific.

Implementing regulation

4.8 Government Decree No. 853N dated June 3, 2008, constitutes the implementing regulation in support of the PPL, but this decree is not comprehensive and focused. For example, it includes contract conditions.

- **Recommendation.** A single comprehensive implementation regulation should be prepared and issued to further explain the topics not adequately covered in the PPL.

Use of single-source method

4.9 Unjustified use of Single Source (SS) procurement continues under the pretext of lack of competition and from those holding certificates (registry system) issued by Anti-Monopoly Commission. There is no clear distinction between “emergency” and “urgent” needs resulting in the use of SS. Late disbursement of budgetary funds does not allow use of competitive procurement methods as procuring entities must use the funds before the end of a fiscal year, i.e., December 31 or lose them. Allegation exists that technical specifications are tailored for a specific manufacturer which leads to de facto SS.

- **Recommendation.** The PPL should include clearly defined criteria for the use of SS. The practice of use of registry of the Anti Monopoly Commission as a proxy for justifying SS on the basis of lack of competition should be discontinued. The current list of items subject to SS should be reviewed and periodically updated to reflect market changes. Extension of existing contracts must be justified on economy and efficiency reasons, and only those contracts initially concluded through competition should be considered for extension. Budgetary funds should be made available early in the fiscal year so as to allow time for use of competitive procurement method. Requirements for sole sourcing on the basis of urgent need or emergency needs to be tightened. Its use should be allowed only in extreme and exceptional circumstances, limited in application and duration, and only if such circumstance did not result from lack of foresight, poor planning or negligence on the part of the entity concerned. The framework should identify the state body responsible for determining urgent need or emergency and the legal basis on which such determination can be made.

Impediments to participation by foreign bidders

4.10 Although nationality is not a basis for exclusion from participation in competition for public tenders, except for national security and defense procurement, impediments to

foreign bidders' participation in these tenders exist. These, among others, include: access to tender information, bidding documents, and absence of procedures for formulation of joint ventures. Furthermore, participation of state-owned enterprises in public tenders creates a non-level playing field both for national and foreign bidders.

- **Recommendation.** In addition to introducing procedures for formulation of joint ventures both among domestic bidders and between foreign and domestic bidders, for facilitating access to tender information and bidding documents, the AB should identify and remove any impediments to foreign bidders' participation in public tenders. It should also develop and implement an outreach program for bidders to improve their understanding of the requirements of the PPL. The PPL or implementation regulation should include clear provisions (including conflict of interest rules) which ensure a level playing field for all bidders. For example, SOEs participating in public tenders should be legally and financially autonomous, operate under general commercial law, and are not government dependent agencies. They should not receive any preferential treatment or enjoy undue advantage on account of subsidies or tax exemptions.

Standard bidding documents and technical specifications

4.11 Standard bidding documents are yet to be finalized, although samples are in use. Bidders' access to bidding documents is difficult. A bidder must apply in person in Yerevan for bidding documents after making the payment for them. Bidding documents are, however, made available in two days which effectively reduces the bid submission time. After applying to the SPA for the bidding documents, a bidder has to contact one of the print shops with which the SPA has a contract to obtain the bidding documents, resulting on additional burden on the bidder.

4.12 Procuring entities lack capacity in preparation of technical specifications resulting in poor quality technical specifications, which, combined with the use of the lowest price as a major selection criteria, leads to poor quality procurement of goods, works and services.

- **Recommendations.** Model bidding documents, along with user guidance, should be formally approved and widely disseminated to procuring entities. Bidding documents should include clear and detailed evaluation criteria. Bidders should be given the choice of either obtaining bidding documents by mail, courier, or in person, immediately upon submission of their written request along with the proof of payment. They should also be provided different options for making payments for bidding documents, i.e., cash, check or bank account. Bidding documents should be made available to bidders at the SPA, and not at print shops. For this purpose, the SPA should strengthen its capacity in terms of staff and equipment. Bidding documents should also be made available on the procurement website so that those who have the means to download them can do so.
- Quality of technical specifications should be improved through training of concerned staff and preparation of model technical specifications wherever feasible. The SPA

should be made responsible to ensure quality of technical specifications, i.e., that these are clear, concise, neutral and broad enough to elicit adequate competition.

Bid submission and opening

4.13 Bidders are required to submit bids in person. Bid opening is seemingly transparent but concerns exist that (i) the number of documents required to be submitted along with the bid is excessive; (ii) bids are rejected if any of these documents are not included with the bid, and if these documents are found “defective” regardless of the significance of the deficiency. In one case a bid was rejected as the date on the bank statement required had a date one day before the bid submission deadline. There is public perception that tender committees intentionally reject bids with a view to selecting a predetermined winner. Bid opening takes place in two stages. In the first stage tender commission reviews the availability of the required documents and rejects the bids which have not included all the documents and have submitted defective bids. In the second stage, only those bidders who have submitted all the required documents are allowed to be present, and from among those the one with the lowest bid price is announced to be the winner.

4.14 Government Decree No.853N provides for participation of civil society representatives as members with an advisory vote. This is tantamount to their participation in decision making and does not preserve the independence and oversight roles of these observers.

- ***Recommendation.*** The AB needs to re-examine the list of documents that bidders are required to submit and retain only the most essential ones. Reasons for rejection of bids should be reviewed with a view to improving the evaluation procedures so that bids are not rejected for trivial reasons. In order to properly determine a responsive bid to be selected for contract award, bid evaluation should take place only after bid opening has been completed and closed. Evaluation of bids should be carried out in three stages: first, bids should be compared to the requirements included in the bidding documents and bids not substantially meeting these requirements should be rejected; in the second stage substantially responsive bids should be compared with each other using price and non-price criteria as disclosed in the bidding documents in order to determine the lowest evaluated responsive bid. Finally, the lowest evaluated responsive bid should be post qualified to ensure that it has the required qualifications and experience for performing the contract.
- Representatives from civil society should remain as observers or monitors and not as participants or advisers in decision-making process. A mechanism needs to be developed to obtain their feedback and observations. Membership of tender committees should be expanded and changed as needed to promote transparency and ensure checks and balance.

Evaluation of bids

4.15 The PPL does provide for the use of non-price criteria but these have not yet been developed. Consequently, the lowest bid price alone is used as a major criterion for

contract award. There is no provision in the PPL or a decree on how to evaluate bids submitted by joint ventures. The PPL (Article 34(c)) provides that rejection of a bid may be based on "...other cases envisaged by law". The formulation in the PPL on this subject is vague and may lead to subjective results.

- **Recommendations**. The PPL or a decree should include detailed evaluation criteria using non price factors which can be quantified in monetary terms for evaluation of bids. The SPA and procuring entities should be required to use these criteria, wherever applicable, and determine the lowest evaluated responsive bid using these criteria rather than the lowest bid price. The PPL or decree should specify the rules on how evaluation is conducted when bidder is a joint venture or a consortium, which can leverage combination of their capacity, experience, and financial strength, to bid on contracts. Criteria for rejection of bids must be disclosed in bidding documents.

Consulting services

4.16 The PPL lacks clear provisions relating to the selection of consultants. The same procedures as applicable to prequalification of contractors have to be applied for shortlisting consulting firms. Criteria for evaluation of qualifications are subjective as a point system is stipulated in the PPL. Section 5 of the PPL covers procurement of consulting services on the basis of non-price conditions. However, it does not provide the basis for using quality alone, price alone or a combination of both. In case of selection of consultants, the PPL or Government Decree 853N does not provide for carrying out evaluation of technical proposal before price proposal in order to ensure quality of services. Design contracts are defined as works rather than consultant services contracts.

- **Recommendations**. The PPL or decree should clearly define the evaluation methodology where using quality alone, price alone, or a combination of both are appropriate. For evaluation of proposals for consultancy assignments, the PPL or a decree should provide detailed evaluation procedure which takes into consideration quality of technical proposals of participating firms before evaluating their prices. Qualifications and experience of bidders should be evaluated on a pass fail basis rather than using a subjective point system. Criteria for rejection of bids must be objective and disclosed in bidding documents. Design contracts should be defined as consultant contracts rather than works contract as these involve intellectual services.

Complaints and Review System

4.17 The PPL requires the establishment of a standing unit in the AB to perform review functions of complaints which may engage representatives of stakeholders who are not procurement entities or NGOs, on an unpaid basis (A16(2)(3)). Currently, the AB performs such functions and has resolved around 50 appeals cases in 2008, approximately 50% of which have been decided in favor of the appellant and against the procuring entity. This, however, raises issues of potential or perception of conflict of interest by the AB which is simultaneously involved in organizing, regulating, and coordinating procurement procedure, dispensing advice, and reviewing an appeal or complaint. The AB and the SPA being under the MOF's supervisory authority raises issues from the conflicts perspective.

Under OECD-DAC/World Bank methodology, even though the first review may normally be carried out by the procuring entity, there should be an administrative/judicial review body which is independent from the procuring agency.

- **Recommendations.** Institutionalize an appeals and complaints system that is independent and free from real or perceived conflict of interest and that would build confidence as a result of its transparent, efficient and responsive resolution of complaints and provision of meaningful remedies. Any review body should have no direct interest in the procurement process, should not report to the procurement agency and should ideally be a separate body. It should have a degree of autonomy that assures freedom from interference and conflict of interest. This is crucial as confidence in the procurement system is a great incentive for more participation and enhanced competition

Pillar II: Institutional framework and management capacity (Overall score: 1.7)

Budget cycle and procurement planning

4.18 Procurement plans are prepared as part of the budget formulation process. However, these do not contain important pieces of information, such as contract description, procurement method, and key dates. The Medium Term Expenditure Framework (MTEF) provides for multi-year contracts but their effectiveness is conditioned upon availability of funds. Budgetary funds are generally not available beyond the first year of such contracts; consequently contractors do not perform in a consistent manner leading to poor quality of delivered goods and completed works. Substantial amount of procurement is carried out in the last quarter of the year because due to poor planning procuring entities do not use budgetary funds in a timely manner during the year. This does not allow them enough time for carrying out a transparent and competitive procurement. Consequently, procuring entities resort to Sole Sourcing based on poorly prepared specifications and inadequate contract conditions.

4.19 A procuring entity can initiate the procurement process and sign a contract prior to earmarking of funds. This adversely affects bidders' interest in public tenders considering the unilateral power of a procuring entity to cancel a signed contract. This practice also distorts budget prioritization and planning process.

- **Recommendations.** Procurement planning and contents of a procurement plan should be improved. As soon as information about budget approval becomes available to a procuring entity, it should prepare a detailed procurement plan, in line with para. 6 Annex 1 of GD853N, including contract package description, estimated budget, procurement method, key dates, including contract signature and completion dates. Budget execution processes should be improved with a view to (i) making new budgetary funds available to procuring entities in a timely manner to avoid bunching towards the end of the fiscal year; and (ii) ensuring availability of funds for multi-year contracts. Advance contracting and effectiveness of contracts contingent on availability of funds should be discontinued. If this is retained, the circumstances allowing its use should be restricted and specified in the PPL.

Authorized body's role in actual conduct of procurement

4.20 Review of evaluation reports and contracts by the AB constitutes its direct involvement in the actual conduct of procurement. It creates a situation of potential conflict of interest because the AB is also responsible for oversight of public procurement and resolution of bid complaints. Lack of clear rules about the scope and extent of AB's oversight authority and function may be attributable to this situation.

- **Recommendation.** The AB should discontinue direct involvement in the procurement process related to the reviews of evaluation reports and signed contracts to avoid conflict with its oversight role and the role of review and resolution of bid complaints. Furthermore, the PPL or the implementation decree should include clear rules regarding the oversight function of the AB.

Organization of procurement

4.21 The public procurement organization in Armenia comprises the AB, the SPA and procuring entities. The Procurement Process Regulation and Budget Execution Methodology Department of the MOF serves as the AB and is responsible for procurement policy and regulation. The SPA, which also reports to the MOF, is responsible for the actual conduct of procurement in collaboration with procuring entities. Procuring entities are budget spending units. Procuring entities' role in procurement is limited to preparation of technical specifications, delivery schedule; payment terms; establishment of a tender committee; and supervision of contract performance and for contractual payments. Procurement process is organized by the SPA through a secretary appointed to each tender committee. The SPA secretary possesses considerable power to cause suspension of the procurement process, and to effectively negate the tender committee's decision. The SPA also signs all contracts concluded through open tenders. This is effectively a centralized procurement system which provides no incentive for procuring entities to build their own procurement capacity, besides leading to segmentation of responsibility and dilution of accountability.

- **Recommendations.** Procuring entities should be made responsible for their own procurement including the procurement process, and contract signature. For this purpose, procuring entities' capacity should be strengthened with the AB and SPA's support. SPA's procurement capacity and experience should be used to conduct periodic tenders, where central purchasing through aggregation results in clear efficiency gains. It should also support procuring entities through technical assistance and training. SPA's role in targeted tenders should be limited to providing advice to procuring entities and their tender committees.

Stakeholders' involvement in procurement policy making and oversight

4.22 Perception exists that procuring entities at all levels of government are not adequately involved in the formulation of procurement policy and regulation. This perception is shared by the civil society and NGOs, and is evidenced by little interaction

between the AB and procuring entities at Marzpetaran and community levels. Involvement of civil society is also limited.

- ***Recommendation.*** A procurement advisory council should be established, involving the major procuring entities not only from Yerevan but also from Marzes and local communities, to ensure stakeholders' participation in improving and overseeing the public procurement function. This council should also have representatives from civil society, including NGOs, Chamber of Commerce, etc.

Collection, maintenance and dissemination of procurement statistics

4.23 The AB has a semi-computerized system for collection of procurement data and information managed with the support of SPA. While tender invitations, requests for proposals and contract information are adequately disseminated, procurement information system is not well integrated among procuring entities. There is no sustainable strategy in this regard. Procedures, guidelines and standard formats do not exist for collecting and maintaining procurement data, including information on monitoring compliance with the procurement legislation. No periodic reports on performance of public procurement are prepared and made available to public.

- ***Recommendations.*** Develop a sustainable strategy for collecting, maintaining, and disseminating procurement statistics. Also design and implement a system for monitoring procuring entities' compliance with the procurement legislation. Prepare periodic report on the performance of public procurement and make these available to the public through the public procurement website. Develop a simple excel based procurement monitoring information system for procuring entities. This system can eventually be integrated into the web-based e-GP.

Procurement capacity building

4.24 The AB is responsible for procurement capacity building but it lacks capacity for fulfilling the country's capacity building needs. There is unmet demand in training both in public and private sectors. Some procuring entities' staff have received short training only once in two years. In November 2008, the GOA approved a training strategy for professional development of public financial management specialists, including procurement, through higher education and other training institutions. However, the strategy is yet to be implemented.

- ***Recommendations.*** The AB should carry out a procurement training needs assessment and skill gap analysis in order to determine training needs both in the public and private sectors, including Chamber of Commerce, universities, etc. Within the framework of the recently approved training strategy, the AB should design long and short-term training programs and use both public and private sources of training for implementing these training programs. It should also implement the testing and accreditation program included in the training strategy.

Pillar III: Procurement operations and market practices (Overall score: 1.5)

Procurement profession in Armenia

4.25 Procurement is not a recognized profession in Armenia. Procuring entities have procurement specialists but procurement is just one among their many tasks. There are no full-time procurement specialists in line ministries. The level of knowledge and familiarity with procurement norms, principles and processes, including the mandatory requirements of legislation in Marzes is unsatisfactory.

- **Recommendation.** Concurrently with the delegation of procurement responsibility to procuring entities (See recommendation under Pillar II above), each procuring entity (especially large ones) should appoint qualified and experienced procurement specialists with the conduct of procurement in compliance with the procurement legislation as their main assignment. The AB should implement the recently approved training strategy and develop programs for building procuring entities' capacity through training and accreditation of public officials appointed as procurement specialists.

Weak contract administration

4.26 Spot inspections by independent organizations have revealed the quality of construction under several contracts to be poor, especially in Marz. It appears that the contract administration procedures and processes, and oversight mechanisms are inadequate and do not ensure quality of goods, works and services procured. The contract management weaknesses are also attributable to lack of clear contract administration provisions, including contract dispute resolution, division of risks, termination, etc, in contract conditions. There is lack of technical capacity in procuring entities to administer contracts.

- **Recommendations.** The AB should carry out an in-depth review of the current contract administration mechanism, and, based on the findings of the review, prepare a user friendly contract administration manual. In addition, it should design training programs in contract administration for procuring entities' staff, and make arrangements to implement these programs.

Contract dispute resolution

4.27 Public contracts have dispute resolution reference, but no provision relating to national or international arbitration. Disputes are currently resolved by the AB or in a civil court of general jurisdiction. The PPL combines procurement review with contract implementation disputes. Implementation mechanisms to enforce the results of contract dispute resolution are weak and need to be strengthened. Arbitration system has not been introduced yet. Industry groups, including association of contractors, Chamber of Commerce, etc., have expressed a keen desire to have in place a robust and well functioning arbitration system.

- **Recommendations.** The PPL should not combine procurement complaints system with contract dispute resolution. A clear reference to how contract disputes are to be resolved during implementation should be included in the legal framework. The specific terms should be reflected in the modal contract documents. The model bidding documents should include clear provision on mechanisms and substantive rules that apply in case of disputes

Private sector

4.28 Since the May 2004 CPAR, Armenia has made progress in reducing administrative barriers for business and investment. The steps taken include, inter alia, consolidating, downsizing, and clarifying mandates of various government inspections; enacting the new law on business registration; streamlining licensing procedures; issuing new accounting recommendations for small and medium-sized enterprises; establishing a regulatory framework that allows privatization of urban land by business entities; and adopting simplified procedures for obtaining site development and construction permits. The recent business surveys of Armenian entrepreneurs suggest that these efforts have already resulted in a more positive private sector perception of the business and investment environment. For example, the average time necessary to obtain construction and building renovation permits was reduced from 310 days in 2001 to 112 days in 2006. However, competition under procurement has remained less than adequate. Participation of foreign bidders in public procurement tenders in Armenia is insignificant.

4.29 Bureaucratic documentary requirements and procurement processes are perceived as subjective and seriously affect competition for public tenders and result in higher prices for government tenders. These requirements, among others, include a large number of documents that must be submitted along with the bid, bid securities and performance securities – for which contractors and suppliers must provide collateral, poor technical specifications, unclear evaluation criteria, and use of price as a major factor of contract award decision. Consequently, construction contractors and suppliers appear to be more interested in private sector contracts and contracts financed by international and bilateral donors.

4.30 Given the limitations of the manufacturing industry of Armenia, required goods are generally imported. Suppliers of goods are mostly local traders who participate in bids. Perception of collusion among them also exists. Contracting industry comprises large, medium and small contractors. Large contractors are concentrated in Yerevan while some medium and small contractors (especially specialized ones, e.g., road construction) operate in different Marzes. The number of contractors in Marzes and communities is small as evidenced by small competition for construction contracts in regions. Tendency exists among contractors to participate in contracts only in their regions and not to bid for contracts in other regions. Two reasons were cited for this situation: cost of mobilization; and resistance by local contractors to those from other regions intending to operate in their area.

- **Recommendation.** Implement the recommendations of this report especially with regard to improving the procurement processes. Revisit the list of documents that

bidders are required to submit with their bids and reduce it to the essential ones; encourage participation of foreign bidders by improving their access to tender information and provision of bidding and other documents in English; reconsider the need of requiring a bid security in every contract by substituting it where feasible with a bid security declaration under which a bidder agrees to be disqualified for a defined period (for example two years) from participation in public tenders; promote national bidding rather than regional tendering by encouraging bidders from across the country to participate in tenders. Establish and maintain a regular dialogue with suppliers and contractors to improve their awareness of not only the requirements of the PPL but also their rights (e.g., right to participation in any public tender regardless of its location) under the PPL and other relevant pieces of legislation.

Pillar IV: Integrity and transparency of the public procurement system (Overall Score 1.7)

Internal and external controls of procurement

4.31 There are multiple internal and external audit bodies carrying out audit of public procurement. Major line ministries have internal auditors but their roles do not appear to be effective. The effectiveness of audit mechanisms is questionable because of excessive bureaucracy and lack of clarity of audit rules and audit capacity. Generally, it is difficult to assess whether follow-up on procurement audit findings is sufficient because of inadequate data showing evidence of such follow up. Also, there is limited evidence of sanctions for non-compliance. Auditors are not sufficiently informed about procurement requirements. There is need to design and implement regular training programs for audit bodies to improve their knowledge of procurement requirements. Several supervisory bodies are involved in supervising, inspecting and monitoring the procurement processes in procuring entities, in general, and in the SPA, in particular. These bodies include the President's supervisory service, Prime Minister's supervisory service, Prosecutor's Office, Chamber of Control, Ministry of Finance, etc. There are, however, no clear rules for auditing procurement, and the supervisory bodies discussed above reportedly do not prepare any reports about their activities.

- **Recommendations.** Strengthen internal audit in procuring entities through improving auditors' accountability. Improve auditors' knowledge of the requirements of the PPL through regular training in procurement. Furthermore, introduce reforms in order to align, streamline and clarify principles, processes and functions of internal and external procurement audits. Data on the results of audits carried out by different audit bodies should be collected with a view to ensuring follow up on adverse findings. Clear regulations for procurement audit should be prepared and implemented. The responsibility of auditing procurement should be assigned to relevant bodies such as the Chamber of Control. At the same time the procurement audit capacity of such bodies should be strengthened. In addition, the rules for the AB to implement its public procurement oversight functions should be set out in detail, including the authority that it would need to require procuring entities data and records. Similarly, rules should be clarified for other bodies, such as the Prosecutor's Office, to investigate

procurement processes only when there are concrete allegations of fraud and corruption, and violations and crime.

Complaint review mechanism and blacklisting of firms for non-performance

4.32 The PPL provides for a complaint review mechanism both for bid and contract disputes. Remedies allow for the possibility of redirecting award, granting interim relief through suspension of actions and correcting the decision. Damages can also be awarded if decisions are rendered against the procuring entity. The AB, which performs the review functions, is required to make a decision on a complaint within 10 to 20 working days. Firms are blacklisted from participation in public tenders because of their failure to perform contracts. The absence of a due process for blacklisting may lead to abuse.

- ***Recommendation.*** An appeal system should be set up that is totally independent of the MOF, AB, SPA and government entities, that operates in an environment free from a perception of conflict of interest, which builds confidence from participants, and which would be efficient, timely and responsive to procurement needs and effective in providing meaningful remedies. The architecture and configuration of this body has to be organic to Armenia and will ultimately rely on the domestic legal structure. But a varied membership from persons of known probity and independence such as members of NGOs, media, academia, retired jurist or judges, industry and private sector representatives will inspire confidence in terms of fairness and transparency. The practice of blacklisting firms because of non performance of contracts should be discontinued (and should be limited to clear grounds of misconduct) and contractual parties treated in accordance with the relevant provisions of their contract, i.e., application of imposition of liquidated damages and contract termination for default.

Tender notices and contract award information

4.33 Tenders and contract awards are currently publicly advertised on the website as well as in the media. However, there is need of further improvement. The MOF website needs upgrading, especially with regard to making it accessible to English speakers. The website should also be used for posting bidding documents and relating information, including hosting an interactive help or information desk and reporting portal.

- ***Recommendations.*** The current practice of publication of tender notices and contract award information should be continued in order to ensure that all those interested in the information throughout the country have access to it. The procurement website should be made accessible in English in order promote participation of foreign bidders. Publication in print media, especially newspapers, should be continued in order to facilitate access to tender and contract award information to all interested parties throughout the country.

Provision on fraud and corruption in bidding documents

4.34 The bidding documents do not include adequate provisions on fraud and corruption. The PPL does not provide any precise instructions on how to incorporate these

provisions in the bidding documents. The media, including various articles written by investigative journalists, point to several cases of alleged corruption in public procurement, including during contract implementation. However, there is no evidence of follow up. Since 2003, there are no changes in the corruption index of the country, although the GOA has taken several anti-corruption measures, including the anticorruption strategy adopted in 2003, establishment of an Anti-corruption Council as well as a Commission on Monitoring and Execution of Anti-corruption Strategy.

- **Recommendations.** Fraud and corruption provisions should be included in the model bidding documents. Findings of audits and reports obtained through the complaint system or through the internal and external control system, including investigative reports of journalists and NGOs, should be followed up with investigation, prosecution and other enforcement measures. Portals, including website and hotlines and mailing addresses should be made available and easily accessible for people who want to report allegations and anomalies, with awareness of protection of anonymity and confidentiality.

Dialogue with private sector and civil society

4.35 There is need for a more proactive and robust reaching out to the private sector, media, nongovernmental entities, and civil society. A sustained dialogue and consultation with various stakeholders is absent.

- **Recommendations.** Establish an informal network of interested parties and stakeholders on consultative basis, such as a procurement advisory council, that meets regularly to discuss policy issues, reform proposals and systematic problems in the procurement process. Representatives from civil society should remain as observers, monitors or oversight agents and not as participants in the procurement decision-making process. A mechanism should also be developed to obtain feedback and observations.

Code of ethics for procurement professionals

4.36 There is no specific code of ethics that particularly apply to procurement profession. Government Decree 853N provides some conflict of interest rules with respect to prospective tender committee members.

- **Recommendations.** Rules of ethics, a code of conduct and conflict of interest provisions relating to public procurement should be codified, widely disseminated, and systematically enforced. More specifically these provisions should require public officials conducting procurement, including members of tender committees, procurement specialists, to disclose any conflict of interest in a given procurement process.

Compliance/Performance Status

4.37 The OECD-DAC/World Bank methodology also includes Compliance/Performance Indicators (CPIs) for which procurement monitoring data are required to determine adherence to the formal system. Based on the data that was available to the team, a report performance report has been prepared and is included in Attachment 2 to this report. The findings of the performance report are consistent with the findings discussed above. It is worth mentioning here that the data provided by the Government does not appear to be complete in all respects; nor has it been possible to verify these data.

5. CASE STUDIES – SUMMARIES OF FINDINGS AND RECOMMENDATIONS

5.1 In close collaboration with the counterpart team, relevant ministries and agencies, and the sector colleagues, both at the headquarters and in Yerevan, the case studies have been prepared on Electronic Government Procurement (e-GP); Public Procurement in Health and Transport Sectors; Mitigation and Management of Corruption in Public Procurement; and Public-Private Partnership in Public Procurement. The main objective of these case studies, respectively, is to ascertain the extent to which current information technology is being used in Armenia for enhancing efficiency of public procurement; whether procuring entities, such as the health and transport line ministries and other bodies, are appropriately organized, have adequate procurement capacity and whether their procurement practices are in compliance with the procurement legislation; and whether there is adequate interaction between the Authorized Body and private sector (consulting firms, contractors and suppliers) which enables the latter to be informed of the requirements of the system leading to participative and optimal competition for public tenders. The case study on mitigation and management of corruption in public procurement looks into the transparency and accountability aspects of public procurement and suggest measures to strengthen these.

5.2 Each of these case studies includes a detailed action plan. A summary of each of the case study, along with recommendations, is given below.

E-GOVERNMENT PROCUREMENT

5.3 Given the importance of e-GP for improving the public procurement system in general and its transparency and efficiency in particular, an overall assessment of the current status of the e-GP program in Armenia was conducted as part of the CPAR. The e-GP assessment is based on the MDB e-GP readiness assessment tool which was developed jointly by the Asian Development Bank, the Inter-American Development Bank, and the World Bank⁶. It addresses a set of key success factors for the introduction of e-GP which go far beyond the mere application of information technology. These foundations include the need of strong government leadership and management planning, appropriate policy and legislation, extensive buyer and supplier activation, and standardization and infrastructure development.

5.4 The launch and initial phase of the e-GP program in Armenia including the e-GP roadmap, the Government Decree on the e-GP strategy, and the development of an e-GP application under the Public Sector Modernization Project established a promising basis for the successful introduction of e-GP. The Ministry of Finance has provided great leadership in this context and is collectively recognized as the lead agency for the implementation of the e-GP agenda. However, the implementation of e-GP has been delayed, mainly due to political change, lack of capacity, an overambitious implementation approach, and the absence of a detailed action plan.

⁶ <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=645459>

5.5 While the current legislation addresses the use of electronic means for public procurement, it appears desirable to include more detailed reference with regard to electronic procurement transactions in the procurement regulation. Much work has been done to reach out and build capacity among buyers and suppliers and it is critical to continue these efforts to manage successfully the change from paper-based to electronic procurement and develop appropriate capacity. On the other hand, the capacity of the Government of Armenia to design and implement an e-GP system appears limited thus suggesting the use of external expertise for the systems needs analysis, design, development, and roll-out. The application of procurement and technology standards is highly recommended and needs to be coordinated across the Government of Armenia. Internet penetration improves fast and as part of the e-GP implementation program, the Government needs to ensure accessibility to online government procurement opportunities in order not to limit competition to those firms which are connected to the Internet.

- ***Recommendations.*** Building on the strong will and intent of the Government of Armenia, it is recommended that the Ministry of Finance continues to lead the adoption of the e-GP agenda based on an updated strategy and a less ambitious implementation approach. More specifically, the updated strategy should provide for an e-GP implementation plan in manageable phases with clearly defined actions, roles, and milestones. It should also address the need of capacity building among procuring entities and private industry. The e-GP component under the Public Sector Modernization Project should be limited to the design and implementation of an e-Tendering component.

PUBLIC PROCUREMENT IN HEALTH SECTOR

5.6 The case study reviewed the procurement institutional arrangements, capacity and practices in the health sector. Since the procurement process (preparation and distribution of bidding documents, receipt, opening and evaluation of bids, contract award and signature) is centralized in the SPA both for periodic (framework) and targeted tenders, the MOH and other procuring entities in the health sector had no incentive to develop their own procurement capacity. Particularly, at the Marz and community levels, there is little awareness of the requirements of the PPL leading to uneconomic and inefficient procurement. Use of poor quality technical specifications for the procurement of pharmaceuticals combined with lowest price as the major award criteria, is resulting in poor quality and ineffective distribution of medicines. Finally, weak internal and external controls, including the AB oversight of procurement, adversely affect accountability of public officials involved in procurement.

5.7 It is recommended that procurement be decentralized to the Ministry of Health and other procuring entities which should be made fully responsible and accountable for the whole process of procurement from identification of needs and procurement planning, to conduct of procurement process and contract award, signature and supervision. For taking over this responsibility the MOH and other procuring entities in the health sector should develop their own procurement capacity. The MOH should establish a separate procurement unit staffed with qualified and experienced procurement professionals and advisory services of the SPA should be made available to all procuring entities, especially

those with few contracts which would not justify full time procurement specialists. Since this case study had a limited scope and could not cover the complex area of procurement of pharmaceuticals, it is recommended that a detailed case study be carried out on the procurement of pharmaceuticals. Finally, there is immediate need of preparing clear rules on audit of procurement, and for strengthening the capacity of the Ministry of Finance, and that of the Chamber of Controls to conduct procurement audit in an effective manner. At the same time, the procurement oversight role of the AB should be clearly defined with particular attention to avoid any conflict of interest in its different roles.

PUBLIC PROCUREMENT IN TRANSPORT SECTOR

5.8 With regard to procurement capacity, this case study has led to the same conclusion as for the health sector (See above), i.e., due to centralization of procurement in the SPA, the transport sector, including the MOTC, has not developed its own capacity to carry out procurement. The recommendation, therefore, is also the same, i.e., that the procurement authority should be decentralized to the MOTC and other procuring entities in the health sector. Procuring entities like the MOTC, which have large volume of procurement work, should establish a procurement unit staffed with qualified and experienced procurement specialists, while procuring entities with small procurement volume could use advisory services of SPA but should be fully accountable for their procurement decisions. Just as in the health sector, the case study also recommends streamlining of procurement audit rules and regulations and strengthening the capacity of the relevant audit bodies to carry out procurement audit in a more effective manner. Finally, given the keen government interest in moving forward with its e-GP agenda, it is recommended that the MOTC should be used as a pilot for introducing e-GP in the transport sector, which can begin with advertisement of transport sector procurement notices and contract awards and for dissemination of procurement regulations and good practices.

MITIGATION AND MANAGEMENT OF CORRUPTION IN PUBLIC PROCUREMENT

5.9 This case study further examines the issues already highlighted in the main OECD-DAC/World Bank assessment on integrity and transparency and distills the findings with a view to further articulating the concerns about risks of leakage and corruption. It makes corresponding recommendations and includes an action plan. The public procurement system in Armenia appears to suffer from an acute perception of lack of integrity and transparency in terms of practice and compliance with the regulatory framework and best practices. The assessment and consultations conducted have revealed that certain procurement practices in Armenia are indicative of ongoing or potential abuse of the legal framework. These weaknesses in the area of integrity and transparency in the procurement system have been a result of a defective or weak framework, non-compliance with norms, manipulation of the market, or due to misconduct by key players. The case study also includes a discussion on related background literature or previous analytical work on the topic, on risk assessment and red flags, summary of reported Cases and some key recommendations and action plan.

5.10 Essentially the findings during assessment and according to various reports that were gathered point to a variety of issues relating to: weaknesses and overreliance on and

abuse of restricted tendering (mainly sole sourcing); a lack of confidence in the independence and effectiveness of the complaint review mechanisms; numerous reports of poor quality of works and services and instances of non-delivery or non-performance; deficient rules on conflict of interest and codes of conduct; indications of anti-competitive agreement prior to submitting bids (eg. collusion); abuse of the qualification and evaluation process to favor pre-determined bidder; faulty specifications that favor certain suppliers; lack of significant participation and oversight by civil society groups and other stakeholders; deficient mechanisms for transparency, information access and feedback systems; unclear and overlapping audit systems with no significant follow-up of findings; lack of integration with overall national anti-corruption strategy and reference to the appropriate criminal legal framework; abuse of use of “monopoly” privileges; dismally low level of tender participation; and general lack of capacity of procuring entities.

5.11 The case study recommends that a network/council of interested parties and stakeholders be established. This will encourage feedback, confidence and civil society participation and oversight. A review of the PPL provisions on civil society engagement in the procurement process is also needed. There is also need of establishing effective portals to report allegations of fraud and corruption and how these were followed up. Vigorous implementation of access to information and appropriate information systems and freedom of information regimes will also promote transparency. A need to set out clear rules of accountability is also required. Clear references in the PPL to criminal laws and setting out responsibilities and accountabilities of persons involved are, therefore, necessary. Debarment and blacklisting system under the PPL needs to be clarified with articulation of applicable procedures and principles to ensure fairness and prevent abuse.

5.12 Capacity building and awareness-raising on fraud and corruption in procurement is also essential. This will ensure that employees engaged in procurement have practical understanding of fraud and corruption schemes. The government must devise a systematic and targeted policy and enforcement mechanism for detection and prevention of certain practices. Among others, procurement officials should be trained to focus on red flags indicating unusual bid patterns such as: distinct bids by a systematic or uniform percentage; bids inexplicably too close or too far apart; losing bid prices are rounded or of unnatural numbers; unexplained inflated bid prices; losing bidders become subcontractors; apparent rotation of losing bidders; unusual repeated extension of bid security; delay in completing BER or contract award signing indicating efforts to negotiate corrupt terms; cartel like behavior in the market; and a general scheme of coordination of preparation of bids by designated winner. Overlapping and excessive audits and control mechanisms should be streamlined and made more effective with meaningful follow-up enforcement measures.

Public-Private Partnership in Public Procurement

5.13 The main purpose of this case study is to review the status of public private partnership as it relates to public procurement in Armenia and to make recommendations for strengthening the relationship and involvement of the private sector in public procurement. It is based on a desk review of available reports on public –private partnerships (PPP) and discussions with a few selected private sector firms and

associations in Armenia. The findings and recommendations made in this report are subject to review and approval by Bank management.

5.14 Private sector constitutes about 70 percent of the GDP in 2003 and its share of employment is about 75 percent, has been rapidly growing in recent years earning Armenia the name of “the Caucasian Tiger”. The private sector includes 2300 small, medium and large companies and organizations involved in the provision of over 10,000 items of goods, works and services. Private sector development is also one of the focus areas for the Bank’s CAS. Armenia has had an impressive track record of implementing PPPs in the infrastructure sector, especially in the areas of Water Supply, telecommunications, energy and transport, with about \$560 million in PPP investments up to 2006. However, there is room for further development as Armenia at present lies in stage one of the PPP market maturity (developed by Deloitte), which is characterized by: (i) policy and legislative framework for PPP is being developed; (ii) Deal structures are being formulated and implemented; (iii) Process of getting the public–private transactions right has begun; (iv) Process of building a marketplace for PPP has commenced; and (v) lessons from PPP in sectors where this has been tried are being adapted to other sectors. Some of the constraints inhibiting the further growth of PPP are lack of clarity, consistency and transparency in PPP processes and its administration, failure of the legal and regulatory framework to ensure a fair and transparent competitive bidding process, protection of public interests, insufficient capacity to conclude and manage PPP contracts, lack of impact assessment – ex-post and ex-ante, lack of well-developed financial institutions which makes dependency on grants and soft loans. Moreover, the development of PPP in Armenia, however, has been stifled by two main problems in public procurement; which are (i) Pricing mechanisms do not reflect current market conditions; and (ii) continued perception of the private sector of public procurement not being transparent, especially in the setting of qualification criteria and technical specifications.

5.15 The organization of the private sector in Armenia is at an early stage, a few of which are the union of employers, association of builders’ association of investigative journalism. These need to be nurtured and developed to take an active role and increased involvement in the public procurement process and facilitate market access. There is limited competition due to lack of interest, procurement policies, and monopolistic or oligopolistic features, especially in infrastructure projects. New types of PPP are models are being tried out, such as the housing project in earthquake affected areas led by Ministry of Urban Development.

5.16 The business climate in Armenia for the growth in public private partnership needs further improvement as indicated by Armenia’s overall ranking of 44 out of 181 countries in the ease of doing business in 2009 and ranks 61 in enforcing contracts. There is a lack of interest in private companies to do business with the Government – which was also one of the findings of the CPAR conducted in 2004. Armenia ranks 109 in the improper procurement practices index according to Transparency International with a CPI score of 2.9 Improper procurement practices in public procurement in Armenia occurs in a variety of ways – such as collusion between bidders, sole source contracts, awarding contracts to non-qualified contractors, limited dissemination of procurement opportunities, acceptance

of low quality works in relation to the expenditure, favoring selected contractors and suppliers for the provision of goods, works and services, etc.:

- **Recommendations.** The study recommends the following main actions: (i) In the short term, adopt a public-private partnership (PPP) act and incorporate PPP provisions in the public procurement law; design a PPP strategy and action plan; establish a PPP unit/agency in the Ministry of Economy with qualified and experienced personnel to develop policies, procedures and monitor the implementation of PPP strategy and action plan; (ii) In the short to medium term create an enabling environment for the development of association of private sector, and citizen groups to function as independent oversight institutions in all aspects of public procurement; Design and implement a continuous public awareness, education and training program in PPP for the staff of the PPP unit as well as the private sector and institutionalize the training program in a recognized national university/training institution.

6. PROPOSED ACTION PLAN FOR FURTHER IMPROVEMENTS

STRENGTHS AND WEAKNESSES

6.1 **The Government of Armenia has made commendable progress in improving public procurement since the May 2004 CPAR.** In January 2005, a new PPL was introduced. Implementation of several recommendations contained in the CPAR action plan has also contributed positively to an improved procurement environment. Estimated contract prices are no longer disclosed in tender notices, and single-source procurement has been significantly reduced. Policy on public disclosure of procurement processes was introduced and has been included in the Official Procurement Bulletin of the Ministry of Finance and Economy, which is distributed to state governments and to local self-government bodies.

6.2 **Progress notwithstanding, significant weakness still need to be addressed.** These include: lack of clarity of the scope of the PPL; excessive and unjustified sole sourcing; a lack of confidence in the independence and effectiveness of the complaint review mechanism; reports of poor quality of works and services and instances of non-performance; deficient rules on conflict of interest and codes of conduct; indications of anti-competitive agreements (such as collusion) prior to submitting bids; abuse of the qualification and evaluation process to favor predetermined bidders; poor quality and biased specifications to favor certain suppliers; lack of significant participation and oversight by civil society groups and other stakeholders; deficient mechanisms for transparency, information access and feedback systems; unclear and overlapping audit systems with no significant follow-up of findings; lack of integration with overall national anticorruption strategy and reference to the appropriate criminal legal framework; abuse of use of “monopoly” privileges; dismally low level of tender participation; and general lack of capacity of procuring entities. This places the public procurement of Armenia in a mid to high risk category.

ACTION PLANS FOR FURTHER IMPROVING THE PUBLIC PROCUREMENT SYSTEM

6.3 **The weaknesses identified in this assessment have been summarized below and a prioritized action plan prepared.** The prioritized action plan is at Annex 1. The action plan of the May 2004 CPAR has also been updated and is included in Annex 2.

Public Procurement

- Establish an independent complaint review system that is free from real or perceived conflict of interest and that would build confidence as a result of its transparent, efficient and responsive resolution of complaints and provision of meaningful remedies. Any review body should have no direct interest in the procurement process, should not report to the procurement agency and should ideally be a separate body. It should have a degree of autonomy that assures freedom from interference and conflict of interest. This is crucial as confidence

in the procurement system is a great incentive for more participation and enhanced competition.

- Enhance competition, encourage participation and prevent anti-competitive behavior through efforts that: produce measurable and significant increase in number of bidders including participation by foreign firms; prevent *de facto* sole sourcing due to artificial cases of failure of bidding or limited participation; further reduce over-reliance on sole source procurement by tightening requirements for emergency procurement (for example, sole sourcing on the basis of urgent or emergency needs should be allowed only in extreme and exceptional circumstances, limited in application and duration, and only if such circumstance did not result from lack of foresight, poor planning or negligence on the part of the entity concerned), ensuring that technical specification and procurement planning are not designed to favor select bidders, preventing bogus disqualification to favor a pre-determined winner, discontinuing reliance on the registry of the Anti-Monopoly Commission as a proxy justification for sole sourcing; detecting and preventing collusion and other anti-competitive behavior; and more generally, by reducing the significant information barrier to procurement opportunities and to aggressively reach out in a transparent manner to the private sector and interested parties to encourage participation.
- Code of Ethics, asset reporting and disclosure and conflict rules should be codified, widely disseminated and systematically enforced in the procurement sector. Rules of accountability need to be clearer. References should be included in the PPL to criminal laws and to setting out responsibilities and accountabilities of persons involved. Tender, contract and other model documents should be developed and should include provisions addressing corruption, fraud, conflict of interest and unethical behavior. The relevant provisions should also set out the consequences and sanctions for such behavior.
- Establish a network or council of interested parties and stakeholders in order to encourage feedback, confidence, civil society's participation, and oversight. A review of the PPL provisions and implementation of civil society engagement and oversight role in the procurement process is also needed. Appropriate information systems and freedom of information regimes are needed to be vigorously implemented to promote transparency. Accelerating the demand side for the reform agenda is crucial for the success of the various initiatives.
- Amend the PPL to expand its application to public enterprises and utility companies (in accordance with international best practice. *See* for example EU Directives which provides coverage for private utilities which operate on the basis of special or exclusive rights granted by a competent authority); decentralize procurement function to procuring entities;; and to redefine the AB's oversight role;
- Prepare a comprehensive implementation regulation, and model bidding documents;
- Design and implement a continuous capacity building plan for procuring entities both at central and local levels; and

- Clarify rules of internal and external audit of procurement and strengthen capacity of audit bodies to carry out procurement audit in an effective manner.

The key recommendations of the case studies at Appendix 3 are summarized below.

e-GP

- Review and update the e-GP implementation strategy including the identification of detailed action plans and next steps with cost estimates and performance indicators;
- Develop a communications, training, and change management strategy to catalyze the e-GP awareness and capacity building; and
- Use international e-GP expert consultancy to help implement the e-GP program, in general, and manage the contract with the selected company under the Public Sector Modernization Project in particular.

Public Procurement in Health Sector

- Create a procurement unit and staff it with qualified and experience procurement staff;
- Design and deliver procurement training for health sector staff at all levels; and
- Carry out a study on the procurement of pharmaceuticals.

Public Procurement in Transport Sector

- Create a procurement unit in the MOTC; and
- Design and deliver procurement training for transport sector staff at all levels.

Anti-Corruption Measures

- Include clearer rules of accountability with references in the PPL to criminal laws and setting out responsibilities and accountabilities of persons involved;
- Clarify debarment and blacklisting system under the PPL with articulation of applicable procedures and principles to ensure fairness and prevent abuse; and
- Build capacity and awareness-raising on fraud and corruption in procurement to ensure that employees engaged in procurement have practical understanding of fraud and corruption schemes.
- Strengthen and streamline overlapping and weak capacity in the audit and control systems.
- Portals are needed where allegations of fraud and corruption can be reported and followed up.

Public-Private Partnership for Public Procurement

- Adopt a public-private partnership (PPP) act and incorporate PPP provisions in the PPL;
- Design a PPP strategy and action plan;
- Establish a PPP unit in the MOF (Note; Should not this be done with Ministry of Economy?) with qualified and experienced personnel to develop policies, procedures;

- Create an enabling environment for the development of association of private sector, and citizen groups to function as independent oversight institutions in all aspects of public procurement;
- Design and implement a continuous public awareness, education and training program in PPP for the staff of the PPP unit as well as the private sector and institutionalize the training program in a recognized national university/training institution.

Implementation Arrangements

6.4 The AB has informed the team that it would be responsible for implementing the remaining actions in the Updated Action Plan of May 2004 CPAR and the recommendations of this assessment. The recommendations contained in the case studies would also be implemented by AB, except for the case studies on public procurement in the health and transport sectors which will be implemented by the MOH and the MOTC in close collaboration with the AB.

6.5 In addition to seeking budgetary funds for implementing the action plans, the AB should explore with bilateral and multilateral donors active in Armenia the possibility of obtaining financial support for this purpose. As a first step, the MOF has expressed its interest in applying for an IDF grant from the World Bank for implementation of the short term recommendations of this assessment.

Annex 1 - Prioritized Action Plan for Further Improvements in Public Procurement System

Measures	Objectives	Time frame*
<p>May 2004 CPAR: Complete the implementation of the recommendations of the Action Plan in the 2004 CPAR that have not yet been implemented as of the writing of this report. See Annex 2.</p>		
<p>Pillar I. Legislative and Regulatory Framework</p>		
<p>Amend the PPL to include private enterprises using public funds; utility companies (see, for example, the EU directive which provides coverage for private utilities which operate on the basis of special or exclusive rights granted by a competent authority); and concessions.</p>	<p>To broaden and clarify the scope of PPL coverage as well as to make it more comprehensive.</p>	<p>Short term</p>
<p>Amend the PPL to provide for the establishment of an appeals and complaints system that is independent and free from real or perceived conflict of interest and that would build confidence as a result of its transparent, efficient and responsive resolution of complaints and provision of meaningful remedies</p>	<p>Promotes transparency, inspire confidence and encourage participation</p>	<p>Short term</p>
<p>Prepare a single detailed implementation regulation to expound on such areas as bid evaluation methodologies, for which the PPL cannot provide sufficient detail.</p>	<p>To provide comprehensive explanation of the PPL with a view to improving procuring entities' compliance.</p>	<p>Short term (Immediately after the revised PPL has been adopted)</p>
<p>Finalize, approve, and disseminate standard bidding documents. Make their use by procuring entities mandatory. Prepare model technical specifications.</p>	<p>To achieve compliance with the PPL and efficiency in preparation of bidding documents.</p>	<p>Short term (Immediately after the revised PPL has been adopted)</p>
<p>Amend the PPL to clarify criteria for justification of single-source procurement. Include in the PPL clear definitions of terms “emergency” and “urgent”; limit single-source procurement only from “natural” monopolies; to require that civilian goods for use for defense and security are procured through open tenders; to discontinue reliance on the registry of the Anti-Monopoly Commission as a proxy</p>	<p>To reduce the use of single-source only where justified cases and for emergency situations.</p>	<p>Short term</p>

Measures	Objectives	Time frame*
<p>justification for sole sourcing; make budgetary funds available to procuring entities timely so as to allow use of competitive procurement methods.</p> <p>Identify and remove obstacles (such as access to tender notices, bidding documents, and those relating to post contract award, including customs) to participation by foreign bidders.</p> <p>Amend the PPL to improve selection of consultants, including shortlisting and evaluation procedures.</p>	<p>To optimize competition.</p> <p>To select consultants in an objective manner to ensure quality of services procured.</p>	<p>Medium term</p> <p>Short term</p>
<p>Pillar II. Institutional Framework and Management Capacity</p>		
<p>Require procuring entities to prepare comprehensive procurement plans immediately after budget approval. Improve budget processes so as to make funds available to procuring entities to allow for the use of competitive procurement methods.</p>	<p>To ensure transparency and economy aspects of public procurement.</p>	<p>Short term</p>
<p>Empower procuring authorities to be fully responsible for procurement, especially for targeted tenders, from procurement planning to the bidding process, contract award, contract signature, contract supervision and completion. Make SPA's procurement services available to procuring entities as technical assistance.</p>	<p>To improve procurement capacity building in procuring entities; and improve accountability.</p>	<p>Short term</p>
<p>Create a council of stakeholders in public procurement, comprising representative from government, Marzpetarans, communities, civil society, etc, and seek their participation in improving procurement policy and procedures.</p>	<p>To ensure all stakeholders' participation in formulation of procurement policy and procedures, and oversight of functioning of public procurement.</p>	<p>Medium term</p>
<p>Design and implement beginning, intermediate and advanced training programs to train staff of procuring entities in preparation of procurement plans, technical specifications, bidding documents, bid opening and evaluation. Also prepare short awareness procurement training seminars for private sector.</p>	<p>To ensure effective implementation of the procurement legislation and procurement staff compliance with it; and to improve bidders' awareness of the requirements of the PPL for better quality bids.</p>	<p>Long term</p>
<p>Pillar III. Procurement Operations and Market Practices</p>		
<p>Procurement to be recognized as a profession in the civil service so</p>	<p>To ensure that procurement entities' staffs</p>	<p>Medium term</p>

Measures	Objectives	Time frame*
that procurement is carried out by qualified and experienced professionals rather than as one of many tasks they are currently assigned.	are administering contracts effectively by seeking compliance with contract conditions.	
AB to carry out an in-depth review of the current contract management procedures and prepare a contract administration manual. Train procuring entities staff in contract administration.	To ensure that contractors, consultants and suppliers perform according to their contracts.	Medium term
Pillar IV. Integrity and Transparency of the Public Procurement System		
Strengthen and streamline internal and external audit of procurement.	To ensure effective use of public resources.	Medium term
Continue publication of tender notices and contract award information in newspapers.	To ensure that procurement information is available to interested parties throughout the country.	Medium term
Include fraud and corruption clause in bidding documents; publicize information about fraud and corruption.	To enhance transparency of public procurement system.	Short term
Establish and maintain procurement dialogue with private sector and civil society.	To improve transparency of public procurement and quality of bids.	Long term
Codify, widely disseminate and systematically enforce rules of ethics, conflict of interest and asset disclosure for public officials involved in carrying out procurement.	To improve accountability.	Short term
To introduce a system of collection and maintenance of procurement statistics for use in publication of periodic reports on the website on the performance of the procurement system.	To improve decision making based on quality statistics and to keep public informed about the performance of the public procurement system.	Long term

* Note: Short term measures generally refer to the timeframe of 1 to 2 years; Medium term refers 2 to 5 years; and Long term refers to more than 5 years.

Annex 2 - Current Status of Implementation of Actions Recommended in 2004 CPAR

<i>A. Completing Legal Framework</i> ⁷						
Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
A1. Increase the use of competitive procurement methods and incentives for private sector to bid						
1. Set out fully the conditions for the use of single source procurement in the Public Procurement Law (PPL) and do not subject the use of Single Source (SS) to the prior approval of the Authorized Body (AB) (C2.5 (5) and C.4.1	X			Partially Completed	An itemized list of goods and services subject to SS has been developed. Sole source contracts have registered a decline. However, AB continues to authorize procuring entities for single source contracts. Annex 6 of Government Decree 853N lists seven natural monopolies, including electric supply, natural gas, irrigation and industrial water, and water drainage and sewer treatment services. Decree 426-N has improved the criteria for the use of SS, which are lack of competition supported by a written justification from the procuring entity for sole sourcing. Delayed allocation of budgetary funds often leads to the use of single source	List of 34 items in MOFD426, which are subject to single source method should be reviewed and periodically updated in order to confirm the rationale for inclusion of specific items in this list and take into consideration changes in market conditions and regulatory reforms in certain sectors. Update list of firms with exclusive licenses, which should be disclosed periodically to the public.

⁷ This was included as part of the SAC-V conditionalities with regards to the implementation of the recommendations of the agreed CPAR action plan for improvements in the legal and regulatory framework.

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
2. Include in the PPL a limited/restricted tendering procedure (C2.5(5)) and a procedure for procurement of consultant services (C2.5(6))	X			Partially Completed	<p>Restricted procedures are appropriately circumscribed based on the criteria and financial thresholds specified in the PPL. Government Decree 853 provides the methods and formula for evaluation. Provisions are also provided in Articles 20, 41- 45 and 48 of the PPL.</p> <p>The legislation lacks clear provisions for selection of consultants, including shortlisting procedures. Consequently, Procurement of consultants is carried out in the same way as procurement of goods and works. Under the PPL as implemented, preparation of designs is treated as “works” rather than “consultant services”.</p>	<p>The PPL/implementation regulations should clearly indicate the criteria for the selection of consultants based on quality, or price or combination thereof, with detailed evaluation procedures. Shortlisting procedures need to be elaborated. Detailed guidelines for selection of consultants should be developed.</p>
3. Discontinue the use of estimated prices in procurement notices Delete the requirement for their use from the PPL (C2.6). Amend Article 36 of the PPL to the effect that a competition may be declared invalid and bids	X			Completed	<p>The practice of using estimated prices in notices has been discontinued. However, the practice of fixed budget within which all works have to be carried out continues and is often known to the bidders.</p>	<p>Continue the practice of declaring the competition invalid and bids to be re-invited based on revised bidding documents and technical specifications, when all bids exceed the (undisclosed) budget allocated by a substantial margin.</p>

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
re-invited based on revised requirements, when all the bids exceed the budget (undisclosed) budget allocated by a substantial margin (C.2.6 (1))						
4. Adopt secondary legislation setting out in more detail a comprehensive list of qualifications criteria Introduce in the PPL the option to use a pre-qualification system to streamline competition for large works contracts by identifying qualified contractors prior to tendering procedure (C2.9 (1))	X	X		Under - implementation	Secondary legislation is being developed to set out a comprehensive list of qualifications criteria and the option of using a pre-qualification system to streamline competition for large works.	Develop pre-qualification criteria and system for evaluation of qualifications.
5. Include provision in the bidding document and secondary legislation for bid prices to be evaluated by taking into account evaluation criteria, other than price, that are quantifiable in monetary terms; and for guidelines to be prepared on the	X			Partially completed	Articles 27 and 34 of PPL provide for the tender commission to evaluate bids in accordance with the evaluation criteria in the bidding documents and to select the “most highly evaluated bid” from those who are qualified. Non-price criteria is not considered in the evaluation process resulting in contract awards made on the basis of the lowest bid price and without	Market prices should be used to estimate costs and updated on a regular basis. Evaluation criteria should be quantifiable in monetary terms and qualification criteria should be evaluated on a pass or fail basis. Evaluation procedures should be developed when the bidder is a joint venture or a consortium, who can

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
evaluation of bids (C2.11)					regard to quality of goods, works and services	leverage their capacity, experience, and financial strength to bid on contracts. A34(c), which requires rejection of bid “in other cases envisaged by law”, should be deleted as it could be subject to interpretation and open to abuse. Prepare detailed procurement guidelines for the evaluation of bids for goods, works and services and make them publicly available.
6. Amend the PPL to (i) State that bid securities must not be more than 2 % (ii) Require bidders ensure the validity of their bids for larger contracts during the whole procurement procedure (iii) Limit performance security to between 5 and 10 % for large works and goods contracts (iv) Require an advance payment guarantee in the event of an advance payment (v) Introduce the system of retention money (vi) Delete articles 39(9)-(11) that establish the	X			Partially completed.	Provisions in the PPL on bid security have been amended. Sections Article 27 (k). Article 31 indicates that tender security is mandatory and shall be 2% of the tender price, raising issues of breach of confidentiality of the tender offer and making it easy for a competitor to determine exact tender offer using this information.	In future amendments, the law should be amended to make tender security not mandatory in all cases and the 2% should not be based on the actual and exact tender price (for example, the bidder may be allowed the discretion to vary the amount by obtaining a security in any amount that is not lower than 2% of the tender price, and the exact amount being at the sole option of the bidder. Simplified method of calculation or formulation which addresses this concern of confidentiality should be explored).

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
damages provision (C2.8 and 9)						
7. Amend the PPL to require the submission of a single envelope and that bid prices be read out and recorded at the public bid opening session (C.2.4)	X			Partially Completed	Bid prices are read out and recorded in public during bid opening. Provisions are provided in Articles 33 in the Procurement law. The two-envelope practice, however, continues.	The practice of requiring bids in two envelopes should be discontinued.
8. Amend the PPL to state that a license is required only as a condition for award and not as a condition to participate in a bid (C2.9 (2))		X		Completed	Provisions are provided in Articles 5 in the Procurement law.	This provision should be made known to bidders and explicitly stated in the procurement notices
9. Delete from PPL the provisions for local preference (C2.4)			X	Completed	Provisions have been deleted	This provision should be reflected in the procurement guidelines and operational manuals.
10. (i) Postpone publication of the contract award results until after the winner has been finally selected (ii) Delete Articles 39 (B) and 39 (11) and introduce a clause to the effect that the procuring entity shall incur no liability in the case of the rejection of tenders for where all		X		Completed	Articles 39 B and 39 (11) have been deleted and clause stating that the procuring entity shall incur no liability in the case of rejection of tenders for all tenders are invalid has been introduced.	This provision should be reflected in the procurement guidelines and operational manuals

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
tenders and invalid (C.2.12)						
11. Raise the threshold for open bidding in the PPL and apply different thresholds to works and goods and services contracts (C.2.5)	X			Completed	The thresholds need to be re-visited and adjusted to reflect market conditions. Provisions are provided in Articles 21 in the Procurement law.	Thresholds should be revised on an annual basis through the annual budget law.
12. Introduce a provision in the PPL requiring the procuring entities to pay interest for delayed payments (C.2.1) already covered in civil code)	X				Provisions are provided in the civil code 411.	The provision requiring the procuring entities to pay interest for delayed payments should also be indicated in the PPL with cross-reference to the appropriate clause in the civil code.
13. Adopt law on E-Signatures (C.5)			X	Completed	Law adopted by the national assembly on 14 December 2004 and made effective on 23 January 2005	Develop implementing guidelines and mechanisms for the acceptance of documents with E-signatures.
A2. Extend Scope of PPL's Applicability						
14. Amend PPL to ensure that 50% and more state owned closed joint stock companies, regardless of the source of their funds (C.2.2 (1)); procurement under PPL for self-financed state entities, including procurement for Competitive Bidding (CB) of the Republic of Armenia	X			Completed	Provisions are provided in Articles 2 in the Procurement law.	These amendments should be reflected in the procurement guidelines and operational manuals.

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
(RA) (C2.2 (2)) 15. Amend the law on State Non-Commercial Organizations to ensure the adoption of procurement obligations for state non-commercial organizations, as well as delete the possibility of giving permission for single source procurement foreseen in the Law on State Budget	X			Completed	Provisions are provided in Articles 2 and 6, part 4 in the Procurement law. Amendments to the RA law on state non-commercial organizations is declared “null and void”	These amendments should be reflected in the procurement guidelines and operational manuals.
16. Regulate PPL to include an appropriate definition of items that may be procured for defense and national security purposes by way of closed bidding, making reference to a list of state secret and non secret items (C2.3)		X		Not Completed	Although a list of goods, works, and services of items of civilian nature has been prepared, procurement of these items is still subject to closed tenders.	Consider procuring goods of civilian nature required for defense and national security purposes through open tendering.
A3. Realign and/or Rationalize Institutional Functions						
17. Amend Decree 1267 to limit the State Procurement Agency’s (SPA) role in targeted procurement to providing the secretary of the Tender Committee (TC) to ensure compliance	X			Not Completed	SPA is still involved in actual conduct of procurement, except for technical specifications and a tender committee appointed by a procuring entity. It has the authority of annulling the bidding process; and it signs contacts with selected providers.	Conduct of procurement for targeted tenders should be delegated to procuring entities; they should develop their own procurement capacity; carryout bidding process; sign and supervise contracts, while SPA can provide technical assistance.

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
(C3.3)						
18. Adjust PPL to reflect the option chosen regarding the review functions of AB (see Action 23)	X			Completed	Provisions are provided in Articles 16 in the Procurement law.	The new functions of the AB should be reflected in the procurement guidelines and operational manuals and made known to the public.
19. Review the functions of multiple control bodies and re-define them to exclude unwarranted interference in the procurement process; Amend the pertinent laws as necessary (C.6)		X		Under-development	Provisions are provided in Articles 16 in the Procurement law.	Streamline the control mechanisms and build capacity of control bodies' staff to ensure transparency and avoid duplication. Develop institutional mechanisms to implement the recommendations based on the assessment
B. Creating Institutional Capacity						
B.1 State Procurement Agency						
20. (i) Adopt an internal manual procedures containing deadlines for specific actions, together with a control of such procedures to streamline the SPA procedures in periodic procurement (ii) Ensure timeliness and efficiency through computerization of such procedures (C3.4) (iii) Establish a sustainable				Under-development	The PPL is supported by detailed implementation regulations in the form of Government Decree No. 853N dated June 3, 2008, which has been approved. However, this decree does not comprehensively cover all aspects of the PPL and contains contract conditions, some of which should be more appropriately articulated in model documents. Computerization of procurement records is under development. Training strategy for the SPA has	Prepare an internal procedure manual, as recommended.

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
training strategy for the SPA; and (iv) Introduce an electronic catalogue for the use with periodic procurement (see action 31)					been prepared financed under an IDF Grant. The development of E-Catalogue system is in an advanced stage and is expected to be operational within a year.	
21. Limit the role of SPA in targeted procurement to that of providing the secretary to the TC and give a possibility to the SPA secretary in targeted bidding to travel to the procuring entity, specifically those in the Marzes (C2.4) (see action 17)	X			Partially Done	Provisions are provided in Article 57 in the Procurement law. The SPA representatives are not members of TC in targeted procurement. The SPA provides secretary to the TC.	Redefine the role of SPA as part of the decentralization strategy for public procurement.
B.2 Authorized Body						
22. (i) Implement the second phase of the AB training program (ii) Establish a sustainable training strategy for the SPA, bidders and procuring entities and electronic cataloguing (iii) Identify an educational center for ongoing procurement training, in line with the training	X			Partially done	Training in public procurement has been carried out in an ad-hoc manner and has not been institutionalized. A training strategy has been developed.	AB to identify potential educational institutions to provide public procurement training on a regular basis and develop a graduate degree program over the medium term.

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
strategy (C2.15)						
23. Create, introduce and implement an accreditation scheme for procurement officers (C2.15)	X			Not done	There is no system of accreditation for procurement officers, nor is there a defined career stream.	Design and implement an accreditation system for procurement officers supported by performance based incentive systems and provide opportunities for career growth in public procurement
24. Designate a separate body, unit with published internal procedures within the AB with the purpose of conducting review procedures and complaints (C4.2)			X	Completed	AB's functions at present include the consideration of complaints filed against the procurement process, resolution of contractual disputes, though less frequently. The CPAR mission is presently reviewing the roles of SPA and AB as part of the decentralization strategy for public procurement, which would be implemented gradually over time.	Develop internal procedures for procurement review as part of the operational manual for public procurement Design and implement an independent institutional mechanism for conducting review procedures and addressing complaints.
25. Rather than prior approval of single source use, the AB should instead subject the choice of procurement method (C4.1) – See action 1			X	Completed	Provisions are provided in Articles 16 and 23 in the Procurement law.	Use of SS method for public procurement should be reduced further.
26. Improve the AB's implementation of the reporting system and establish a baseline in order to begin effective monitoring of compliance,		X		Being done	Current system of monitoring and reporting is weak and needs substantial improvement.	Design and implement a real time procurement monitoring system establish a baseline for monitoring of compliance especially in regards to overuse of SS and price quotation methods of public procurement

Recommended Actions	Priority		Current status	CPAR 2008 Findings	Remaining actions
	ST	MT			
specifically in order to better follow overuse of SS and price quotation methods (C2.13)					
B3. Ministry of Defense					
27. Create a list of non-state secret items that may be procured by Ministry of Defense (MOD) and other power ministries by way of open bidding. Seek assistance from MOD's of Governments who conduct competitive procurement of non-military items, in order to gain experience of which items are appropriate for open procurement	X		Under development	List of non-state secret items is under development	Prepare list of non-state secret items which may be procured by MOD and other power ministries to be carried out by open bidding.
B.3. Build capacity through E-Procurement (C.5)⁸					
28. (i) Prepare an action plan specific to electronic procurement following the results of the Amyol contract, with a view to identifying procurement needs and sources of	X		Completed	E-Government Procurement Strategy and action plan has been prepared with support from an IDF grant and approved by the Government of Armenia. Government Decree No. 137N on the strategy for introducing the system of Electronic	PPRD should continue as the lead agency with the overall responsibility for the revision of the E-GP strategy and action plan, prepare cost estimates, performance indicators, capacity development program and a step-by-step manageable

⁸ Financing for the implementation of these recommended actions were provided by an IDF Grant and the Public Modernization Support Project – which is currently under implementation.

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
funding, and (ii) Hire a specialist consultant to make accurate time and cost estimates required by donors, including both internal and external costs (C.5)					Procurements was issued on January 26, 2006. Implementation of the e-GP however, has been slow. Time and cost estimates for E-GP are yet to be prepared.	implementation approach. Establish an Advisory Committee with representatives from the government (e.g. the Prime Minister's Office, line ministries, SPA, Control Chamber, etc.) and the private industry (e.g. business associations, Chamber of Commerce, etc.). PPRD should begin the transformation of SPA into EPSC by establishing an e-GP support unit and an e-GP operations unit and developing respective TORs. PPRD should select international consultants to assist in the implementation of the e-GP program and managing the contract with the selected company under the RFP (under PSMP)
29. Seek the support and assistance of a professional qualified expert in the field of Information Technology (IT) procurement and project management during implementation of all phases of e-procurement	X	X	X	Short term assistance provided	International Professional assistance has been provided on a short-term basis.	PPRD should obtain international expertise to assist in the design and implementation of different phases of E-GP
30. Establish a relationship through a pilot twinning arrangement with the logistics and IT department	X	X		Not done	This activity was to be financed out of the IDF grant, which was not carried out, resulting in partial cancellation of the IDF grant. However, a study tour	Design and implement a long-term capacity building program in E-GP for the procurement staff in SPA, PPRD, line ministries and the user community.

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
of the Planning, Budget and Administration Ministry (SLTI), which is the federal Government of Brazil's procurement authority, in order for SLTI to orient Armenian procurement authorities and assist in the development of initial e-procurement activities in Armenia					to South Korea to obtain first-hand knowledge of the complexities of E-GP in a highly developed economy for procurement specialists from the SPA and AB was carried out.	Dialogue with the international e-GP community by actively participating in international learning events and inviting international e-GP practitioners to come to Armenia to share and learn from their e-GP experience.
31. After investment in equipment and systems, launch an e-catalogue for periodic procurement and acquire a year or two of experience working with all systems		X		Under development	The e-catalogue system is in an advanced stage of development and is expected to be operational soon.	Introduce e-Purchasing mechanisms for common-use goods, works, services and small contracts Explore collaboration with the private sector, such as SPYUR for the development of e-catalogue system
32. Launch a specific awareness campaign to publicize the electronic catalogue system among procuring entities and potential bidders		X	X	Being done	Specific awareness campaign should be carried out on a regular basis among procuring entities as well as potential bidders	Intensify awareness raising and capacity building efforts on all aspects of E-GP among all procuring entities and users in the private sector, including the provision of hands-on training.
33. Upon assessment of first year or two of experience with first stage of e-procurement systems, test second stage features,		X	X	Not done	E-GP in Armenia is in the early stages of development.	Upgrade and maintain the web-site www.procurement.am in Armenian as well as in English. PPRD should initiate the design, delivery, and operation of the pilot e-

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
such as online supplier registries or the use of electronic means for quoting on line for centralized procurement of standard goods. Advancement into a subsequent stage of e-procurement would require the use of e-signatures and adequate safeguards, and at that time, Government would need to review its legislation for E-procurement and provide for the use of electronic signatures						Tendering system in selected line ministries for large contracts and its subsequent roll out including required training services as the next phase of E-GP.
C. Fostering Culture of Compliance						
C.1. Transparency through dissemination and standardized documents						
34. Improve information dissemination (C.2.15) (i) Make efforts to improve the dissemination of the printed bulletin; (ii) Initiate a public awareness campaign to ensure that bidders, procurement entities and	X			Being carried out	Procurement notices are published in the bulletin, newspapers and posted on the web site: www.procurement.am. Procurement opportunities are also telecast and broadcast by two national TV channels	Carry out public awareness campaign to ensure that bidders, procurement entities and the public are informed about the changes in public procurement and make them available on the web-site; Establish internet access points in local municipalities and/or community centers for the public to access the web-

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
<p>the public are informed of the existence of the web-site;</p> <p>(iii) Use web-site to disseminate bidding opportunities, announce contract awards and dispute decisions, publish blacklists, publish AB reports, promulgate standard documents, guidelines and best practices</p> <p>(iv) Support broader access to the internet, possibly through the UNDP funded information centers around the country</p>						<p>site and learn about public sector procurement opportunities.</p>
<p>35. Draw up guidelines to assist procuring entities in the definition of technical specifications and prepare catalogues with technical specifications for goods and services of common use and publish on the web-site (C2.9 (3))</p>	X			Under development	Detailed procurement guidelines are under development	<p>Procurement guidelines and definition of technical specifications should be carried out and made available as soon as possible.</p>
<p>36. Establish a registry system for goods and works contractors (C2.9)</p>		X		Under development	<p>Web-based business directory containing information for over 10500 products and services from</p>	<p>Registry system for goods and works contractors should be regularly updated</p>

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
					about 5000 firms has been developed by the private sector. www.spyur.am . Collaboration possibilities with SPYUR should be explored to establish a registry system for goods and works.	
37. Separate the relevant standardization functions and develop national standards Allow reference to international standards where there are no national standards (C2.9 (3))		X		Under development	Standardization functions are under development	Develop national standards with reference to international standards
38. Prepare standard documents, including instructions to bidders and standard contract provisions and publish them on the web-site (C2.6 (2))		X		Under review	Sample bidding documents have been prepared and are being used but formally approved standard bidding documents have not been finalized.	Finalize standard bidding documents as soon as possible and make them available on the web-site. Bidding documents should also include general contract conditions and provide for inclusion conditions related to the type of procurement being carried out and should be balanced, impartial and fair to all contractual parties.
D. Bank-funded Procurement (C.8)						
39. Simplify tax and customs clearance				Partially Completed	1. The rules and procedures for tax and custom duties exemptions	Customs authorities to apply “invoice price” for calculation of custom duties.

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
procedures be in order not to create unnecessary burden on the part of the contractor or the PIU.					applicable to the contracts for goods and works under the World Bank and other IFI financed projects are specified in the GD 256N of 26.02.2004 and “On approval of procedure for using of tax and custom duties privileges in frame of international contracts signed between RA and WB, between RA and IFAD and between RA and GoFRG” and CD 860N of 26.05.2006 “On making of amendment to GD 256N”	
40. Apply the national competitive bidding procedure in line with the Law on Public Procurement (LP) for Bank financed procurement, provided these procedures are modified as indicated in	X			Not done	<p>2. Implementing agencies for the projects (where the taxes are eligible for payment), are paying higher amount as a custom duties because the custom authorities are applying “reference price” rather than “invoice price” for purposes of calculation of custom duties.</p> <p>None of the implementing agencies for the Bank financed projects are following national procedure for NCB under their projects.</p>	<p>1. Adopt a Government Decree mandating the use of the national public procurement procedures for NCB contracts in the Bank financed projects.</p> <p>2. Revise GD #765 of December 22, 1999 to exempt Bank financed NCB procurements from application of the provision requiring government</p>

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
Annex 8. Such national procedures should in any event only be used below the Credit Agreement's NCB threshold, for procurements that are unlikely to attract foreign competition.						clearance for contracts with the cost above US\$1.00 million.
41. Procure recurrent items financed from operating expenses through the SPA, following the procedures for periodic procurement.	X			Not done	Implementing Agencies are procuring recurrent items financed from operating expenses, following the procedures described in the Project's Operation Manual.	Adopt a Government Decree mandating the use of procedures for periodic procurement for recurrent items financed from Project's operating expenses category.
42. Agree on medium and long-term objectives and a transition plan to a longer term solution whereby line ministry procurement staff would conduct procurement under Bank projects		X		Not done	Procurement activities in the Bank financed projects is carried out by the stand alone Implementing Agencies (PIUs)	Develop procurement capacity building program (including necessary financial resources required for implementation) for ministries' staff
45. Designate an upcoming project in a ministry that is already strong in procurement to serve as a pilot under such transition plan.		X		Not done	None of the Bank's projects (negotiated after the CPAR 2004 was issued) proposed as an implementation arrangement to use a ministry as an implementing agency for the project.	Designate an upcoming project in a ministry that has trained procurement staff to serve as a pilot under such transition plan.
46. Develop capacity		X		Not done	Capacity building program does not	(see recommendation for item 42

Recommended Actions	Priority			Current status	CPAR 2008 Findings	Remaining actions
	ST	MT	LT			
building program to support the transition for the designated line ministries.					exist.	above)

Annex 3 - List of Persons Met

Organization	Person	Title
Ministry of Finance	Mr. Tigran Davtyan	Minister
Ministry of Finance	Mr. Atom Janjughazyan	Deputy Minister, Chief Treasurer
Chamber of Control	Mr. Ishkhan Zakaryan	Chairman
Ministry of Transport	Mr. Haik Davtyan	Deputy Head of Finance Department
Ministry of Transport	Mr. Alexander Bakhtamyanyan	Head of Transport PIU
Ministry of Agriculture	Mr. Hovhannes Hovhannisyanyan	Head of Financial-Economic and Accounting Records Department
Ministry of Urban Development	Mr. Vardan Torosyan	Head of Financial-Economic and Accounting Records Department
Ministry of Health	Mr. Armen Karapetyan	Head of Economic and Accounting Department
Ministry of Health,	Mr Ara Ter-Grigoryan M.D.	Head of State Health Agency
Yerevan Municipality	Mr. Mushegh Burnusouzyan	Head of Transport Department
Yerevan Municipality	Mr. Armen Soghoyan	Head of Health Department
Prosecutor General office	Mr. Armen Ashrafyan	Head of Department
Armavir Marzpetaran	Ms. Larisa Muradyan	Vice Governor
State Commission for Protection of Economic Competition	Mr. Ashot Shakhnazaryan	Head
State Procurement Agency (SPA)	Mr. Hakob Beglaryan	Head
Chamber of Commerce & Industry	Mr. Araik Vardanyan	Executive Director
Union of Manufacturers & Businessmen	Mr. Gagik Makaryan	Deputy Head
Union of Builders of Armenia	Mr. Gagik Galstyan	Chairman
“Road Maintenance Equipment” CJSC	Mr. Yura Gevorgyan	Head
“Road Construction/Maintenance” JSC	Mr. Aramais Davtyan	Head
“Dorproject” CJSC	Mr. Samvel Badalyan	Director
“Serzh Mkrtychyan” CJS	Mr. Serzh Mkrtychyan	Manager
“Medtekhnik Plus” CJS	Mr. Vahag Torosyan	Manager
“Griar” CJS	Mr. Ghazar Ghazaryan	Deputy
Millennium Challenge Corporation (MCC)	Mr. Alex Russin	Country Resident Director
USAID	Mr. Armen Yeghiazaryan	Procurement Specialist
EBRD	Mr. Armen Petrosyan	Procurement
ADB	Ms. Gohar Musaealyan	Procurement Specialist

Organization	Person	Title
Transparency International	Mr. Varuzhan Hochtanyan	Vice-Chair
AEPLAC	Ms. Emma Atoyán	Legal Expert
AEPLAC	Ms. Arpine Meliksetyan	Legal Expert
ICHHD office	Mr. Vahan Asatryan	Expert
ARLEX office	Mr. Tom Samvelyan	Head
SPYUR Information Center	Mr. Ashot Grigoryan	Director
Yerevan State University	Mr. Vardan Sargsyan	Vice Rector
National Standards Institute	Mr. Yennock Azaryan	
Association of Investigative Journalism	Ms. Sara Petrosyan	Journalist

**Appendix 1 - Report on Benchmarking of Public Procurement against
International Standards**

**REPUBLIC OF ARMENIA
BENCHMARKING OF PUBLIC PROCUREMENT SYSTEM USING OECD-
DAC/ WORLD BANK METHDOLOGY**

OECD-DAC/World Bank Methodology

A sound public procurement system built on the principles of transparency and fair competition is essential to increase the effectiveness and efficient use of public funds. In order to assess the effectiveness of the national procurement systems of Governments, the joint World Bank and OECD/DAC, together with developing countries, bilateral and multilateral donors have developed the “Methodology for Assessment of National Procurement Systems”⁹. This methodology provides a common tool to assess the quality and effectiveness of national procurement systems, which has been used by the World Bank CPAR team. This widely used tool is based on the following four pillars, each of which is supported by respective baseline indicators and subindicators.

Pillars and Baseline Indicators (BLIs)

Pillar I: Legislative and regulatory framework

This pillar is used to assess the legal and regulatory instruments from the highest level (national law, act, regulation, decree, etc.) down to the detailed regulation, procedures, and bidding documents. It uses the following two baseline indicators:

- Existence of a public procurement legislative and regulatory framework that achieves the agreed standards and complies with applicable obligations. (This is supported by eight subindicators.)
- Existence of implementing regulations and documentation. (This is supported by six subindicators.)

Pillar II: Institutional framework and management capacity

This pillar assesses the operations in practice through the institutions and management systems that comprise overall public sector governance. Three baseline indicators are used, which are:

- A public procurement system that is mainstreamed and well integrated into the public sector governance system
- Existence of a functional normative and regulatory body.
- Existence of institutional development capacity.

⁹ See OECD, *Methodology for Assessment of National Procurement System*, Version 4, July 17, 2006.

Pillar III: Procurement Operations and Market

This pillar assesses the degree of professionalism and knowledge of the staff responsible for implementing procurement activities. It uses three baseline indicators:

- Are the procurement operations and practices efficient? (This is supported by four subindicators.)
- Effectiveness of the functionality of the public procurement market. (This is supported by three subindicators.)
- Existence of contract administration and dispute resolution provisions. (This is supported by three subindicators.)

Pillar IV: Integrity and transparency of public procurement systems

This pillar assesses whether the procurement system operates with integrity, has appropriate controls that keep procurement implementation in accord with the legal and regulatory framework, and can take appropriate measures to address the potential for corruption. It uses four baseline indicators:

- Existence of an effective control and audit system. (This is supported by five subindicators.)
- Efficiency of the appeals mechanisms. (This is supported by five subindicators.)
- Degree of access to information. (This is supported by one subindicator.)
- Whether ethics and anticorruption measures are in place. (This is supported by seven subindicators.)

The four pillars have 12 indicators and 54 sub-indicators to assess the different aspects of procurement under the four pillars. The methodology includes two types of indicators, the Base-Line Indicators (BLIs) and the Compliance/Performance Indicators (CPIs). The use of the BLIs enables comparison of the current system with the international standards defined in the methodology.

The scoring system of the OECD-DAC-WB methodology assigns scores of 0 to 3 to each area of performance. A zero assigned to an indicator or subindicator indicates failure to meet the standard. A score of 1 indicates an area where substantive work is needed to meet the standard. A score of 2 indicates less than full achievement, with improvements needed. A 3 indicates full achievement of the standard.

The Armenian public procurement system has been assessed using this methodology. A summary of findings and recommendations discussed in this report is provided below.

The benchmarking of the Armenian public procurement system using the BLIs discussed above present the following snapshot comparison of the actual system with the international standards. The four pillars the Armenian public procurement system scored as follows:

Pillar 1: Legislative/Regulatory Framework	2.0	Substantial Improvements but less than full achievement
Pillar 2: Institutional Arrangements	1.7	Needs substantial improvements
Pillar 3: Procurement and Market Practices	1.5	Needs substantial improvements
Pillar 4: System Integrity and Transparency	1.7	Needs substantial improvements

These scores show that progress has been made but much remains to be done. The legislative framework for procurement (Pillar I) has evolved toward achieving international standards in recent years. On the other hand, the scores of the other three Pillars show that these need substantial improvements to achieve these standards. (See also Figures 1 and 2 in the Executive Summary).

Compliance/performance Indicators (CPIs)

The Compliance/Performance Indicators (CPIs) indicate how the system actually operates. They are more closely related to the application of the regulation and to the prevailing procurement practices in the country. This requires the examination of sample of procurement transactions. Given the lack of trustworthy and incomplete data and difficulty in access to actual transactions, Attach 2 to this Annex shows compliance with several (not all) Compliance/Performance Indicators, including, among others, selection of procurement methods, publication of tender notices, time allowed for bid preparation, complaint resolution, payments, etc.

Appendix 2 - Base-Line Indicators

**REPUBLIC OF ARMENIA
BENCHMARKING OF PUBLIC PROCUREMENT SYSTEM USING
OECD/DAC WORLD BANK METHDOLOGY**

Base-Line Indicators

Pillar I - Legislative and Regulatory Framework

A legislative and regulatory framework is essential for laying the foundation for a sound public procurement system. This is represented by Pillar I of the OECD-DAC/World Bank Baseline Indicators (BLI) assessment which encompasses two indicators - a legislative and regulatory framework for public procurement that meets agreed-upon standards and complies with applicable obligations (Indicator 1), and the existence of implementing regulations and documentation (Indicator 2).

Indicator 1: Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations. This indicator covers the legal and regulatory instruments from the highest level (national law, act, regulation, decree, etc.) down to detailed regulation, procedures and bidding documents formally in use. This indicator is broken down into eight sub-indicators (a-h) which are individually scored.

Sub-indicator	Brief Explanation	Score
1(a). Scope of application and coverage of the legislative and regulatory framework.	<p>The norms of public procurement legislative and regulatory framework in Armenia are recorded and organized hierarchically. The framework comprises of Constitution dated July 5, 1995, as amended on November 27, 2005, the Civil Code dated May 5, 1998, with amendments, the Public Procurement Law (PPL) in effect since January 1, 2005, the Ministry of Finance (MOF) Decree No. 426 (MFD426) of April 25, 2005, and Government Decree No. 853-N (GD853N) dated June 5, 2008. These are in accordance with</p> <p>Article 4 of the PPL (A4). All rules applying to public procurement should be consolidated in a single instrument and clear references made in the PPL to other laws and/or regulations. The PPL should contain all public procurement rules, and where it does not apply, should specifically refer to other applicable laws and regulations.</p> <p>Article 2 covers procurement of all types of goods, works, and services, including consulting services. Rent and lease are defined as “purchase of services” which is also covered, but the law does not articulate how these will be procured. In other systems, acquisition or rental of land or existing buildings are normally excluded from the application of the PPL, but otherwise covered by separate legislation.</p>	3

Sub-indicator	Brief Explanation	Score
	<p>The PPL encompasses all procurement with budgetary resources, but is not clear whether private entities receiving fiscal resources are also subject to its provisions.</p> <p>The PPL does not have specific provisions that deal with concession contracts and public-private partnership type of agreements. Utility companies are not specifically mentioned in the PPL. Public enterprises, such as utility companies, may be formally excluded from the scope of the PPL if they operate as commercial companies, but their regulation is perhaps governed by a separate legal framework that assures principles of transparency, equal treatment, economy and efficiency. The EC requires coverage under the PPL for private utilities operating on the basis of special or exclusive rights granted by competent authority.</p> <p>Scope: The PPL applies in a modified manner and to a limited extent to state governance bodies and local self-government bodies, state or community agencies, Central Bank, state or community non-profit organizations and commercial organizations with over 50% of shares owned by the state or communities.</p> <p>State non-commercial organizations and commercial organizations with over 50% ownership by the state, conduct their own procurement without mandatory involvement of the SPA and without the mandated review and supervision authority under the PPL, to allow flexibility and respond to market demands in a timely manner. Alternatively, a system could be designed where these are covered by the procurement rules when they conduct procurement using state budget funds, provided the issues arising from the comingling of funds with those generated from its operations can be satisfactorily resolved. This is also applicable to entities where the government has minority interest and state funds are provided.</p> <p>Coverage of procurement that relates to national security, national defense, and protection of state or official secrets are restricted.</p> <p>Procurements governed by international agreements and those outside Armenia are explicitly excluded from the application of the PPL. Additional exclusions or carve-outs are referred to in a number of other decrees and regulations which is an issue to be clarified. The PPL generically stipulates that other legal acts may apply.</p> <p>The laws and related decrees are published and easily accessible at no cost. These are also posted on the website which is presently available only in the Armenian language.</p>	

Sub-indicator	Brief Explanation	Score
	<p>1(a) Recommendations:</p> <p><i>The PPL has broad and comprehensive scope and coverage which could be improved by including provisions for:</i></p> <p><i>(1) Concession contracts and public-private partnership type of agreements;</i></p> <p><i>(2) Utility companies (in accordance with international best practice. See for example EU Directives which provides coverage for private utilities which operate on the basis of special or exclusive rights granted by a competent authority);;</i></p> <p><i>(3) Non-core defense procurement or procurement of dual use products should be done through open competition (such as uniforms, boots, food, medicine, capital construction for the military);</i></p> <p><i>(4) Omnibus provision that the PPL is based on reference to the Constitution of Armenia and deals with all public procurement except where the PPL specifically states otherwise; and</i></p> <p><i>(5) the PPL should contain all procurement rules and, where this is not feasible, should specifically refer to other procurement laws and regulations that would apply.</i></p>	
<p>1(b). Procurement methods.</p>	<p>Article 17 provides for the following procurement methods: open tender; restricted tendering; request for quotations; competitive negotiations; and single-source procurement.</p> <p>Tenders can be open or closed; targeted or periodic. Open tender maybe periodic or targeted. Periodic tender involves procurement of periodically used or recurrent items from a list compiled by the Authorized Body (AB). All other items are procured using targeted tender. Closed tenders are used for classified procurement such as the procurement carried out for defense purposes.</p> <p>The PPL prescribes the criteria for the use of the different procurement methods (Articles 17-23, and 46-51) and defines the open tender as the preferred method (Article 17 (5)). Restrictive procedures are appropriately circumscribed based on the criteria and financial thresholds specified in the PPL. Consultant services are covered, and different methods for selection are provided. Fractioning of contracts to limit competition is prohibited (Article 24 (1(a)).</p> <p>Urgent Need should be defined more precisely, to limit the use of this justification for continued use of single source methods. The PPL defines “urgent need” as arising out of “emergency” and contingency”, which should be elaborated further.</p> <p>“Lack of competition” and sole “license” holder have also been cited as providing opportunities for wide abuse. MFD426 sets out the</p>	<p>2</p>

Sub-indicator	Brief Explanation	Score
	<p>grounds and documents to support single source procurement and Annex 6 of GD 853N lists seven natural monopoly services, including electricity supply; natural gas; drinking water; irrigation water; technical and industrial water; water drainage and sewerage treatment service.</p> <p>The 2004 CPAR indicated that the Anti-Monopoly Commission was issuing certificates which were being used as documentary proof and justification for single source procurement under the 2000 law and under the MOF Decree 17 dated April 25, 2005, Past experience demonstrates that these certificates were being treated as virtual certificates of monopoly by firms and procurement bodies to justify single source procurement award to the firms in possession of such certificates, despite the fact that actual market conditions reflect a competitive environment in the particular market. The Anti-Monopoly Commission no longer issues such certificates. The Commission however maintains a list or registry of firms which are dominant (over 1/3 or 33% share) or which exercise virtual monopoly over certain markets, for the purpose of preserving and effectuating its regulatory and enforcement authority under Armenian legal and judicial framework. Moreover, the MOF has issued Decree 426N which requires the submission of a statement of record from the Centralized Registry of Economic Entities with Dominant Position, issued by the Anti-Monopoly Commission. as proof of “lack of competition” in order to justify sole source procurement, The situation described therefore under the 2004 CPAR may not have been fully addressed since firms and procuring entities may still use this record as a proxy for claiming virtual monopoly and as justification for sole sourcing. The Anti-Monopoly Commission has indicated its position that despite possession of such a record, the tender should nevertheless be conducted in an open and competitive manner.</p> <p>Late allocation (frequently in the last quarter of the year) of budgetary funds (especially new allocations) often leads to the use of the single source method of procurement as little time is left before the end of the fiscal year to carry out competitive procurement. Procuring entities use this method to avoid losing the funds if not used before the end of the fiscal year.</p> <p>The PPL lacks clear provisions relating to the selection of consultants. Section 5, Article 41, provides for prequalification in accordance with A6 rather than a clear procedure. Article 41 states “up to six consultants, who passed the prequalification with the highest scores, are entitled to participate in further proceedings” but at the same time, it states that “if more than six consultants have scored highest, then all consultants are regarded as passed the prequalification”. It is, however, silent on whether more than six qualifying firms can be shortlisted. Para. 47 of Annex 2 GD853N elaborates further on the subject but</p>	

Sub-indicator	Brief Explanation	Score
	<p>does not lay down clear procedure for separating the evaluation of technical proposal from financial proposal, and keeping the financial proposals sealed until the technical proposals have been evaluated, with a view to ensuring selection of qualified and experienced firms. As a result, procurement of consultants is carried out in the same way as procurement of goods and works. The PPL defines preparation of designs as “works” rather than “consultant services”. There are no detailed guidelines or operational manual for selection of consultants. .</p> <p>While the number of periodic contracts fell from totals of 74 and 98 in 2006 and 2007 to 59 in 2008, the number of targeted contracts increased from 448 in 2006 to 655 in 2007 and 865 in 2008 and also rose in value.</p> <p>The number of sole source contracts has shown a decline from 703 contracts in 2006 (AMD 99,835,638,000) to 638 in 2007 (AMD 11,731,031,300), and 496 in 2008 (AMD 12,217,503,100). This does not include other exclusions from the PPL. For example, a number of firms that contracted on a sole source basis now receive resources as non-commercial entities, and are thus not covered by the procurement legal framework.</p> <p>There is no specific provision which deals with International Competitive Bidding under the PPL, although the law does not unduly restrict or discourage participation by foreign bidders. Proposals are being developed to reach out and publicize information to encourage foreign firms to participate.</p> <p>1 (b) Recommendations:</p> <p><i>(1) For Single Source:</i></p> <p><i>(a) Revise MOF Decree 426 to define and clarify, with examples, emergency and contingency situations (e.g., natural disasters) to ensure that the urgency was not a result of the act, omission or negligence of the procuring entity.</i></p> <p><i>(b) Use of registry of the State Commission for the Protection of Economic Competition (Anti-Monopoly Commission) as a proxy for justifying single source on the basis of lack of competition should be discontinued. In order to depart from the default rule of competitive bidding, any such record should be supplemented by an articulation of the actual position and market share of the firm, including identification of the other dominant and marginal players in the specific market, and by an explanation by the firm as indicated in 2004 CPAR. These provisions should be included in MOF Decree 426.</i></p>	

Sub-indicator	Brief Explanation	Score
	<p>(c) <i>The list of 34 items in MOFD426, which are subject to the single source method, should be reviewed and periodically updated to reflect changes in market conditions and regulatory reforms. The list also includes “procurement of goods and services for the elimination of the consequences of natural calamities” which presently is too broad and should be limited to disaster or emergency response related procurement, but excluding long term rehabilitation efforts. Contracts for private mass media publication and for historical design and restoration would greatly benefit from open competition, subject to rigorous technical specifications and evaluation to ensure highest quality standards. List of firms with exclusive licenses which are active should be updated and disclosed periodically.</i></p> <p>(d) <i>Extension of contracts. Any extension must be justified on economic and efficiency reasons, including the lack of advantage to be obtained in not using competitive methods. Additionally, it should be a pre-requisite to extension of contracts on sole source basis that the current or original contracts have been obtained through competitive process (and not through original sole source).</i></p> <p><i>In order to avoid the perception that technical specifications are tailored for a specific manufacturer or supplier, the SPA should review technical specifications upon receipt from procuring entities to ensure that quality, including clarity, conciseness, and broadness.</i></p> <p>(2) <i>Periodic Tenders- AB should consider harmonizing with the framework agreement models of the European Directives (including Dynamic Purchasing) or those developed by UNCITRAL, which are:</i></p> <p>(i) <u><i>Closed framework agreements without second-stage competition</i></u> <i>A framework agreement is concluded with one or more suppliers. All the specifications and terms and conditions of the procurement are set out in the framework agreement. As a result, there is no further competition between the suppliers at the second stage of the procurement, and the only difference of this type of framework agreement procedure as compared with traditional procurement procedures is that the items are purchased in batches over a period of time.</i></p> <p>(ii) <u><i>Closed framework agreements with second-stage competition</i></u> <i>A framework agreement is concluded with more than one supplier and sets out the specifications and main terms and conditions of the procurement. A further competition among the suppliers-parties to the framework agreement is required to award the</i></p>	

Sub-indicator	Brief Explanation	Score
	<p><i>procurement contract at the second stage of the procurement.</i></p> <p>(iii) <u>Open framework agreements</u> <i>A framework agreement is concluded with more than one supplier and involves second-stage competition between the supplier-parties. While no supplier/contractor can join the framework agreement after the first stage of the procurement under the type (i) and type (ii) arrangements, type (iii) is open to new suppliers throughout the duration of the framework agreement, similar to the EU Directive's Dynamic Purchasing System.</i></p> <p>(3) <i>Request for quotations: In Article 21 of the PPL, the request for quotation is used for procurement not covered by periodic tender and under five million drams. However, request for quotation may also be based on functional criteria on type of goods such as procurement of off-the-shelf goods, goods with standard specification or simple work of small value. The PPL should provide for this.</i></p> <p>(4) <i>Consultant Contracts: The PPL or Decree should clearly define the requirements when using quality alone, price alone, or a combination of both, and develop detailed evaluation procedure for each method. Detailed shortlisting procedures should be included in the PPL which takes into account the qualifications and experience of interested consulting firms. It should also address conflict of interest issues which arise in consulting assignments.</i></p>	
<p>1(c). Advertising rules and time limits.</p>	<p>Publication in a bulletin/newsletter has been discontinued, even though Article 25 of the PPL states that open tenders and contract awards are announced in the newsletter. Tenders and contract awards are currently published electronically on the website, www.procurement.am, in Armenian, English and Russian and on TV/radio, but the website in English can be accessed only if someone has knowledge of the Armenian language. The request for quotations as stated in Article 49(1) and announcement of competitive negotiation as stated in Article 50 are published in print media which has a circulation of at least three thousand.. Sufficient time is allocated to bidders to respond, but the bidding documents are not made available immediately. The bid submission deadline is set at least 30 or 40 days, from the date of announcement for open tenders, and 10 days for Request for Quotation and Competitive Negotiation. Bid documents are only provided in two working days from the date of request (Article 26). Moreover, these documents can only be obtained in person in Yerevan. As a result, the actual bid preparation period therefore is effectively shorter than that envisioned in the law. For example, one prospective bidder was given only one and half day to prepare a bid was cited. AB disputes this case as it provided a shorter</p>	<p>2</p>

Sub-indicator	Brief Explanation	Score
	<p>period to prepare the bid than that envisioned in the law and stated that based on its review of the documents, the bidder was late in obtaining the bid documents, which was obtained almost near the deadline to file bids, and thus resulting in the very short period to prepare and submit the bid.)</p> <p>Although the content of tender announcements seems adequate as provided by law, and contains just enough information to enable interested parties to determine their ability and interest in bidding, more information about the tender should be provided to attract a larger number of potential bidders.</p> <p>The website www.procurement.am needs further development. At present, this is available only in Armenian language. Bidding documents and related information, as well as interactive help desk should be made available in the web-site. As most providers of goods, works and services in Armenia either do not have access to internet, or do not have computers and internet connectivity, or lack familiarity with the use of internet for business, publishing tender notices and contract award information only electronically would limit competition. Dissemination of procurement notices therefore should also be made using mass media to reach more potentially interested bidders.</p> <p>1(c) Recommendations:</p> <p><i>Dissemination of procurement information should be made using mass media to reach more potentially interested bidders, such as TV, radio, print media. The website should be upgraded to include English language. Advertisement in TV and radio is more appropriate for short announcement of future opportunities and more information could be provided in the website. A summary of planned future procurement opportunities, information on forthcoming contracts in the public media including newspapers should be made. Until the internet is well developed and is affordable throughout the country, publishing tender notices and contract award information in mass media, such as TV, radio, newspapers should be continued. In addition to all these, targeted and pro-active dissemination of generally available information to potential tenders, industry groups, and even select foreign embassies would be helpful in generating more interest.</i></p> <p><i>Bidding documents should be made available to interested bidders upon request and not after two days of bidders' application. The SPA should strengthen its capacity to respond to this need of bidders.</i></p>	
1(d). Rules on participation.	There is no exclusion from participation in competition for public tenders on the basis of nationality (Article 7 (1, 2)) of the PPL, except for procurement relating to national security and defense. There are no domestic preferences. Registration is needed in case of a periodic	3

Sub-indicator	Brief Explanation	Score
	<p>tender but it does not constitute a barrier to participation in tenders and does not require mandatory association with other firms (GD853N, Annex 2). Despite these provisions, foreign participation in tenders in Armenia has been very low if not virtually absent. In 2008, foreign bidders participated only in one open periodic and one open targeted tender; and 11 single source contracts. This indicated that while there may not be any legal or regulatory barrier, there are other reasons prohibiting foreign bidders from participating.</p> <p>Article 5(2)(d) states that companies or representatives of their management bodies who within the period of the last three years were convicted of offenses against economic activities or public service; submitted false data in order to sign a procurement contract; violated obligations under procurement contract which caused unilateral termination of the contract by procuring entity are excluded from bidding. No special rules have been established for the participation of state owned enterprises.</p> <p>Cases of non-commercial entities participating and obtaining contracts, occasionally on a single source basis, from the entities to which they belong to (e.g., the road maintenance organization obtaining contracts from its owner Ministry of Transport; and a company belonging to the Yerevan Municipality which gets large contracts from the Municipality also on single source basis) have been found to occur. This illustrates the presence of a non-level playing field and potential conflict of interest which should be addressed through introduction of detailed rules on the participation of such entities in government tenders.</p> <p>Bid security is mandatory in all cases. However, given the banking system in Armenia, bidders must provide his bank with collateral in order to obtain a bank guarantee to be used as bid security. This seriously impairs a bidder's financial strength.</p> <p>The list of suppliers who do not meet the requirements under Article 5(2)(d) is published by the AB based on the data obtained from the procurement entities and other bodies (Article 5 (6)). In practice, however, there is very low level of participation in tenders, and there is an urgent need for the government to take measures to increase the interest of contractors, consultants and suppliers in public procurement.</p> <p>According to the information provided by the AB, in 2008, for 4 work tenders 8 bids, and for 8 services tenders 8 bids were received; for 120 open targeted tenders, 201 bids were received; for 691 works tenders 1194 bids received; for 23 competitive negotiations for goods only 23 bids were received; for 94 works contracts, 164; and for 7 services</p>	

Sub-indicator	Brief Explanation	Score
	<p>contracts 24 bids were received; there were 41 request for quotations for goods for which only 41 bids were received; 38 for works with 56 bids; and 35 for services with 190 bids. Data on closed tenders is not available and there were no restricted and two-stage bidding tenders in 2008. This is due to the following factors: the public procurement website requires knowledge of Armenian; the requirement that interested bidders must apply in person to the SPA to obtain bidding documents; the size and value of contracts; and, more important, the public perception of lack of transparency in the public procurement process. Foreign firms, similarly face significant information barriers both in accessing information about procurement opportunities and understanding the applicable rules and norms.</p> <p>1(d) Recommendations:</p> <p><i>The PPL should include a provision governing the participation of joint ventures and consortia.</i></p> <p><i>Provide more clarity on the rules for Blacklisting or Debarment for misconduct (or for poor or non performance) to ensure fair process. Past performance can be considered during postqualification of the lowest evaluated bidder.</i></p> <p><i>Article 5 of the PPL relates to qualification but essentially describes the conditions for exclusion which should be clarified since the criteria for exclusion should not combine poor past performance, insolvency and misconduct.</i></p> <p><i>Clarify the rules which ensure a level playing field if state owned enterprises are significant participants in government procurement process or open tenders. They should be legally and financially autonomous, operate under general commercial law and are not dependent agencies. The provision should identify the situations of conflict of interest and provide mechanisms for their resolution. These firms should not also be subject to preferential treatment or enjoy undue advantage on account of subsidies or tax exemptions.</i></p> <p><i>The law should be amended so that tender security is not mandatory in all cases and the 2 percent requirement should not be based on the actual and exact proposed tender price to protect confidentiality of the bid. A bid security declaration rather than a bid security should be introduced. Thus a bidder, instead of submitting a bid security, would make a declaration that withdrawal of a bid during the bid validity period or not signing the contract if selected for award would result in disqualification from participating in future government tenders for a preordained period.</i></p> <p><i>Develop mechanisms to promote participation of both domestic and foreign bidders in tenders. The AB should establish a regular</i></p>	

Sub-indicator	Brief Explanation	Score
	<p><i>partnership private sector providers of goods, works and services, including holding regular meetings to seek their views on the functioning of public procurement, carrying out awareness raising seminars throughout the country; partnering with NGOs to support government efforts for improving competition and for ensuring transparency in public procurement. The AB should identify the impediments to participation of foreign bidders in Armenian procurement tenders, and accordingly improve procurement processes to facilitate their participation, including access to tender information and to bidding documents.</i></p>	
<p>1(e). Tender documentation and technical specifications</p>	<p>The PPL establishes the minimum content of the tender documentation (Article 27). Article 13 (2) requires use of neutral specifications and recognition of international standards It is prohibited to refer to any trade mark, brand name, license, design or model, country of origin or concrete source or producer, except in cases when it is not possible to describe the item without such a reference. In such cases, description of technical specifications should contain the words “or equal” AB has the obligation to approve the model document forms used in procurement procedure, as indicated in the PPL. Some model documents are currently being used, and they are in the process of being reviewed by the cabinet and awaiting formal approval.</p> <p>Bidders are required to physically present themselves and submit an application along with the required payment for obtaining bidding documents from the SPA in Yerevan, and from procuring entities in other towns and cities. A bidder has to sometimes wait for three days before the bidder can obtain the bidding documents, which could adversely affect the bidders’ access to bidding documents and, consequently, may result in reduced competition and higher prices.</p> <p>The SPA currently utilizes six printing companies to print the bidding documents and the companies are authorized to directly release the documents to potential bidders and accept the payment. It is unclear as to how these printing companies were selected and the type of contractual arrangements made between the SPA and these firms, especially with regard to the payments they are authorized to collect from bidders.</p> <p>Proposals are being developed to make the bidding documents available on the website. While this may help large firms which have access to computer resources, small and medium firms may continue to face difficulty in obtaining bidding documents without physically presenting themselves in the premises of the SPA or in the sites of the procuring entities in cases where SPA is not involved.</p> <p>There is a lack of capacity in drafting technical specifications. . Poor technical specifications, combined with the lowest price being used as</p>	<p>2</p>

Sub-indicator	Brief Explanation	Score
	<p>predominantly the only selection criteria in most cases, results in poor quality of procurement of goods, works and services.</p> <p>1(e) Recommendations: <i>Model documents, along with user guidance, should be formally approved and widely disseminated. Bidding documents should include clear evaluation procedures and criteria.</i></p> <p><i>Quality of technical specifications should be improved through training of concerned staff and preparation of model technical specifications whenever feasible.</i></p> <p><i>Interested bidders should be given the bidding documents upon submission of application, by mail, courier or in person, rather than the current practice of making them available only in SPA and the printing companies authorized to produce the bidding documents.</i></p> <p><i>If technically feasible, bidding documents should also be made available on the website so that those who have the means of downloading these from the website can do so.</i></p>	
<p>1(f). Tender evaluation and award criteria.</p>	<p>The PPL, which lists under Article 27 the content of an invitation, requires that tender documentation contain description of procedures of evaluation and selection of winner (Article 27 (c, f)). This Article provides for a tender commission to evaluate bids in accordance with the evaluation criteria in the bidding documents (Article 34(2)) and to select “the most highly evaluated bid” out of the satisfactory ones (Article 34(5)). When evaluating bids to determine the most highly evaluated bidder, in addition to the proposed price, non-price criteria are also taken into consideration (Article 34(5)). However, non-price criteria have not been developed as yet. Tender commissions evaluate compliance of a bid with the requirements as specified in the bidding documents; and examine the accuracy of calculation of the financial indicators – the bid price and the cost price (GD853N, Annex 2, para. 29). In the absence of a non-price evaluation methodology, decisions on contract awards are frequently made on the basis of the lowest bid price without regard to quality, which results in poor quality of goods, works and services.</p> <p>PPL covers consulting services and the Government Decree 853N provides the methods and formula for evaluation. However, Article 43(1) of the PPL does not provide the underlying basis when the use of quality alone, price alone, or a combination of both are appropriate, although the criteria for direct contracting or sole sourcing in Article 44 are well defined.</p> <p>The PPL should state clearly that the tender evaluation criteria should</p>	<p>2</p>

Sub-indicator	Brief Explanation	Score
	<p>be quantifiable in monetary terms. Quantifying bid evaluation criteria in monetary terms is the only method which leads to transparent evaluation and allows bidders to submit an effective protest or complain.</p> <p>For qualification criteria, these should be evaluated on a pass or fail basis. Although GD853N, Annex 2, para. 30 indicates that the assessment should be based on whether the bid is “compliant” or “non-compliant,” it is important to clarify this point in the legal framework since the PPL seems to imply that a point or percentage system, rather than a pass or fail test, is used for evaluating qualification (under Article 6(9), which states that “if more than six suppliers are scored highest, then all suppliers with the highest scores are regarded as having passed prequalification.”) All qualified bidders should be allowed to bid.</p> <p>A34(c) in providing that rejection of bid may be based “in other cases envisaged by law” raises serious issues. Generally, only the criteria specified in the bidding documents should form the basis for rejection of bid. Unless the bidding documents are able to list and specify these additional grounds, and have these sufficiently disclosed to the potential bidders, the current formulation is vague and broad and consequently should be deleted. This is especially crucial since in practice assessment of qualification is used to promote anti-competitive arrangements and to disqualify firms on non-substantive criteria.</p> <p>1(f) Recommendations:</p> <p><i>Evaluation criteria should be quantifiable in monetary terms and qualification criteria should be evaluated on a pass or fail basis. The PPL or decree should specify the rules on how evaluation is conducted when the bidder is a joint venture or a consortium, which can leverage combination of their capacity, experience, and financial strength, to bid on contracts. Article 34(4.c) requires rejection of bid “in other cases envisaged by law” should be deleted since it is subject to interpretations and open to abuse. This should be specified and disclosed to potential bidders. Article 34(c), provides for the rejection of bid the words in other cases envisaged by law”, should be deleted.</i></p>	
<p>1(g). Submission, receipt and opening of tenders.</p>	<p>The PPL has sound provisions for the submission, receipt and opening of bids. It specifies the date, time and manner of submission and requires that tenders are to be opened immediately following the closing date for bid submission (Article 33(1)). The procuring entity must submit information contained in procurement minutes, except classified information, to any person, within 5 working days after the receipt of the request (Article 9 (4)).</p>	<p>2</p>

Sub-indicator	Brief Explanation	Score
	<p>Confidentiality of bids is maintained prior to bid opening and disclosure of information before the bid opening is prohibited (GD853N, Annex 2, para. 23). Bidder's names, as well as the price are announced to those present at bid opening (Article 33(2)). The PPL requires record keeping of proceedings (Article 33(3)). Bidders attending bid opening, should be allowed to sign the minutes and make comments.</p> <p>Bid opening takes place in two stages. In the first stage, the tender commission reviews the availability of the required documents and rejects the bids which have not included all the documents with their bid. In the second stage, where the winner is announced, only those bidders whose bids have been determined to contain all the documents are allowed to be present,</p> <p>While the bid submission, receipt and opening, have the basic elements of transparency, bidders have expressed the following issues:</p> <ul style="list-style-type: none"> • Bidders are required to submit the bid in person • The number of qualification documents required to be submitted with a bid is long and obtaining these for each bid a heavy burden on bidders. Bids are rejected if any of the required documents are not included in the bid or "defective" in some way, regardless of the importance or material content of the document and to give the bidder the opportunity to submit the correct document or clarify the matter during bid evaluation. • Bids are rejected for insignificant reasons such as an incorrect date (e.g., mandating that a bank statement from a bidder's bank be dated one day prior to the bid submission deadline). <p>There is public perception that the current bid opening practices have the potential of allowing the tender commissions to intentionally reject bids for inconsequential reasons with a view to selecting a pre-determined winner. This contributes to the lack of transparency in the procurement process, and limits fair competition.</p> <p>Suppliers or representatives are entitled to request for copies of minutes which need to be provided within one working day (Article (5)). The minutes are provided after one day of the bid opening to the bidder (Article 33(6)).</p> <p>GD853N requires that the regular members of the tender commissions should belong to the client or the procuring entity, except for the secretary of the commission who is provided by the SPA. The</p>	

Sub-indicator	Brief Explanation	Score
	<p>membership of the tender commission should be broadened and consist of specialists from different establishments to allow for checks and balances and to promote transparency.</p> <p>GD853N, Annex 2, para. 4(2), provides a mechanism for others who are legitimately interested in the bidding process, including representatives from civil society, to attend In its current formulation, these “advisers” are considered “members” with an “advisory vote.” This should be further clarified since the membership implies participation in the decision-making process (albeit on an advisory capacity). In designing a system of civil society participation, consideration should be given to the value of maintaining the independence and oversight roles of these “observers”, and measures introduced for preventing co-optation. In order to perform an effective oversight role, these “observers” should have a mechanism to note their observations and provide instant feedback. Thus, at their option, they should be allowed to note their comments in the minutes or given the opportunity to report their observations. However, this should not be made obligatory on their part in all cases. Transparency International Armenia has participated as observer in several previous tenders.</p> <p>1(g) Recommendations:</p> <p><i>Bid evaluation should take place only after bid opening has been completed and closed, so that tender commissions can devote sufficient time to the important task of determining the substantial responsiveness of bids. After substantial responsiveness of bids has been established, the lowest evaluated responsive bid should be postqualified to ensure that the selected bidder has the required qualifications and experience. Furthermore, in order to facilitate the bidding process, the list of required documents should be reduced to those which are most critical to evaluate the impact on the qualification and capacity to perform the tasks and a bid clarification procedure during evaluation of bids should be introduced during which tender commissions, instead of rejecting their bids, can give an opportunity to bidders to submit correct documents without in any way modifying their bids.</i></p> <p><i>Representatives from civil society should remain as observers, monitors or oversight agents and not as participants or advisers in the decision-making process. Mechanisms should be developed to obtain their feedback and observations. Membership of tender committees should be expanded and changed as required to promote transparency and ensures checks and balance.</i></p>	
1(h). Complaints.	The PPL provides for the complaints process to be initiated by any person (and not just losing bidders) and to seek review, if he or she claims to have suffered or can suffer from the actions of the procuring	2

Sub-indicator	Brief Explanation	Score
	<p>entity and (or) tender commission (Article 52 (1)). This leaves room for initiating complaints beyond the procurement process to contract disputes during implementation especially in light of Article 56 (which seems to be the practice). Appeal is filed and is published in a print media without identifying the personal details of the appellant.</p> <p>The subject matter of review is wide and is not restricted to the award. Remedies allow for the possibility of redirecting award, granting interim relief through suspension of actions and correcting the decision. Damages can also be awarded if decisions are rendered against the procuring entity (Article (30(5)).</p> <p>The PPL provides a timeframe (10-20 working days) for issuance of decisions by the AB (Article 53 (4)). Article 56 provides that the actions of the AB and (or) procuring entity and (or) tender commission can be appealed in court. Submission of appeal to AB is not mandatory as a condition for going to court.</p> <p>The PPL requires the establishment of a standing unit in the AB to perform review functions of complaints which may engage representatives of stakeholders who are not procurement entities or NGOs, on an unpaid basis (Article 16(2) (3)). Currently, the AB performs such functions and has resolved around 50 appeals cases in 2008, approximately 50% of which have been decided in favor of the appellant and against the procuring entity. This, however, raises issues of potential or perception of conflict of interest by the AB which is simultaneously involved in organizing, regulating, and coordinating procurement procedure, dispensing advice, and reviewing an appeal or complaint</p> <p>The current practice of having both the AB and the SPA under the supervisory authority of the MOF also raises issues from the conflicts perspective. Under OECD-DAC/World Bank methodology, even though the first review may normally be carried out by the procuring entity, there should be an administrative/judicial review body which is independent from the procuring agency.</p> <p>1 (h) Recommendations:</p> <p><i>An appeals system should be established which is fully independent of the MOF, AB, SPA, and government entities, which operates in an environment free from a perception of conflict of interest, which builds confidence from participants, and which would be efficient, timely and responsive to procurement needs and effective in providing meaningful remedies. The architecture and configuration of this body needs to respond to local conditions and rely on the domestic legal structure. But a varied membership from persons of known probity and independence such as members of NGOs, media, academia, retired</i></p>	

Sub-indicator	Brief Explanation	Score
	<p><i>jurist or judges, industry and privates sector representatives will inspire confidence in terms of fairness and transparency. The AB, given its expertise and organizational advantages, may serve as secretariat.</i></p> <p><i>A56 combines contract disputes mechanisms with complaint review mechanisms in the procurement processes. These should be treated separately</i></p> <p><i>Mechanisms for the resolution of disputes relating to the procurement process and contract disputes that result from implementation of the contract, need to be made clear and incorporated in the conditions of contract.</i></p> <p>Note: See a more extensive discussion under Indicator 10 on the Efficiency of the Appeals Mechanism</p>	

Notes

Periodic v. Targeted Tenders:

Periodic tenders are listed as one procurement method in the PPL and further regulated in GD853N. Open tender maybe periodic or targeted. Periodic tender involves procurement of periodically used or recurrent items from a list compiled by the AB. All other items are procured using targeted tender. Periodic procurement method is applied for common use goods, works, and services which are approved by the AB and specified in a catalogue of some 13,000 items which is available in electronic format and posted on the website www.procurement.am. Typical catalogue items include office supplies, consumables, pharmaceuticals, and maintenance services (e.g. roads). The concept of periodic contracts, which may also be characterized as akin to framework agreements, aggregates the demand of goods, works, and services of general use and aims at conducting procurement in a more efficient way. Savings in transaction costs by avoiding multiple repetitive tender procedures and lower prices through bulk purchasing are typical gains from framework agreements. While it seems obvious that transaction cost savings result from the aggregation of demand into one periodic tender rather than multiple targeted tenders for different purchasing agencies, no data was available to clearly demonstrate that lower prices are obtained under periodic tenders.

For example, different views were expressed by the Ministry of Urban Development, which seemed to be satisfied with the delivery, time and price of periodic contract items, and the Marzpetaran of Armavir, which provided the example of an expensive periodic contract item (a pen for 50 Drams) as compared to the same item available in the market for a much lower price (20 Drams). In addition, the pen under the periodic contract has to be obtained from Yerevan whereas the less expensive same pen can be purchased in the

store next door. (This may be suitable for small orders – but not for large quantities). Quality issues have been reported with regard to pharmaceuticals, i.e. medicines procured under periodic contracts seemed not always as effective as expected although only certified pharmaceuticals were admitted to periodic contracts. This issue should be linked with the wider reform agenda in the health sector. In some countries, reform has been introduced, oftentimes in accordance with WHO recommendations, by limiting choice through the Essential Drug Lists (EDLs) of generically named products. This list aims to achieve expanded access to a smaller number of appropriate drugs. It has been observed that the adoption of such a list has been crucial in helping some countries to increase the objectivity and transparency of the pharmaceutical selection process and improving access to quality medicines.

It might be useful for the government to consider the preparation of a Standard Medical Equipment List with a view to ensuring that scarce resources are used to obtain priority or essential equipment. Purchase of medical equipment should ensure that it is compatible with the availability of expertise in the public sector, servicing and maintenance is readily available, that the equipment is suitable for the facility environment, and that complementary equipment is on site (e.g. generators, surge protectors) etc.

In the past, periodic contracts were closed framework agreements between the SPA and one qualified firm who provided the lowest price per unit. While these agreements were limited in terms of duration (usually 2 or 3 years) they did not indicate a maximum purchase quantity or volume over this period, which could have provided a stronger basis to bidders for their price calculations. For specific purchase orders, purchasing agencies had to submit an application to the SPA who signed an agreement with the supplier/contractor. Although the framework agreement was set up competitively, the subsequent purchase orders did not allow for additional competition since only one firm was selected as supplier/contractor for the duration of the agreement. To this end, unit prices were fixed and there was no market-based price adjustment mechanism in place.

With the recent adoption of GD853N of June 5, 2008, the model of closed periodic contracts has been changed to become a model of open periodic contracts allowing as many bidders as interested to register with the SPA at any time and to compete for the lowest unit prices on a periodic basis. While promoting competition by allowing multiple interested bidders to register and qualify during the lifetime of the periodic contract, competition can be increased by inviting all registered bidders to compete for each purchase order. In line with GD853N, periodic tenders will be advertised with a procurement notice, which is valid for 3 years. Interested bidders can start the registration process by submitting to the SPA a written application together with the documents required for qualification. Bidders who are compliant with the qualification criteria will be registered and they will then sign a preliminary contract with the SPA. Those who do not qualify will be given the opportunity to re-register after having addressed the issues which led to their initial rejection. On a quarterly (goods) or yearly (works and services) basis, all qualified bidders submit to the SPA a closed envelope with unit prices, a bid security, and a declaration ensuring their compliance with the qualification criteria based

on which they had been registered and admitted to the periodic contract. The bidder with the lowest price will be contracted by the SPA as a supplier for the next 3 months (goods) or as a contractor for the next 12 months (works and services). The prices are published in the catalogue on the website. Once purchasing agencies have submitted to the SPA, Their requests for purchase orders, the SPA signs an agreement with the respective supplier/contractor for each purchase order. The SPA does not charge any fees for its services.

According to the SPA, procuring entities must procure the items on the MOF list of items subject to periodic tenders.

The transition from a closed to an open periodic contract model is a positive development to increase competition and adjust prices of periodic contract items with market prices. However, the new periodic contract model is open for competition among qualified registered bidders for every 3 (goods) or 12 (works and services) months when they are invited to re-submit their unit prices. Thereafter, the price of the lowest bidder is locked in and valid for all purchase orders until the next round of price submissions. *Competition could be increased by conducting a “mini-competition” for each requested purchase order rather than every 3 or 12 months. While this would require more administrative effort, the use of electronic means for such “mini-competition” (e.g. electronic reverse auctions or electronic requests for quotations) could help to minimize such administrative effort in the future.*

AB should continue to review the practices with regard to the application of framework agreements and modify GD 853N accordingly. Examples include but are not limited to the framework agreement models of the European Directives (including Dynamic Purchasing) or the current discussion of UNCITRAL about the inclusion of three different framework agreement models in the revised procurement model law. The set up and management of periodic contracts in Armenia could benefit from these models and the adoption of some good practices, e.g. the definition of terms and conditions in the initial framework agreement including the reference to a ceiling quantity or volume over the lifetime of the framework agreement or mini-competition for purchase orders in framework agreements with multiple suppliers/contractors.

In the context of redefining the role of the SPA for public procurement, it is recommended to retain the setting up and management of framework agreements or periodic contracts among the tasks of the SPA. At the same time, the efficiency of framework agreements could be increased by streamlining the purchase order procedures and have purchasing agencies rather than the SPA sign purchase orders directly. In the context of decentralization of public procurement in Armenia, the SPA would no longer be involved in the procurement process of targeted tenders. Instead, the procurement expertise of the currently some 50 staff of the SPA could be used for periodic tenders and contracts. Since the SPA will also be responsible for the operation and support of the future e-GP system, all expertise and capacity required to establish and manage such framework agreements would be consolidated in the SPA as a centralized purchasing agency for framework agreements.

It is recommended that the government explore the integration of the currently available electronic catalogue in the second stage of the e-GP system, i.e. the e-Purchasing system. Electronic means can facilitate the competitive purchase order procedures of framework agreements, e.g. mini-competition for purchase orders through electronic reverse auctions or electronic requests for quotation. Additional features include e-ordering and e-payment modules linked to the electronic catalogue. However, the implementation of such electronic procurement means should be subject to a detailed and phased implementation plan in line with the overall e-GP strategy and requires adequate infrastructure and capacity within the SPA and among the supply (suppliers/contractors) and buyers (purchasing agencies).

Note on 1(d). *Participation Rules*

Blacklisting or Debarment

Under the PPL, if during procurement process, the supplier or its representative “commits” illegal acts against economic activity or public service, then the bid of this supplier is immediately rejected and the procuring entity advises to that effect the authorized body and the law enforcement bodies, providing the grounds for that decision to the latter and the supplier (Article 12). There is a need for clarity on the precise legal meaning of the word “commit” as against “convicted” which is used in another part of the PPL (Article 5), and the processes leading to disqualification under Articles 5 and 12, in order to ensure fair process. Alleged commission of acts that leads to rejection of tender should not be based on mere rumors or baseless allegations. Giving the tender committees wide discretion in this respect might open opportunities for unnecessary restriction of competition by disqualification of otherwise qualified firms on the basis of mere suspicions, bare allegations or even of false charges. There is a need to articulate the type of offenses constituting the ground for debarment and it would be helpful to provide examples on what constitutes corrupt and fraudulent practices in the procurement processes (e.g. bribery to obtain contract, submission of fraudulent bid securities, and collusion to award to a pre-determined winner or to establish artificial prices at non-competitive levels)

The mechanism for debarment or blacklist is not prospective in effect but retrospective in the sense that it affects ongoing contracts. In other words, the effect of blacklist is not only to disqualify a firm from future tenders but to disqualify it from an ongoing tender or resulting in termination of an effective contract. Article (5) includes violations of obligations under the contract which caused the unilateral termination of contract by the procuring entity. Therefore, poor performance is in effect a basis for inclusion in the blacklist. This is an inappropriate criterion to judge and enforce contractual obligations. As an alternative, the AB should consider factoring in previous poor performance as one relevant evaluation criterion that will be evaluated rather than using it as the basis for rejection of tender.

The blacklist is published in the AB website, and is valid for three years. The decision to include a company on the list is based on information received from the procuring entities

and other bodies. Considering the impact of this on reputation of firms, the uncertainty of some of the allegations, the severe effect on competition, and the unmediated nature of the penalty, there is need to articulate the procedure for receiving the allegations and for a fair opportunity to, explain, contest and appeal any initial determination. Moreover, the penalty can be more differentiated depending on the egregiousness of the violations. For example, submission of false data under Article 5(2)(d)(2) should refer to knowing submission of false or fraudulent material data that was relied upon in the award decision in order to merit a severe penalty. Submission of immaterial documents should not merit a similar penalty. However, the commission of egregious criminal acts related to procurement, which are proven, may merit a severe penalty including permanent debarment. Firms should be able to drop in or out of the list based on assessment of compliance with some rehabilitation and good conduct conditions, such as cooperation in the investigation, return of proceeds, the dismissal of the responsible official or employee, appointment of compliance monitor within the company and promotion of a robust compliance and ethics culture in the company.

Bid Security

The provision on bid security in the PPL has been amended in response to the recommendations of the 2004 CPAR. Article 27 (k) and Article 31 suggests that bid security is mandatory and thus required in all cases. This should allow for exceptions since the rule should be that security should be required only in cases where it makes economic sense and where it is justified on the basis of a risk assessment. Under normal circumstances, security is not necessary in procurement of simple goods or goods of nominal value. Alternatively, in such cases and in lieu of a security, the entity may require bidders to sign an undertaking that if they withdraw or modify their bids during the period of bid validity or if they are awarded the contract and fail to sign the contract or submit the requisite performance security before deadline, the bidder will be suspended from being eligible to bid in any contract. Availability of bid securities from banks is rather limited in Armenia. Such security is usually issued only upon deposit of an equivalent amount in cash and in case collateral is accepted, such collateral should be valued at about a third of its actual value. Requiring security in all cases, even in cases of simple and nominal goods or where risks are low or absent, is therefore uneconomic and unnecessary, and may even have significant impact on competition. A31 requires a reasonable bid security requirement of 2%, which is based on the tender price rather than the contract value. This practice is could be in response to the 2004 CPAR recommendations, and at present the estimated contract value/budget is no longer disclosed to bidders. Basing it on tender price raises the issues of breach of confidentiality of the tender offer as it would be easy for a competitor to determine the exact tender offer using this information. In future amendments, the law should be amended to make bid security not mandatory in all cases and the 2% should not be based on the actual and exact bid price (for example, the bidder may be allowed the discretion to vary the amount by obtaining a security in any amount that is not lower than 2% of the tender price, and the exact amount being at the sole option of the bidder. Simplified method of calculation or formulation which addresses this concern of confidentiality should be explored).

Note on 1(f). Evaluation Criteria

Article 34 of the PPL requires that in evaluating bids, the evaluation should be based on whether the bid is “satisfactory” or “unsatisfactory” in accordance with the requirements of the invitation. This strict interpretation whether a bid is responsive to the invitation is a good feature since it prevents abuse by tender committees from exercising inappropriate and wide discretion. However, in certain cases, evaluation should take into account whether a deviation is minor or major and whether it relates to an integral, important or substantive aspect of the invitation. If the deviation is minor, then depending on the nature of deviation, this might be disregarded or the tender might receive a lower score based on the deviation, as opposed to being declared as totally unresponsive and thus rejected. However, this should be carefully designed and implemented, as it provides some discretion to the evaluation committees in going beyond a strict interpretation of the invitation requirements.

Note on 1(g). Tender Submission

Varying membership of tender committees to promote check and balance is illustrated by the following examples: procurement by the Ministry of Health in building of hospitals may include a member from the Ministry of Urban Development, or procurement by the Ministry of Health of ambulance may include a member from the Ministry of Transport. Procurement for works on irrigation canals by the Ministry of agriculture may likewise include a member from the Ministry of Urban Development and a reputed faculty member in engineering from a nationally recognized university. Transparency could be further enhanced by including membership from some independent state bodies (like the State Commission for the Protection of Economic Competition).

Note on 1(h) Complaints.

Ideally, the complaint review body should be an independent external body, but if this is not feasible due to national capacity constraints then, it should nevertheless be an independent procurement review panel or body. While it is notable under the PPL that the AB is no longer involved in the procurement decision-making process, as earlier when it was involved in the approval for the use of single source contracts, the functions of the AB as a review body raises issues about its independence. The AB in performing various functions and exercising authority—which includes regulatory, advisory, and review and enforcement responsibilities—creates opportunities for potential conflicts of interest. The discretionary power of the AB (or any future appeals body) under A55 to suspend the procurement proceedings until the decision is made with respect to the appeal should be judiciously exercised to balance the risks attendant to undue delay this may cause in the procurement process.

Indicator 2. Existence of Implementing Regulations and Documentation. This indicator verifies the existence, availability and quality of implementing regulations, operational procedures handbooks, model tender documentation, and standard conditions of contract. Ideally the higher level legislation provides the framework of principles and

policies that govern public procurement. Lower level regulations and more detailed instruments supplement the law, make it operational, and indicate how to apply the law to specific circumstances. This indicator consists of six sub-indicators (a-f).

Sub-indicator	Brief Explanation	Score
<p>2(a). Implementing regulations that provide defined processes and procedures not included in higher-level legislation.</p>	<p>The PPL is supported by detailed implementing regulations in the form of Government Decree No. 853N of June 5, 2008, approving the implementation rules. However, this decree does not comprehensively cover all aspects of the PPL and contains contract conditions, some of which should be more appropriately articulated in model documents. The MOF has also issued Decree No. 426, dated April 25, 2005 on sole source procurement. (See also 1a).</p> <p>2(a) Recommendations: <i>A single comprehensive implementation regulation should be prepared and issued to further articulate other aspects of the law not covered in the current version. Decrees should not include contract conditions which should be included in the model bidding documents.</i></p>	<p>2</p>
<p>2(b). Model bidding documents for goods, works, and services.</p>	<p>There are no approved model bidding documents, but a set of mandatory items and content for tenders are specified in the PPL in Article 27. Under the PPL, the AB has the authority to approve model document forms (Article 16(2) (d). A number of standard bidding and contract documents are commonly used by the SPA but these have not been formally approved nor disseminated. The non-publication and the centralization of use of these forms with the SPA constrain procuring entities in preparation of the package. These should be formally approved and made readily available on the website. The AB intends to proceed with formalization of these standard documents along with further amendments to the legal framework and implementation of the recommendations on these and other assessments.</p> <p>2(b) Recommendations: <i>Model documents and standard contract conditions should be formally developed and approved and posted on the website as soon as possible.</i></p> <p><i>Model Bidding documents should provide, among others, for bid evaluation to take place only after bid opening has been completed and closed, so that tender commissions can devote sufficient time to the important task of determining responsiveness of bids. After responsiveness of bids has been established, the lowest evaluated responsive bid should be postqualified to ensure that the selected bidder has the required qualifications and experience. Furthermore, in order to facilitate the bidding process, the list of required documents should be reduced to the most essential needed</i></p>	<p>1</p>

Sub-indicator	Brief Explanation	Score
	<p><i>for evaluation and to comply with the PPL and a bid clarification procedure during evaluation of bids should be introduced during which tender commissions, instead of rejecting their bids, can give an opportunity to bidders to submit the legitimate and valid documents without in any way modifying their bids.</i></p> <p><i>Model Bidding documents should also include general contract conditions and provide for inclusion of special conditions or those particularly applicable to the procurement being carried out. These conditions should be balanced, impartial and fair to the contractual parties.</i></p>	
<p>2(c). Procedures for pre-qualification</p>	<p>Qualification criteria and pre-qualification procedures are set out in Articles 5 and 6 of the PPL, respectively. However, there has been no precedent in the use of prequalification procedure as of this time. The PPL provides that qualification must be based on professional, technical, financial and labor resources but is not explicit that the criteria should be based on pass or fail system.</p> <p>Qualification should be evaluated on a pass or fail basis. Although GD 853N, Annex 2, para. 30 already indicates that the assessment should be based on whether the bid is “compliant” or “non-compliant”, the PPL seems to imply that a point or percentage system, rather than a pass or fail test, is used for evaluating qualification under Article 6(9), which states that “[i]f more than six suppliers are scored highest, then all suppliers with the highest scores are regarded as having passed prequalification.” All qualified applicants should be invited to submit bids.</p> <p>Normally, pre-qualification should not be mandatory in all cases and is usually necessary only for large or complex works or in cases where the high costs of preparing detailed bids could discourage competition.</p> <p>The PPL also combines prequalification of bidders for goods and works with shortlisting for consulting firms for services.</p> <p>2(c) Recommendations: <i>Pre-qualification should not be mandatory in all cases, except for large or complex goods or works or in cases where the high costs of preparing detailed bids could discourage competition. Standard qualification criteria should be developed and should be evaluated based on pass-fail basis. All those pre-qualified should be invited to bid.</i></p> <p><i>Prequalification should apply only to goods and works and a separate provision on shortlisting of consulting firms for consultant</i></p>	<p>2</p>

Sub-indicator	Brief Explanation	Score
	<i>assignments should be included in the Decree. In general, the standard should be postqualification type of process.</i>	
<p>2(d). Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion.</p>	<p>Section 5 of the PPL covers procurement of consulting services evaluated on the basis of “non-price conditions.” However, Article 43(1) of the PPL does not provide the basis when using quality alone, price alone, or a combination of both are appropriate, although the basis for direct contracting or sole sourcing in Article 44 are defined. Government Decree 853N provides the procedure for evaluation of price and non-price criteria. In standard procurement of goods, works and services, the process allows for evaluation of the most highly evaluated proposal which may consider, in addition to price, non-price criteria as well. Design contracts are treated as part of works.</p> <p>2(d) Recommendations: <i>The PPL or Decree should define clearly the evaluation methodology when using quality alone, price alone, or a combination of both are appropriate for consultant services. Design contracts should be defined as consultancy services rather than works.</i></p>	2
<p>2(e). User’s guide or manual for contracting entities.</p>	<p>According to the AB, a “Methodological Guidance” which serves as a Procurement Manual exists. The AB has the responsibility for its maintenance under Article 16 (2) (b) of the PPL.</p> <p>2 (e) Recommendations: <i>The procurement manual should be updated and widely disseminated to procuring entities and interested contractors, suppliers and consulting firms.</i></p>	2
<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>The PPL under Article 27 (g) requires that the invitation should include the draft procurement contract. There are elements of General Conditions of Contract in the implementing regulations in GD853N Annex 1, paras. 17-18 and Annex 2, paras. 1-3, and 7 which are obligatory. All procurement contracts are also based on the general Civil Code. There are plans to formally approve model contract documents. Suppliers and contractors complain that the terms, risks and attendant obligations in the contract conditions are one-sided and favor the government.</p> <p>2 (f) Recommendations: <i>Develop and formally approve fair, equitable and balanced standard general (and special) conditions of contract, and include these in model bidding documents.</i></p>	2

Note on 2(a). Implementation Regulations

Government Decree No. 853N dated June 5, 2008, covers only certain key aspects of the PPL and annuls a list of other subsidiary regulations. There is need to clarify what rules apply with respect to the items that are not covered and whether certain other existing regulations which were not expressly annulled remain enforceable. An inventory of all the other related legal acts, reconciliation of potential conflicting aspects, harmonizing and aligning them in accordance with the provisions of the law in order to achieve some more clarity on the scope and subjects of its applicability needs to be carried out

Pillar II. Institutional Framework and Management Capacity

Pillar II assesses at how the procurement system as defined by the legal and regulatory framework in a country is operating in practice through the institutions and management systems that are part of the overall public sector governance in the country.

Indicator 3: The public procurement system is mainstreamed and well integrated into public sector governance system. This indicator assesses the procurement system to (a) determine its suitability to discharge the obligations prescribed in the law without gaps or overlaps; (b) whether the necessary links with other sectors of government affecting procurement exist; (c) whether procurement operations are constrained by other external institutional factors; and (d) whether the managerial and technical capacity of the system more adequate to do procurement without unnecessary cost or delay. This indicator also measures the degree of integration of the procurement system with other parts of government and particularly with the financial management system given the direct interaction between the two, from budget preparation and planning to treasury operation for payments. There are four sub-indicators (a-d) to be scored under indicator 3.

Sub-indicator	Brief Explanation	Score
3(a). Procurement planning and associated expenditures are part of the budget formulation process and contribute to multiyear planning.	At the initiation of the budget preparation cycle, procuring entities submit a list of proposed procurement requirements to the National Standards Committee (NSC). The NSC verifies the submitted list and sends it to SPA for costing. After the SPA determines the relevant costs, the budget entity includes the procurement details/items into a quarterly cash plan. Such plans, however, are not procurement plans, as foreseen by paragraph 6 of GD853N, i.e., these include only items (or needs) to be procured and their estimated costs. These documents, which are used for budget preparation purposes, do not show description of contract packages, applicable procurement method, and key dates for tender process, i.e., preparation of technical specifications, bidding documents, issue of bidding documents, receipt, opening and evaluation of bids, contract signature and contract completion. Within the Medium Term Expenditure Framework (MTEF), multi-	2

Sub-indicator	Brief Explanation	Score
	<p>year contracts (for two/three years) are signed but with a provision that makes their effectiveness conditional upon availability of funds. Budgetary funds are generally not available beyond the first year of multi-year contracts. As a consequence, these contractors do not perform efficiently in a consistent manner leading to poor quality of delivered goods and completed works.</p> <p>Substantial amount of procurement is carried out in the last quarter of the year when the procuring entities are provided budgetary funds. This places the procuring entities in a difficult situation as, on one hand, the funds need to be utilized before the end of the fiscal year (i.e., December 31) or forfeit them and, on the other, little time is left to carry out transparent and competitive procurement. Consequently, procuring entities resort to quick but unjustified procurement methods, such as the single source method, based on poorly prepared technical specifications and inadequate contract conditions.</p> <p>3 (a) Recommendations:</p> <p><i>Simplify process, and align the procurement process with budget cycle to avoid bunching of contracts towards the end of the budget period of the fiscal year.</i></p> <p><i>Improve timeliness of procurement planning and contents of procurement plans. As soon as information about budget approval becomes available to a procuring entity, it should prepare a detailed procurement plan, in line with paragraph 6 of GD853N, including contract package description, estimated budget for that package, procurement method, key dates, including contract signature and completion dates.</i></p> <p><i>Improve budget execution processes with a view to (i) making budgetary funds available to procuring entities in a constant manner over the year; and (ii) ensuring availability of funds for multi-year contracts.</i></p>	
<p>3(b). Budget law and financial procedures support timely procurement, contract execution, and payment.</p>	<p>Budget legislation supports the conduct of timely procurement procedures. The Law “On Treasury” of July 27, 2001, regulates financial procedures. Payment is made after 5 days of submission of all necessary documents by procuring entity to the Treasury, and verification by the AB (See sub-indicator 3(b) below) that the procurement process is in compliance with the PPL. Since 2002??, payments have been conducted on time and according to the terms and conditions of public procurement contracts, there were no complaints submitted to the MOF regarding delays in payment; nor contractors and suppliers raised any issues concerning getting</p>	<p>3</p>

Sub-indicator	Brief Explanation	Score
	the payment on time.	
<p>3(c). No initiations of procurement actions without existing budget appropriations.</p>	<p>The PPL has no mandatory requirement that procurement action should be initiated only after ensuring relevant budget appropriations are in place. A procuring entity is entitled to initiate the procurement process and sign a procurement contract prior to the earmarking of financial resources with the fulfillment of the condition that the contract is in effect and valid (Article 15 (4) and as long as funds are available for it. Article 15(5), however, cautions the procuring entity that it can undertake financial obligations for procurement subject to availability of funds allocated to the contract.</p> <p>AB contends that the general rule remains that sufficient funding is assured before commencement of procurement process. This arrangement raises issues regarding the waning of bidders' interest in participating in tenders and transferring the risks to the private sector, considering the unilateral power of procuring entities to cancel a signed contract and costs incurred, and opportunity costs for a potential participant. This may contribute to the bidders' low level of interest in government contracts and inadequate level of competition. This practice also distorts the budget prioritization and planning process.</p> <p>3 (b) Recommendations: <i>Advance contracting and effectiveness of contracts contingent on availability of funds should be discontinued. If this is retained, the circumstances allowing its use should be restricted and specified in the law.</i></p>	2
<p>3(d). Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.</p>	<p>There is requirement that every public procurement contract must be registered with the Treasury. According to the AB and as provided under the law governing the Treasury, all transactions are registered with MOF, including cost overruns and unpaid invoices. A9 of the PPL also requires submission to the AB copy of the evaluation report, within ten working days of contract signature or cancellation of a tender.</p> <p>The AB carries out a review of evaluation reports and signed contracts, and provides feedback to the SPA if it determines that the PPL provisions have not been followed. If the PPL has been complied with, the AB provides the Treasury with its positive opinion on the basis of which the Treasury makes contractual payments. These reviews by the AB do constitute direct involvement of the AB in the procurement process, and creates conflict of interest situations because the AB is also responsible for oversight of public procurement and review and resolution of</p>	1

Sub-indicator	Brief Explanation	Score
	<p>bid complaints.</p> <p>3(c) Recommendation <i>The AB should discontinue direct involvement in the procurement process related to the reviews of evaluation reports and signed contracts to avoid conflict of interest with its role of review and resolution of bid complaints.</i></p>	

Indicator 4: The country has a functional normative/regulatory body. Although this indicator refers to a normative/regulatory body, the roles and functions of various institutions within the public sector, and degree of coordination between them (i.e. one agency responsible for policy, another for staff training and another for statistics) is of utmost importance. When the assessment criteria below refers to the “regulatory body”, this may imply “regulatory function” if applicable to the particular assessment. The assessment of the indicator will focus on the existence of the function, the independence of the regulatory function, the effectiveness of performance and the degree of coordination between responsible organizations. There are four sub-indicators (a-d), which are measured.

Sub-indicator	Brief Explanation	Score
4(a). The status and basis for the normative /regulatory body is covered in the legislative and regulatory framework.	<p>The public procurement organization in Armenia is complex. It comprises the Authorized Body (AB), the State Procurement Agency (SPA), and procuring entities. The MOF acts as the Authorized Body (AB) through its Procurement Process Regulation and Budget Execution Methodology Department. Its main role is to regulate, coordinate and oversee public procurement. The SPA, which also is a unit of the MOF, is responsible for conducting procurement in collaboration with procuring entities. The SPA is headed by a Director and Deputy Director. It has a staff of 50 organized in two departments: the Procurement Organization Department (16 key staff), and the Legal Department (10 key staff). Procuring entities’ role comprises of the preparation of technical specification; delivery schedule, and payment terms; establishment of a tender commission comprising 3 to 5 members; and supervision of contract performance.</p> <p>The PPL defines the powers and authority of the AB and procuring entities, which are further elaborated in GD853N. It identifies the SPA but does not provide the functions and responsibilities, except for stating that it shall perform functions envisaged by law. (Decree N1904-N dated December 12, 2002 which predates the PPL). However, in Article 57, the PPL provides for the SPA to organize open tender and to sign contracts on behalf of the procuring entities’. GD853N further</p>	2

Sub-indicator	Brief Explanation	Score
	<p>elaborates in various provisions the role of SPA. However, there is need for further clarifying and streamlining the role and responsibilities of the SPA through updating and elaborating the decree on SPA.</p> <p>The public procurement function appears to be decentralized to procuring entities. However, there are significant and residual functions that remain centralized to the SPA. Structurally and in practice, the framework adopts a significant central coordination of procurement which allocates responsibility to the AB for policy and regulation and coordination of procurement. The AB performs functions that relate to monitoring compliance with the requirements of the procurement legislation.</p> <p>Article 57 of the PPL gives significant authority to the SPA to organize and sign open tenders, thereby significantly centralizing all procurement activities and separating the signatory of the contract from the party responsible in its implementation. While the procuring entities are made responsible for carrying out procurement, this role is limited to (i) preparing technical specifications; (ii) establishing a tender commission; and (iii) supervising contract performance. The PPL further provides that SPA staff serve as secretaries to tender commissions and can also serve as members (in periodic tendering).</p> <p>The SPA-appointed secretary to the tender committee possesses considerable power to cause suspension of the procurement process, which could effectively negate the decision of the tender committee. Unlike other procurement systems in the region, this centralization of functions involves the SPA not just with coordination but with the specifics of the conduct of open tenders. While this has certain advantages in terms of economies of scale and ensuring compliance with the requirements of the PPL, the current organization severely constrains building the capacity of the procuring entities and in promoting clear lines of accountability, as the responsibilities are fragmented. There is an urgent need to align responsibilities, outline clear line of accountabilities, promote ownership and develop capacity in procuring entities.</p> <p>Procuring entities are state governance bodies, local self-government bodies, state or community agency, the Central Bank, state or community non-profit organizations and entities with over 50% of shares owned by the state or communities as authorized by the Constitution and other relevant laws. There are 47 government entities; 11 Marzpetarans; 926 local communities. Both Marzpetarans and local communities comprise of a large number of procuring entities.</p>	

Sub-indicator	Brief Explanation	Score
	<p>4 (a) Recommendations:</p> <p><i>The roles of the SPA need to be redefined in light of the introduction of E-Government procurement to accelerate reform and the decentralization of the procurement process to procuring entities.</i></p> <p><i>Procuring entities should be made responsible for their own procurement, including the procurement process and contract signatures, while the SPA's role should be reoriented to provide technical assistance and advice, including procurement capacity building. This should be accompanied by clear rules of accountability, checks and balances, and oversight mechanism and regular training and capacity building activities</i></p> <p><i>The SPA should continue to be responsible for the development and management of periodic contracts. At the same time, the efficiency of periodic contracts could be increased by streamlining the purchase order procedures, including authorizing procuring entities rather than the SPA to sign purchase orders directly with the firms selected for periodic contracts. Furthermore, the list of items subject to periodic tenders should be limited only to the items of common and recurrent use.</i></p> <p><i>In the context of decentralization of public procurement, the SPA's expertise should be used for periodic tenders and for supporting procuring entities in conducting tenders for targeted contracts. Since the SPA will also be responsible for the operation and support of the e-GP system, all expertise and capacity required to establish and manage such framework agreements could be consolidated in the SPA as a centralized purchasing agency for framework agreements.</i></p>	
<p>4(b). The body has a defined set of responsibilities that include but are not limited to a set of 8 identified functions.</p>	<p>The AB functions are specified in Article 16(2) which broadly consists of authority in regulating and coordinating procurement. The functions include policy making and drafting of legal acts; organizing management method in procurement; training; approval of model forms; providing methodological support to procuring entities in the organization of procurement; approving publication; coordinating collaboration with international organizations; reviewing procurement minutes; and supervising observance of procurement legislation by procuring entities. AB also considers complaints filed against the procurement process. It also resolves contractual disputes, though less frequently.</p> <p>The current regulatory and normative framework contains</p>	<p>1</p>

Sub-indicator	Brief Explanation	Score
	<p>residual and significant features of conflict of interest. This situation arises from the fact that the MOF is both the overseer (through the AB) and “doer” of public procurement (through the SPA).</p> <p>4 (b) Recommendations:</p> <p><i>An independent body, and not the AB, should serve as a complaints review body. As the procurement is decentralized to procuring entities, the SPA should not be involved in specific procurement processes as a signatory to contracts.</i></p> <p><i>The roles and responsibilities of both AB and SPA should be reviewed and redefined with a view to eliminating potential conflict of interest.</i></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 its responsibilities.</p>	<p>The Procurement Process Regulation and Budgetary Process Methodology Department of the MOF carries out the functions of the Authorized Body in public procurement. Its Procurement Process Regulation Division consists of 10 employees who are inadequate to carry out the responsibilities under Article 16. The current institutional structure of AB and the SPA, both under the supervisory authority of the MOF, perform functions which relate to regulation and coordination of procurement, organization of periodic and targeted procurement, review of compliance with legal requirements, perform advisory functions and conduct review of procurement complaints or enforcement issues contribute to overlapping functions and potential conflicts of interest.</p> <p>Perception also exists that procuring entities at all levels of government are not adequately involved in the formulation of procurement policy and regulation, which is shared by civil society and non-governmental organizations. This is evident by the fact that there is little interaction between the AB and procuring entities especially at Marzpetran and local levels.</p> <p>4 (c) Recommendations:</p> <p><i>Same as 4(a), 4(b), 4(c) above</i></p> <p><i>a Procurement Advisory Committee should be established involving major procuring entities, not only from Yerevan, but also from Marzpetarans and local communities to improve public procurement law and regulations, This Committee should also have representation from civil society, including non-governmental organizations, Chamber of Commerce, etc.</i></p>	<p>2</p>
<p>4(d). The responsibilities</p>	<p>Although the AB is specifically proscribed from being a party to procurement contracts, the SPA, which is under the jurisdiction</p>	<p>1</p>

Sub-indicator	Brief Explanation	Score
should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions	<p>of MOF, signs all contracts for a procuring entity but does not participate in supervision of these contracts.</p> <p>The review process performed by the AB, instead of an independent review body, raises issues of conflict of interest.</p> <p>4 (d) Recommendations: <i>Same as 4(a), 4(b), 4(c) above</i></p>	

Indicator 5: Existence of institutional development capacity. The objective of this indicator is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements. It is very important that responsibilities are clearly assigned and are being performed. This indicator has four sub-indicators (a-d) to be measured

Sub-indicator	Brief Explanation	Score
5(a). The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information.	<p>There is a semi-computerized system for collection of procurement data and information managed by AB with the support of SPA. However, the procurement information system is not well integrated among the different line ministries and procurement entities. This makes it difficult to obtain real time information on the status of all procurement contracts by goods, works and services. The MOF supports a website, www.procurement.am, which provides the current status of legislative normative acts, public procurement advertisements and publication of contract awards but procurement plans are not yet available on this website. It is easily accessible to all interested parties at no cost. Procurement opportunities are also telecast and broadcast by two TV channels as well as published in the newspapers.</p> <p>5(a) Recommendations: <i>Develop a simple procurement monitoring information system which can eventually be integrated into the web based E-Government Procurement System.</i></p>	3
5(b). The country has a sustainable strategy and procedures for collecting and	<p>There is no sustainable strategy, procedures, guidelines and standard formats for the collection and maintenance of data on public procurement, and for collection of information on monitoring compliance with the procurement legislation. The SPA collects and maintains these statistics. There is no practice</p>	1

Sub-indicator	Brief Explanation	Score
<p>monitoring national procurement statistics.</p>	<p>of regular dissemination of procurement statistics.</p> <p>5(b) Recommendations: <i>Develop a sustainable strategy for collecting and disseminating procurement statistics. Also design and implement a system for monitoring procuring entities' compliance with the procurement legislation. See 5(a).</i></p>	
<p>5(c). A sustainable strategy and training capacity exists to provide training, advice, and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.</p>	<p>One of the functions of AB is organization of professional training, assessment of qualifications and development of retraining system for the procurement staff of procurement entities and establishment of an accredited procurement cadre (Article 16 (2, c)). The MOF, at least once in three years, ensures the participation of procurement staff in training or retraining programs and evaluates their qualification (Article 16 (5)). In 2003 the US Treasury helped to organize a Training Centre (TC) under the umbrella of the MOF which provides training once a month to about 25 civil servants and potential bidders. Training materials are developed by MOF. TC provided training to 245 civil servants and bidders in 2006, 700 in 2007. The priority is to train the staff of those procuring entities which have large procurement volumes. However, there is still an unmet demand in training both in public and private sectors.</p> <p>In some procuring entities procurement staff were trained only once in two years. Staff (auditors and inspectors) of some of the government state bodies which conduct external public procurement audit did not receive any procurement training. A decree "On approving the strategy for introduction of the system of training, continuous professional development, and qualification of public financial management specialists" was approved by the GOA on November 20, 2008. The strategy deals with training and continuous professional development for the government officials responsible for finance and procurement. To achieve these objectives the strategy envisages the use of higher education and other training institutions, and specialized organizations. The strategy also provides for assessment and certification of government officials. However, the strategy is yet to be implemented.</p> <p>5(c) Recommendation: <i>Carry out a realistic training needs assessment and skill gap analysis of staff involved in public procurement at all levels in the line ministries, procuring entities, project implementation units, and the private sector.</i></p> <p><i>Develop mechanisms for the sharing and transfer of procurement skills and experience gained by procurement specialists in</i></p>	<p>1</p>

Sub-indicator	Brief Explanation	Score
	<p><i>international procurement procedures in externally funded project implementation units to the corresponding line ministries.</i></p> <p><i>Design and implement a sustainable institutionalized program for short term, medium and long-term term training program in public procurement.</i></p>	
5(d). Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.	<p>Attestation of civil servants takes place once in three years. There are no quality standards to evaluate staff performance in terms of procurement processes and products. No standards for processing procurement actions are disseminated and there are no staff performance evaluation systems in place.</p> <p>There is no performance assessment of procurement staff and accreditation mechanism to qualify candidates for procurement functions in the SPA as well as in line ministries. Capacity building is carried out on an ad-hoc basis.</p> <p>5(d) Recommendation <i>Recognize procurement as a profession; develop quality standards for evaluating performance of staff in AB, SPA and procuring entities involved in the conduct of procurement.</i></p>	1

Pillar III. Procurement Operations and Market Practices

This Pillar assesses the operational effectiveness and efficiency of the procurement system at the level of the implementing entity responsible for issuing individual procurement actions and the degree of professionalism and knowledge of the staff responsible for implementing procurement activities. It examines the role of the market as one means of judging the quality and effectiveness of the system when putting procurement procedures into practice. This Pillar is distinguished from Pillars I and II in that its focus is not on the legal/regulatory or institutional systems in a country but more on how these operate. It uses three baseline indicators:

- Are the procurement operations and practices efficient? (This is supported by four sub indicators.)
- Effectiveness of the functionality of the public procurement market. (This is supported by three sub indicators.)
- Existence of contract administration and dispute resolution provisions. (This is supported by three sub indicators.)

Indicator 6: The country’s procurement operations and practices are efficient. This indicator examines the efficiency of the operations and operational practices as implemented by the procuring agencies. Efficiency is considered to mean that the operational practices result in timely award of contracts at competitive market prices as determined by effective and fair implementation of procurement procedures. There are four sub-indicators (a-d) to be rated under this indicator.

Sub-indicator	Brief Explanation	Score
<p>6(a). The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.</p>	<p>Every civil servant has a job description. The Law “On civil service” establishes general minimal requirements for the level of competence of civil servants. The MOF, at least once in three years, ensures the participation of procurement staff in training or retraining programs and evaluates their qualification (Article 16 (5)).</p> <p>Procurement skills are mostly concentrated in the SPA, with backgrounds in technical, legal and administrative areas. There is neither a procurement cadre nor a career stream for procurement specialists to pursue. The officials in charge of procurement in the line ministries (e.g. Ministry of Urban Development and Health) have combined responsibilities for both procurement and financial management, which needs to be demarcated. Concentrating the procurement capacity in SPA has been a constraining factor in building capacity in the procuring entities. For example, a line Ministry is responsible only for preparing technical specifications and appointing a tender commission. The procurement process, including the preparation of bidding documents, receiving, opening and evaluating bids, and awarding contracts is managed by SPA through its “non-voting” secretaries in the tender commissions. As a result, there is little incentive for a line Ministry to develop its procurement capacity beyond the preparation of technical specifications.</p> <p>Article 16(4) requires procuring entities to establish a procurement section. However, each Ministry decides how to structure procurement units for its operations. For example, the Ministry of Defense has a significantly large procurement unit compared to the Ministry of Agriculture, because defense procurement is classified and external bodies are not involved. Procuring entities have “procurement specialists” but procurement is one of many tasks that they are responsible for. There are no full-time procurement specialists in line ministries. In Marzes there is unsatisfactory level of knowledge and familiarity with procurement norms, principles and processes, including the mandatory requirements of legislation. Non-commercialized bodies, such as hospitals, at Marz and community levels, which carry out their procurement without the intervention of the SPA, have little familiarity with the requirements of the PPL.</p> <p>6 (a) Recommendations: <i>Develop and implement a decentralization strategy of procurement functions which will develop capacity in line ministries and procuring entities so that they can be fully responsible for their procurement activities.</i></p>	<p>2</p>

Sub-indicator	Brief Explanation	Score
<p>6(b). The procurement training and information programs for government officials and for private sector participants are consistent with demand.</p>	<p>There is no regular and systematic training of public procurement. However, short-term training courses in public procurement and management are provided but not on a regular basis. A training strategy has also been developed. The training programs are not sufficient in terms of their duration and frequency for government participants. Training programs' design is not based on a skills gap inventory to match the needs of the system. However, the issues faced by procurement staff at work are discussed during training. There is little interaction between the AB and private sector in terms of improving latter's awareness of the requirements of the PPL.</p> <p>6(d) Recommendation <i>Implement training strategy for procurement staff. Design training programs and procurement skills testing and certification.</i></p>	<p>1</p>
<p>6(c). There are established norms for the safekeeping of records and documents related to transactions and contract management.</p>	<p>A procuring entity must submit information contained in the procurement minutes, except classified information, to any person, within five working days after the receipt of such request (Article 9(4)). The PPL establishes a list of the procurement records that must be kept and available for public access (Article 9 (1)). The Law "On Archive" stipulates a document retention policy. After expiration of this period the documents are kept in archive. There are no established security protocols to protect records - either in physical or electronic form.</p> <p>6 (c) Recommendations: <i>The introduction of E-GP should be accelerated, which would facilitate the electronic storage and retrieval of procurement documents and make them easily accessible. Norms and standards should be developed for the retention, security and access of all procurement documents and procurement trail, which are compatible with the procurement law.</i></p>	<p>2</p>
<p>6(d). There are provisions for delegating authority to others who have the capacity to exercise responsibilities.</p>	<p>Procuring entities delegate to one of their corresponding departments or staff to oversee and organize procurement for the entity. The SPA organizes tenders and concludes public procurement contracts on behalf of procuring entities, although procuring entities have all rights and obligations under the contract. The secretary of tender commission is accountable for observance of public procurement legislation by the members of tender commission. The SPA retains the sole power to annul a procurement process and to sign contracts on behalf of procuring entities.</p> <p>6(d) Recommendations: <i>In order to align accountability and promote capacity, responsibilities, including the signing of procurement contracts, should be significantly decentralized to procuring entities, with appropriate controls and oversight.</i></p>	<p>2</p>

Indicator 7: Functionality of the public procurement market. The objective of this indicator is to assess the market response to public procurement solicitations. This response may be influenced by many factors such as the general economic climate, the private sector development environment and politics, the existence of strong financial institutions, the attractiveness of public system as a good reliable client, the kind of goods or services being demanded, etc. There are three sub-indicators (a-c) to be measured.

Sub-indicator	Brief Explanation	Score
7(a). There are effective mechanisms for partnerships between the public and private sectors.	<p>There is a lack of effective and sustainable mechanism for the development of public private partnership (PPP), and lack of adequate knowledge of the various types of PPP models and complexities. New types of PPP models are being tried out, such as the housing project in earthquake affected areas led by Ministry of Urban Development. There is a need to establish clear guidelines for PPP and provisions incorporated in the Procurement Law</p> <p>There is no comprehensive legal framework for such partnership, although the TC provides training programs to help build capacity among private companies including small businesses. The Government encourages open dialogue with the private sector through meetings and discussions and seeking feedback on public procurement related legislation.</p> <p>7(a) Recommendations: <i>Develop a legislative framework on public-private partnership. Reference may be made to the UNCITRAL model legislative provisions on privately financed infrastructure. (See reference. UNCITRAL. 2003 Model legislative provisions on privately financed infrastructure projects). Also, the EU Directives 2004/18 and key interpretative documents on PPP issued by the EC would be relevant for purposes of Armenia's efforts to harmonize with EU and WTO requirements. Prepare an operational manual for procurement using PPP (Examples of PPP in World Bank financed projects could be used as a model).</i></p>	1
7(b). Private sector institutions are well organized and able to facilitate access to the market.	<p>Organization of private sector enterprises and organizations is at an early stage, such as the union of employers, union of builders, association of investigative journalism and citizen groups. These need to be nurtured and developed to take an active role and increased involvement in the public procurement process and facilitate market access. There is limited competition due to lack of interest, procurement policies, and monopolistic or oligopolistic features, especially in infrastructure projects. New types of PPP are models are being tried out, such as the housing project in earthquake affected areas led by Ministry of Urban Development.</p>	1
7(c). There are no major systemic	<p>Private sector has been rapidly growing in recent years (the business directory (2008) includes 2300 small, medium and large companies and organizations involved in the provision of over</p>	2

Sub-indicator	Brief Explanation	Score
constraints (e.g., inadequate access to credit, contracting practices, etc) inhibiting private sector's capacity to access the procurement market.	10,000 items of goods, works and services). Growth has been especially in the construction and services sub-sector fueled mostly by remittances by the Diaspora. Overall, the business climate needs further improvement as indicated by Armenia's overall ranking of 44 out of 181 countries in the ease of doing business in 2009. Armenia ranks 61 in enforcing contracts. Data on number of firms which have bid for government contracts, winners and losers by contract size and value by goods, works and services should provide a more accurate picture of the level of domestic competition by the private sector in public procurement.	

Indicator 8: Existence of contract administration and dispute resolution provisions.

The objective of this indicator is to assess the quality of contract administration practices which begin after contract award and continue to its acceptance and final payments. This is an area that many procurement systems fail to consider, and where many issues arise that can affect the performance of the contract and impact on service delivery. This indicator covers three sub-indicators (a-c) to be scored.

Sub-indicator	Brief Explanation	Score
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.	<p>Procedures for undertaking contract administration including inspection and acceptance procedures and quality control procedures are defined in the GD853N (Paras. 21-123, Annex 1). Supervision of civil works is carried out by independent engineering firms. Each Ministry has a responsible unit for monitoring contract implementation, but professional capacities in Ministries are weak. There are no formally approved model contracts or documents. Supervision of civil works is carried out by independent engineering firms which are selected by way of tender. Amendments to public procurement contract are regulated in paras. 19 and 20 of Annex 1 of GD853N. Changes in a procurement contract are not allowed as it would result in an artificial alteration of the volumes of procured goods, works, and services, or of the Contract Price. Final payments are processed promptly as stipulated in the contract.</p> <p>Quality of procurement is compromised due to the stipulation of awarding the contract on the basis of lowest bid price in relation to an estimated price, which may not reflect current market conditions. Spot inspections by independent organizations have found the quality of construction to be poor, especially in Marz, e.g., poor construction of kindergartens in the village of Getaazat in the Ararat Marz - contract value of 15 million Drams (US\$50,000 equivalent)). Contract administration procedures and processes, and oversight mechanisms need strengthening to ensure quality of goods, works, and services being procured under public procurement.</p>	1

Sub-indicator	Brief Explanation	Score
	<p>8(a) Recommendation</p> <p><i>The AB should carry out an in-depth review of the contract administration procedure and prepare a manual for strengthening contract management procedures.</i></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>Public procurement contracts have dispute resolution reference, but no provision on arbitration. No standard contracts have been formally approved. Disputes are currently resolved by MoF or in a civil court of general jurisdiction. In practice, very few cases are submitted to courts as cases are amicably resolved. The PPL combines procurement review with contract implementation disputes, which should be treated separately. Provisions for Alternative Dispute Resolution (ADR) are not standard in contracts. There is a Law “On Arbitration”. There are no provisions for international arbitration for international competitive bidding, although Armenia is party to the New York Convention.</p> <p>8(b) Recommendations:</p> <p><i>Law should not combine procurement complaints system with contract dispute review. A clear reference to how contract disputes are to be resolved during implementation, including a contract dispute clause should be included in the legal framework. The specific terms should be reflected in the model contract documents.</i></p>	1
8(c). Procedures exist to enforce the outcome of the dispute resolution process.	<p>Civil executive procedures exist and are regulated by the Law “On execution of courts’ decisions” which enable the winner in a dispute to seek enforcement of the outcome. Armenia is a member of the New York Convention on enforcement of international arbitration awards. Armenia does not have a process to monitor this area of contract administration and to address performance issues. Implementation mechanisms to enforce the results of dispute resolution are weak and need to be strengthened.</p> <p>8(c) Recommendations:</p> <p><i>The model documents should be made clear on what mechanisms and substantive rules apply in disputes. Industry groups have expressed a keen desire to have in place a robust and well-functioning arbitration system.</i></p>	2

Pillar IV. Integrity and Transparency of the Public Procurement System

Pillar IV covers four indicators that are considered necessary to provide for a system that operates with integrity, has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and has appropriate measures in place to address the potential for corruption in the system. It also covers

important aspects of the procurement system that include stakeholders as part of the control system. This Pillar takes aspects of the procurement system and governance environment and seeks to ensure that they are defined and structured to contribute to integrity and transparency.

Indicator 9: The country has an effective control and audit system. The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls preferably based on risk assessment and mitigation. Equally, the effectiveness of controls needs to be reviewed in terms of expediency and thoroughness of implementation of auditors’ recommendations. The assessor should rely, in addition to their own findings, on the most current Country Financial Accountability Assessment (CFAA) or other analysis including PEFA/PFM assessment that may be available. This indicator has five sub-indicators (a-e) to be rated.

Sub-indicator	Brief Explanation	Score
<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 AB, in accordance with Article 16 of the PPL is designated to supervise compliance with the procurement legislation, including review of evaluation reports, and resolution of bid complaints. In addition, there are multiple internal and external audit bodies. These include: the Chamber of Control (CC), Financial Supervision and Internal Audit Assessment Department of the MOF, which carries out control over execution of the state budget, Supervision Service under the President; and Supervision Service under the Prime Minister’s Office.</p> <p>In 2004, the GOA issued Decree No. 1376-N “On Approving the Strategy for the Development of the System of Internal Audit for the RA State and Local Bodies, Organizations Reporting to Them and State and Local Non-Commercial Organizations.” The Financial Supervision Department of the MOF was renamed to “Financial Supervision and Internal Audit Assessment Department” which carries out audits of procurement as well. Many large procuring entities also have internal auditors but their roles do not seem to be effective.</p> <p>The CC was established by and operating under the law “On the Chamber of Control”, dated January 9, 2007, should conduct external audit. The CC is the Supreme Audit Institution of Armenia. Its Chairman is appointed by the Parliament. It carries out financial, compliance, and performance audits. It operates based on the obligatory annual program of control measures approved by Parliament and submits it reports to it. The CC is entitled to conduct audit at central and local levels. The CC has about 140 staff, 100 of which are auditors. It has an ethical code and manual for financial audit. Although the CC has a training strategy, its auditors have received inadequate training in public procurement.</p>	<p>1</p>

Sub-indicator	Brief Explanation	Score
	<p>Some findings of the CC audits are as follows: (i) procurement planning, including cost estimates, is weak; (ii) there is a discrepancy between procurement plans and factual outcome of procurement tenders; (iii) procured goods often do not comply with technical specifications; (iv) prices obtained through public procurement processes are higher than prevailing market prices for the same goods and works; (v) payments are made for works and services that either never take place or are under-delivered; and (vi) procuring entities frequently violate the provisions of the public procurement legislation.</p> <p>The effectiveness of audit mechanisms is questionable in most cases, undermining the intent of the provisions. Furthermore, having undifferentiated, and multiple entities performing “audits”, with no clear demarcation of responsibilities, might provide possibilities for multiple facilitation payments. There is overlap of what is considered “audit” and what is “revision”, which further undermines the quality and effectiveness of audit.</p> <p>Armenia has too many control/supervision bodies involved in controlling procurement on regular and irregular intervals. This control environment is inefficient because of excessive bureaucracy and lack of clarity of audit rules and audit capacity. Based on the cases of non-compliance reviewed, the audit system is ineffective and needs streamlining.</p> <p>Several supervisory bodies are involved in supervising, inspecting and monitoring the procurement processes in procuring entities, in general, and in the SPA, in particular. These bodies include the President’s supervisory service, Prime Minister’s supervisory service, Prosecutor’s Office, Chamber of Control, Ministry of Finance, etc. There are, however, no clear rules for auditing procurement, and the supervisory bodies discussed above reportedly do not prepare and file any reports about their activities.</p> <p>9(a) Recommendations:</p> <p><i>Strengthen internal and external audit in procuring entities through improving internal auditors’ accountability. For this purpose, it would be necessary to apply internal and external audit standards.</i></p> <p><i>Improve knowledge of audit bodies’ staff through regular training in procurement.</i></p>	

Sub-indicator	Brief Explanation	Score
	<p><i>Introduce reforms in order to align, streamline and clarify principles, processes and functions in the area of internal and external procurement audits.</i></p> <p><i>The responsibility of auditing procurement should be assigned to relevant bodies such as the Chamber of Control. At the same time the capacity of such bodies should be strengthened to carry out an effective audit of procurement in a timely manner. In addition, the rules for the AB to implement its public procurement oversight functions should be set out in detail, including the authority that it would need to require procuring entities procurement data and records. Similarly, rules should be laid out for other bodies, such as the Prosecutor's Office to investigate procurement processes only when there are concrete allegations of fraud and corruption, and violations and crime.</i></p>	
<p>9(b). Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.</p>	<p>Audits, which are basically revisions as these are not based on any generally accepted audit standards, are carried out, and response to or implementation of the auditors' recommendations takes different periods of time depending on the character of the recommendation. Periodic reports are posted on website of audit bodies, although the AB does not regularly receive reports from some procuring entities for follow up.</p> <p>9(b) Recommendations:</p> <p><i>Internal and external audit practices must be improved. These are currently lacking in substance and influence or impact, provide no comments on inefficiencies in procurement, and on adherence to or divergence with plans (as indicator of efficiency).</i></p>	1
<p>9(c). The internal control systems provide timely information on compliance to enable management action.</p>	<p>There are established reporting procedures for reporting to management throughout the year and reporting forms. Article 9 establishes the list of the documents which are submitted to the MOF after the contract is signed. If these documents are not submitted, the Treasury will not carry out payments. In addition, before the Treasury makes payments, it obtains the AB confirmation of compliance with procurement legislation. Managers also provide details of procurement activities in their quarterly financial reports (procurement are closely tied to cash and commitment records).</p> <p>Generally, it is difficult to assess whether follow-up to procurement audit is sufficient because of limited data showing evidence of follow-up on procurement audits and limited evidence of sanctions for non-compliance.</p>	1

Sub-indicator	Brief Explanation	Score
	<p>9(c) Recommendations: <i>Data on the results of audits carried out by different bodies should be collected with a view to ensuring follow up on adverse findings.</i></p>	
9(d). The internal control systems are sufficiently defined to allow performance audits to be conducted.	<p>The current internal audit establishment and practice appear deficient. A detailed manual for internal audit was approved by MOF, in active collaboration with the World Bank. No training has been conducted as yet in accordance with the manual; nor is it apparent that the manual is being followed for internal controls. A draft law on internal audit is under preparation. It is expected that by 2010, the framework and compliance systems for internal audit will significantly improve.</p> <p>9(d) Recommendation <i>Design and implement regular training programs for audit bodies to improve their knowledge of procurement requirements.</i></p>	2
9(e). Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.	<p>Auditors are not sufficiently informed about procurement requirements. The staff of the Financial Supervision and Internal Audit Assessment Department of the MOF receive training but there are significant issues about capacity in audit bodies, including in the CC. External audit, as already noted, suffers from lack of clarity in the exercise of “audit” and “control” functions by multiple entities</p> <p>9(e) Recommendation <i>Design and implement regular training programs for audit bodies to improve their knowledge of procurement requirements.</i></p>	1

Indicator 10: Efficiency of the appeals mechanism. The appeals mechanism was covered under Pillar 1 with regard to its creation and coverage by the legal regulatory framework. It is further assessed under this indicator for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system. There are five sub indicators (a-e) to be scored.

Sub-indicator	Brief Explanation	Score
10(a). Decisions are deliberated based on available information, and the final decision can be reviewed and ruled upon by a body (or	<p>Under the PPL, the AB serves as a complaints body whose decisions may be subject to review by courts. The courts may likewise review decision by procuring entities and tender committees. Any person is entitled to seek review, if he claims to have suffered or can suffer from the actions of the procuring entity and (or) tender commission (Article 52 (1)) of the PPL. Based on the procurement legislation, the MOF, not later than 20 days after the receipt of the appeal and not earlier than in 10 working days, makes a decision with respect to the appeal. The</p>	2

Sub-indicator	Brief Explanation	Score
<p>authority) with enforcement capacity under the law.</p>	<p>decision of the MOF is final, unless a court ruled otherwise (Article 53 (4)). If a supplier (contractor) is not satisfied with the decision made, it has the right to appeal to a court of general civil jurisdiction. There is a need to further articulate and elaborate to rules of procedures of a complaints body.</p> <p>The PPL and Annex 4 of GD853N entitled, “Rules for activities of the unit considering complaints to the authorized body and supervising the procurement process”, regulate the process of handling complaints at MOF. There are terms and timeframes established for resolution of complaints. The MOF issues within 20 days a written decision with explanations concerning the complaint; the court of general jurisdiction proceeds according to the timeframe stipulated by the Civil Procedure Code. Mechanisms and authority for enforcement of decisions are carried out according to general provisions of the Civil Procedural Code.</p>	
<p>10(b). The complaint review system has the capacity to handle complaints efficiently and a means can enforce the remedy imposed.</p>	<p>There are terms and timeframes for resolution of complaints. The MOF considers complaints based on Annex 4 of GD 853N called “Rules for activities of the unit considering complaints to the authorized body and supervising the procurement process”. The PPL is notable in opening up the complaints process to any person (and not just losing bidders) to seek review, if he or she claims to have suffered or can suffer from the actions of the procuring entity and (or) tender commission (Article 52 (1)). There is some ambiguity if this is so broad as go beyond the procurement process and likewise cover even contract disputes during implementation, especially in light of Article 56 (this seems to be the practice). Also worth noting is also the wide subject matter of review which is not restricted to the award. Remedies allow for possibility of redirecting award, granting interim relief through suspension of action and correcting the questioned decision. (There is some clarification needed on the conflicting implications of Article 53(3)(a) and 15(3)d). Damages can also be awarded if decisions are rendered against the procuring entity (Article (30(5)) PPL provides a timeframe (10-20 working days) for issuance of decisions by the AB (Article 53 (4)). Article 56 provides that the actions of the AB and (or) procuring entity and (or) tender commission can be appealed in court.</p> <p>Any person is entitled to seek review at MOF <i>before the conclusion of public procurement contract</i>. After expiration of this period complaints are not taken into consideration by MOF and must be submitted by bidders to the court. (Note: The AB confirmed, and as also stated in Pillar 1, it has dealt with contract implementation issues part of the complaint process.</p>	<p>2</p>

Sub-indicator	Brief Explanation	Score
<p>10(c). The system operates in a fair manner, with outcomes of decisions balanced and justified with available information.</p>	<p>The PPL provides that the decision making process should be based on procurement legislation (Article 53 (4)). The MOF decisions are subject to review by courts of general jurisdiction.</p> <p>The PPL requires the establishment of a standing unit in the AB to perform review functions on complaints which may engage representatives of the stakeholders who are not procurement entities or NGOs, on unpaid basis.(Article 16(2)(3). Currently, the AB performs such functions and has resolved around 50 appeals cases in 2008, approximately 50% of which have been decided in favor of appellant and against the procuring entity.</p> <p>10(c) Recommendations <i>Need for specific procedure and standards for the conduct of proceedings including articulation of the evidentiary requirements, burdens of proof and specific parameters for resolution of disputes.</i></p>	<p>2</p>
<p>10(d). Decisions are published and made available to all interested parties and to the public.</p>	<p>As a result of considering a complaint, the MOF compiles a written recommendation, which is posted on the website of the MOF once approved by the Head of the Authorized Body (Para 5 of Annex 4 of GD 853N). The fact that an appeal is filed is also published in a print media without identifying the personal details of the appellant.</p>	<p>3</p>
<p>10(e). The system ensures that the complaint review body has full authority and independence for resolution of complaints.</p>	<p>The MOF, being the complaint review body, is in principle independent and autonomous with regard to resolving complaints. However, there is a general perception that the current appeals systems is not trustworthy and lacks independence.</p> <p>The current set-up raises issues of potential or perception of conflict of interest by the AB which is involved in organizing regulation and coordination of procurement procedure, advisory functions and at the same time reviewing an appeal or complaint. The current set-up of the AB and the SPA being under the MOF also raises issues from the conflicts perspective. Under OECD-DAC, even though the first review may normally be carried out by the procuring entity, there should be an administrative/judicial review body that is independent from the procuring agency.</p> <p>10(e) Recommendations <i>An appeals system be set up that is totally independent of the MOF, AB, SPA and government entities that operate in an environment free from a perception of conflict of interest, which builds confidence from participants, and which would be efficient, timely and responsive to procurement needs and effective in providing meaningful remedies. The architecture and</i></p>	<p>1</p>

Sub-indicator	Brief Explanation	Score
	<i>configuration of this body has to be organic to Armenia and will ultimately rely on the domestic legal structure. But a varied membership from persons of known probity and independence such as members of NGOs, media, academia, retired jurist or judges, industry and private sector representatives will inspire confidence in terms of fairness and transparency. The AB, given its expertise and organizational advantages, may serve as a secretariat.</i>	

Indicator 11: Degree of access to information. This indicator deals with the quality, relevance, ease of access and comprehensiveness of information on the public procurement system.

Sub-indicator	Brief Explanation	Score
11(a). Information is published and distributed through available media with support from information technology when feasible.	<p>Article 25 states that open tenders and contract awards are announced in the newsletter. (Articles 25 (1) and 11)). However, publication in a bulletin/newsletter has been discontinued (need to confirm). Tenders and contract awards are currently publicly advertised electronically on the website, www.procurement.am, Information on procurement is easily accessible on the MOF website. It is centralized and includes public procurement legislation, procurement advertisements, procurement awards, decisions on complaints. It is planned that procurement plans will be also placed on this website starting in 2009. For bidders, however, must have knowledge of Armenian to access the website.</p> <p>10(a) Recommendations <i>The website needs upgrading. At the time of the writing of this Report, one needed familiarity with Armenian language to navigate the different sections of the website. The website would also be a good place to post bidding documents and related information, including hosting an interactive help or information desk and reporting portal. Publication in mass media such as TV, radio, print media should be continued</i></p>	2

Indicator 12: The country has ethics and anticorruption measures in place. This indicator assesses the nature and scope of the anti-corruption provisions in the procurement system. There are seven sub-indicators (a-g) contributing to this matter.

Sub-indicator	Brief Explanation	Score
12(a). The legal and regulatory framework for procurement, including tender and contract	The legal framework does not establish a clear requirement to include fraud and corruption, conflict of interest and unethical behavior references in the tendering documentation but makes fraud and corruption punishable acts under the legislation (PPL calls these offenses against economic activities or public service). There is also a need to link these aspects of the PPL to the overall	1

<p>documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior; it sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.</p>	<p>anti-corruption strategy of the government. The PPL should provide a direct reference to specific offenses under criminal laws and illustrate what constitutes corruption and fraud in procurement processes (e.g., collusion, falsified bid security, fraudulent documents, bribery, etc.)</p> <p>Under Article 5 (2)(d), there is exclusion of companies or representatives of their management bodies who within the period of the last three years were convicted of offenses against economic activities or public service; submitted false data in order to sign a procurement contract; violated obligations under procurement contract which caused unilateral termination of the contract by procuring entity. (See previous comments on this blacklisting and debarment mechanism)</p> <p>There are likewise conflict of interest provisions with respect to members of tender committees, disqualifying members who are “related” with potential participants in the procurement process. This rule needs to be expanded and aligned with the general formulation found in model corruption legislations. The provisions on Consultant Services should also address issues of conflict of interest, which are bound to arise in relation to conflicting consulting assignments, so that these will be addressed by lining up appropriate incentives, requiring appropriate disclosure and/or applying disqualification rules in bidding for upstream-downstream activities. (e.g., consulting firm which designed the specifications are oftentimes conflicted, in the absence of appropriate safeguards, in competing for downstream contracts that utilize the design which it developed)</p> <p>The PPL (Article 5 (6)) provides for disqualification of bidders/contractors/suppliers that have engaged in offenses against economic activities or public service; submitted false data in order to sign a procurement contract; violated the obligations under procurement contract which caused unilateral termination of the contract by the procuring entity. The bidding documents do not include adequate provisions on fraud and corruption. The PPL does not give precise instructions on how to incorporate the matter in tendering documents.</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 Criminal Code provides legal provisions that define fraudulent and corrupt practices and set out the responsibilities and sanctions for individuals or firms indulging in such practices. Annex 1 (Points 5, 2) and 7, 3), c) of the Criminal Code includes conflict of interest rules applying in public procurement. Provisions related to bribery of officials and applicable sanctions are stipulated in the Criminal Code.</p>	<p>2</p>

	<p>12(b) Recommendations</p> <p><i>The PPL should include a direct reference to specific offenses under criminal laws and illustrate what constitutes corruption and fraud in procurement processes (e.g., collusion, falsified bid security, fraudulent documents, bribery, etc.), and accordingly set out responsibilities and accountabilities of persons involved in the procurement process.</i></p>	
12(c). Evidence of enforcement of rulings and penalties exists.	<p>There has not been a precedent of a civil servant charged with criminal offence in the sphere of public procurement. Some cases are reportedly under active investigation. Press releases have also been made about findings in the conduct of audits by certain government agencies with indication of intention to bring the matter to prosecution. The media, including various articles written by investigative journalists, point to several cases of alleged corruption in public procurement, including contract implementation. These cases relate to incorrect investment decisions, including the installation of pipes for water supply in a community while no main source of water supply existed, acceptance of poor quality of goods and works at high prices.</p> <p>12(c) Recommendations</p> <p><i>Findings of audits and reports obtained through the complaint system or through the internal and external control system, including investigative reports of journalists and NGOs, should be followed up with investigation, prosecution and other enforcement measures.</i></p>	1
12(d). Special measures exist to prevent and detect fraud and corruption in public procurement.	<p>Since 2003, there are no changes in the corruption index of the country. The Anticorruption Strategy adopted in 2003 is currently being revised. , which is being financed by USAID, UNDP and OSCE. An Anticorruption Council (AC) led by the PM has been established under the office of the President. It comprises of the different ministers, vice speaker of the Parliament, Head of the Central Bank and state agencies and meets once every quarter. There is no implementation unit with staff assigned for this task. .Anti-corruption law is yet to be formulated. The Criminal Code stipulates sanctions for criminal offences. A Commission on Monitoring and Execution of Anticorruption Strategy headed by the Advisor to the President has also been established, consisting of are representatives of NGOs, and members of Parliament. It does not work on a permanent basis and meets once every 3 months and less frequently in practice. The Criminal Code (CC) does not have a separate chapter on anticorruption criminal offences. There are sanctions stipulated for bribes, offences against the civil services, theft, economical offences, embezzlement, etc. These offences are referred in various sections in CC and are not grouped together as anticorruption offences. The Office of Prosecutor does not have any statistics on anticorruption in public procurement. Separate articles of CC were announced as corruption offences by the Order of the Office of</p>	2

	<p>Prosecutor. There are no special measures for detection and prevention of corruption associated with public procurement, special anticorruption courts and dedicated investigative bodies that are responsible for investigating and prosecuting cases of corruption. Corruption cases are dealt in courts of general jurisdiction.</p> <p>12(d) Recommendations: <i>Portals, including website and hotlines and mailing addresses, should be available and easily accessible for people who want to report allegations and anomalies, with assurances of protection of anonymity and confidentiality.</i></p>	
<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 behavior.</p>	<p>There is a need for a more pro-active and robust reaching out to the private sector, media, non-government entities and civil society. A sustained dialogue and consultation with various stakeholders needs to be put in place, which could be achieved by the establishment of an informal network of interested parties on consultative basis or a formal council that meets regularly to discuss policy issues, reform proposals and address systemic problems.</p> <p>PPL provides a platform for civil society engagement in the procurement process. The PPL requires the establishment of a standing unit in the AB to perform review functions of complaints and has the authority to engage representatives of the stakeholders who are not procurement entities or NGOs, on an unpaid basis.(Article 16(2)(3).</p> <p>GD853N, Annex 2, para. 4(2), provides mechanism for any party who are interested in the bidding process, including representatives from civil society, to attend. In its current formulation, these “advisers” are considered “members” with an “advisory vote.” This should be further clarified since the membership implies participation in the decision-making process (albeit on an advisory capacity). In designing the system, consideration should be given to the value of maintaining the independence and oversight roles of these “observers”, and measures introduced for preventing co-optation. In order to perform an effective oversight role, these “observers” should have a mechanism to report their observations and provide instant feedback. Thus, at their option, they should be allowed to make their comments in the minutes or be provided with some formal vehicle to report their observations. This should not be made obligatory on their part in all cases. Transparency International Armenia has participated as observer in several previous tenders.</p> <p>The architecture of complaints and appeals system should be reformed in terms of increasing its independence.</p>	<p>2</p>

	<p>12(e) Recommendations</p> <p><i>Consider establishment of an informal network of interested parties and stakeholders on consultative basis or a formal council that meets regularly to discuss policy issues, reform proposals and systemic problems in the procurement process.</i></p> <p><i>Representatives from civil society should remain as observers, monitors or oversight agents and not as participants or advisers in the procurement decision-making process. A mechanism should be developed to obtain feedback and observations.</i></p> <p><i>An appeals system should be established which is absolutely independent of the MOF, AB, SPA and government entities, which operates in an environment free from a perception of conflict of interest, which builds confidence from participants, and which would be efficient, timely and responsive to procurement needs and effective in providing meaningful remedies. The architecture and configuration of this body has to be organic to Armenia and will ultimately rely on the domestic legal structure. But a varied membership from persons of known probity and independence such as members of NGOs, media, academia, retired jurist or judges, industry and private sector representatives will inspire confidence in terms of fairness and transparency. The AB, given its expertise and organizational advantages, will serve as a secretariat.</i></p>	
<p>12(f). The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.</p>	<p>The police authorities and investigators maintain a hotline for reporting general criminal violations. Recent amendments¹⁰ to the Criminal Procedure Code provides for protection of persons participating in a criminal trial but the legislation does not address the protection of whistleblowers or informants, who voluntarily provide information about allegations of corruption to relevant authorities. Under the current institutional structure of procurement, complaints and allegations are received through the complaints process to the AB.</p> <p>12(f) Recommendations</p> <p><i>Portals, including in the website and hotlines and mailing addresses, should be made available and easily accessible for anyone interested in reporting allegations and anomalies, with assurances of protection of anonymity or confidentiality.</i></p>	<p>2</p>
<p>12(g). Existence of codes of Conduct/Codes of Ethics for participants that</p>	<p>There are laws and regulations on civil servants which include elements of code of ethics, but there is no Code of Ethics specifically with provisions for those involved in public financial management, including procurement. There are no specific codes of ethics that particularly apply to the procurement profession. GD</p>	<p>0</p>

¹⁰ Law Amending the RA Criminal Procedure Code, May 25, 2006

<p>are involved in aspects of the public financial management systems that also provide for disclosure for those in decision-making positions.</p>	<p>853N provides some conflict of interest rules with respect to prospective tender committee members.</p> <p>12(g) Recommendations <i>Ethics rules, codes of conduct and conflict of interest provisions relating to public procurement should be codified, widely disseminated and systematically enforced.</i></p>	
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Attachment 1 to Appendix 2 - Pillars and Indicators – Summary of Scores

	Indicator Score	Avg. Score	Pillar Avg.
Pillar I – Legislative and Regulatory Framework			2.1
Indicator 1. Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.			
Subindicator 1(a) - Scope of application and coverage of the legislative and regulatory framework.	3		
Subindicator 1(b) Procurement methods	2		
Subindicator 1(c) - Advertising rules and time limits	2		
Subindicator 1(d) - Rules on participation	3	2.4	
Subindicator 1(e) - Tender documentation and technical specifications	2		
Subindicator 1(f) - Tender evaluation and award criteria	2		
Subindicator 1(g) - Submission, receipt, and opening of tenders	2 (see Appendix page 17)		
Subindicator 1(h) – Complaints	2		
Indicator 2. Existence of Implementing Regulations and Documentation.			
Subindicator 2a) - Implementing regulation that provides defined processes and procedures not included in higher-level legislation	2		
Subindicator 2(b) - Model bidding documents for goods, works, and services	1	1.8	
Subindicator 2 (c) - Procedures for prequalification	2		

	Indicator Score	Avg. Score	Pillar Avg.
Subindicator 2(d) - Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion	2		
Subindicator 2(e) - User's guide or manual for contracting entities	2		
Subindicator 2(f) - General Conditions of Contracts (GCC) for public sector contracts covering goods, works, and services consistent with national requirements and, when applicable, international requirements	2		
Pillar II. Institutional Framework and Management Capacity			1.7
Indicator 3. The public procurement system is mainstreamed and well integrated into the public sector governance system.			
Subindicator 3(a) - Procurement planning and data on costing are part of the budget formulation process and contribute to multiyear planning	2		
Subindicator 3(b) - Budget law and financial procedures support timely procurement, contract execution, and payment	3	2	
Subindicator 3(c) - No initiation of procurement actions without existing budget appropriations	2(see annex page 30)		
Subindicator 3(d) - Systematic Completion Reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming	1		
Indicator 4. The country has a functional normative/regulatory body			
Subindicator 4(a) - The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework	2		
Subindicator 4(b) - The body has a defined set of responsibilities	1		
Subindicator 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 its responsibilities	2	1.5	
Subindicator 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 (Due to	1		

	Indicator Score	Avg. Score	Pillar Avg.
the nature of this subindicator, scoring is either a 3 or a 0)			
Indicator 5. Existence of institutional development capacity.			
Subindicator 5(a) - The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information	3	1.5	
Subindicator 5(b) -The country has a system for collecting and monitoring procurement statistics	1		
Subindicator 5(c) - A sustainable strategy and training capacity exists to provide training, advice, and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented	1		
Subindicator 5(d) - Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues	1		
Pillar III. Procurement Operations and Market Practices			1.5
Indicator 6. The country’s procurement operations and practices are efficient.			
Subindicator 6(a) - The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities	2	1.8	
Subindicator 6(b) - The procurement training and information programs for government officials and for private sector participants are consistent with demand.	1		
Subindicator 6(c) - There are established norms for the safekeeping of records and documents related to transactions and contract management	2		
Subindicator 6(f) - There are provisions for delegating authority to others who have the capacity to exercise responsibilities	2		
Indicator 7. Functionality of the public procurement market.			
Subindicator 7(a) - There are effective mechanisms for partnerships between the public and private sectors	1	1.3	

	Indicator Score	Avg. Score	Pillar Avg.
Subindicator 7(b) - Private sector institutions are well organized and able to facilitate access to the market	1		
Subindicator 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	2		
Indicator 8. Existence of contract administration and dispute resolution provisions.			
Subindicator 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	1	1.3	
Subindicator 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	1(see Annex page 43)		
Subindicator 8(c) - Procedures exist to enforce the outcome of the dispute resolution process	2(see Annex page 43)		
Pillar IV. Integrity and Transparency of the Public Procurement System			1.7
Indicator 9. The country has effective control and audit systems.			
Subindicator 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	1	1.2	
Subindicator 9(b) - Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance	1		
Subindicator 9(c) - The internal control system provides timely information on compliance to enable management action	1		
Subindicator 9(d) - The internal control systems are sufficiently defined to allow performance audits to be conducted	2		
Subindicator 9(e) - Auditors are sufficiently informed about procurement requirements and	1		

	Indicator Score	Avg. Score	Pillar Avg.
control systems to conduct quality audits that contribute to compliance			
Indicator 10. Efficiency of appeals mechanism.			
Subindicator 10(a) - Decisions are deliberated based on available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law	2		
Subindicator 10(b) - The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed	2		
Subindicator 10(c) - The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information	2	2	
Subindicator 10(d) - Decisions are published and made available to all interested parties and to the public	3		
Subindicator 10(e) - The system ensures that the complaint review body has full authority and independence for resolution of complaints	1 (see Annex page 50)		
Indicator 11. Degree of access to information.			
Subindicator 11(a) - Information is published and distributed through available media with support from information technology when feasible	2	2.0	
Indicator 12. The country has ethics and improper procurement practices measures in place.			
Subindicator 12(a) - The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing improper procurement practices, fraud, conflict of 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	1		
Subindicator 12(b) - The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices	2	1.4	
Subindicator 12(c) - Evidence of enforcement of rulings and penalties exists	1		
Subindicator 12(d) - Special measures exist to prevent and detect fraud and improper	2		

	Indicator Score	Avg. Score	Pillar Avg.
procurement practices in public procurement			
Subindicator 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.	2		
Subindicator 12(f) - The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	2		
Subindicator 12(g) - Existence of Codes of Conduct/Codes of Ethics for participant that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions.	0		

Attachment 2 to Appendix 2 – Compliance/Performance Indicators

No.	Indicator	Indicator Objective	Measurement	Status and Trend	Performance
	Advertisement of bids and publication of contract awards	Transparency of system	Number of tenders (%) for which bid invitation and contract award information are published (Norm: 95% or more)	All tender notices and information on contract awards is published in the media and on the website.	Satisfactory
	Time for preparation of bids	Equal opportunity to bidders to participate in tenders	Average number of days between tender advertisement and tender submission/opening (Norm: four weeks or more)	Tender: 30 calendar days; Invitation to quote: 10 days.	Satisfactory
	Time for bid evaluation	Efficiency of tendering process	Number of days between bid opening and publication of contract award information (Norm: 90 days or less)	25 days	Satisfactory
	Bidder participation	Level of private sector's confidence in the tendering process	Number of bidders submitting bids in each tendering process (Norm: 5 bids or more)	Average two bids.	Unsatisfactory
	Method of procurement used	Competition level	Use by number of less competitive tendering processes	Incomplete Data.	Not rated.
	Direct contracting	Transparency	Percent of contracts (by number and value) awarded on a Single Source basis (Norm: 10% in number; and 5% in value)	Reportedly about 10% in value but data incomplete and exclusive of procurement from monopolies and for defense purposes.	Unsatisfactory due to use of Single Source Method of procurement.

No.	Indicator	Indicator Objective	Measurement	Status and Trend	Performance
7	Cancellation of ongoing tenders	Trustworthiness of the tendering process	Percentage of tendering processes cancelled (Norm: 5% or less)	No data.	Not rated.
8	Number of complaints	Fairness of the process	Number of complaints submitted (Norm: Not less than 10% and not more than 50%)	12 in 2006, 14 in 2007 and 53 complaints were received in 2008. Of the total 39 were rejected. Low number shows lack of trust in the system.	Unsatisfactory
9	Time to answer to complaints	Efficiency and fairness of the complaint resolution mechanism	Number of days between submission and final response to protects (Norm: 21 days or less)	10 to 20 days	Satisfactory
10	Complaint resolution	Effectiveness of the complaint resolution mechanism	Percentage of contracts with award recommendation modified because of a complaint (Norm: 5% or less)	No data available.	Satisfactory
11	Late payments	Quality and consistency of payment process	Percentage of payments made more than 45 days late (Norm: 10% or less)	Payments are made on time.	Satisfactory
12	Price increase	Quality of bidding and contract management	Percentage increase of final contract amount due to change and amendments (Norm: 15% or less)	Price increases are frequently made in multi-year contracts.	Unsatisfactory
13	Restricted competition for consultants	Quality of services	Percentage of process for selection of consultants using open competition	Shortlisting procedure exists but needs more clarity and	Unsatisfactory

No.	Indicator	Indicator Objective	Measurement	Status and Trend	Performance
			instead of shortlisting methodology (Norm: 5% or less)	objectivity. Few cases of consultant selections during 2008. Design contracts are defined as works contracts.	
14	Selection method for consultants	Weight of quality to price ratio used in selection	Percentage of process for selection of consultants having price weighted more than 20% of the total score (Norm 5% or less)	Few cases of selection of consultants but price usually weighted more than 20%	Unsatisfactory

Appendix 3 - Case Studies

CASE STUDY I – ELECTRONIC GOVERNMENT PROCUREMENT (E-GP)

Executive Summary

Given the importance of e-GP for improving the public procurement system in general and its transparency and efficiency in particular, an overall assessment of the current status of the e-GP program in Armenia was conducted as part of the CPAR. The e-GP assessment is based on the MDB e-GP readiness assessment tool which was developed jointly by the Asian Development Bank, the Inter-American Development Bank, and the World Bank¹¹. It addresses a set of key success factors for the introduction of e-GP which go far beyond the mere application of information technology. These foundations include the need of strong government leadership & management planning, appropriate policy & legislation, extensive buyer & supplier activation, and standardization & infrastructure development.

The launch and initial phase of the e-GP program in Armenia including the e-GP roadmap, the Government Decree on the e-GP strategy, and the development of an e-GP application under the Public Sector Modernization Project established a promising basis for the successful introduction of e-GP. The Ministry of Finance has provided great leadership in this context and is collectively recognized as the lead agency for the implementation of the e-GP agenda. However, the implementation of e-GP has been delayed, mainly due to political change, lack of capacity, an overambitious implementation approach, and the absence of a detailed action plan.

While the current legislation addresses the use of electronic means for public procurement, it appears desirable to include more detailed reference with regard to electronic procurement transactions in the procurement regulation. Much work has been done to reach out and build capacity among buyers and suppliers and it is critical to continue these efforts to manage successfully the change from paper-based to electronic procurement and develop appropriate capacity. On the other hand, the capacity of the Government of Armenia to design and implement an e-GP system appears limited thus suggesting the use of external expertise for the systems needs analysis, design, development, and roll-out. The application of procurement and technology standards is highly recommended and needs to be coordinated across the Government of Armenia. Internet penetration improves fast and as part of the e-GP implementation program, the Government needs to ensure accessibility to online government procurement opportunities in order not to limit competition to those firms which are connected to the Internet.

Building on the strong will and intent of the Government of Armenia, it is recommended that the Ministry of Finance continues to lead the adoption of the e-GP agenda based on an updated strategy and a less ambitious implementation approach. More specifically, the updated strategy should provide for an e-GP implementation plan in manageable phases with clearly defined actions, roles, and milestones. It should also address the need of capacity building among procuring entities and private industry. The e-GP component under the Public Sector Modernization Project should be limited to the design and implementation of an e-Tendering component.

¹¹ <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=645459>

Introduction

1. On September 23-26, 2008; the World Bank organized a mission to Yerevan with the objective to:

- (i) Assess the current situation and status of the e-GP program implementation;
- (ii) Identify the key problems and reasons for the delay of the e-GP implementation;
- (iii) Suggest next steps and provide advice on developing an action plan to move the e-GP agenda forward.

2. The findings and suggestions of this case study are based on discussions between the mission participants (Knut Leipold, OPCPR, and Davit Melikyan, ECSPE) and the following stakeholders:

- **Ministry of Finance:**
 - Mr. Tigran Davtyan, Minister of Finance
 - Mr. Karen Brutyan, Head of Procurement Process Regulation Department
 - Mr. Edgar Avetyan, Director of the FFPMC PIU
- **Adviser of the Prime Minister:**
 - Mr. Aram Gharibyan
- **Ministry of Economy:**
 - Ms. Zhenya Azizyan, Head of IT Development Department
- **State Procurement Agency:**
 - Mr. Karapet Jghalyan, Deputy Head
 - Mr. Arthur Arakelyan, Head of Procurement Department
- **Control Chamber:**
 - Mr. Ishkhan S. Zakaryan, Chairman
 - Mr. Eolyan Levon, Deputy Chairman
- **Private industry representatives from 4 government suppliers.**

3. In addition, several relevant documents were reviewed:

- *Implementation Road Map for Electronic Government Procurement* finalized after the international e-GP workshop in Yerevan, June 5-7, 2005;
- *Government Decree No. 137N* on the "Strategy for Introducing the System of Electronic Procurement" approved on January 26, 2006;
- *In-Depth Review* "E-Government Procurement in Armenia", January 2008;

- **Government Decree No. 853N** on public procurement rules for approving procurement specifications, prior review, procurement financing, bidding committees, procurement minutes, complaints, supervision, procurement outside Armenia, monopoly services; approved on June 5, 2008;
- **RFP** on “Developing Software for the Government Electronic Procurement System” under the Public Sector Modernization Project;
- **Aide Memoire** on “Armenia E-Development and Competitiveness Enhancement”, World Bank mission, May 26-30, 2008;
- **Draft Strategy** for Reforming the Procurement System, 2008.

4. During a follow-up mission as part of the CPAR on December 15-20, 2008; meetings were held with representatives from the Ministry of Finance (Karen Brutyan) and the State Procurement Agency (Arthur Arakelyan). The mission also visited several purchasing agency (Marzpetaran of Armavir and three health care centers).

5. This case study provides some background information about the history of e-GP program adoption in Armenia in Section I. Section II summarizes the current status of e-GP implementation taking into consideration the key foundations for successful e-GP implementation as described in the above-mentioned e-GP readiness assessment guide of the Multilateral Development Banks’ e-GP Working Group. Section III identifies the key issues of the e-GP implementation in Armenia including reasons for its delay and the need to review the current situation. Section IV suggests the way forward with recommendations on alternative scenarios and related risks.

I. Background

6. Under the leadership of the Procurement Process Regulation and Budgeting Methodology Department in the Ministry of Finance, Armenia identified the use of electronic means as a key driver for increased transparency and efficiency of public procurement. As part of the procurement reform agenda, an e-GP program was launched in 2005 with the support of USAID and the World Bank (IDF grant for public procurement reform).

7. An international e-GP workshop was held in Yerevan in June 2005 to raise the awareness of the role of e-GP among representatives of the line ministries and other state organizations. With USAID having prepared an initial e-GP strategy, the workshop resulted in collective understanding with regard to the definition, benefits, and key success factors of e-GP program adoption based on international experience and lessons learned.

8. E-GP does not only offer a huge potential for increased transparency and compliance with procurement rules; it also reduces the opportunity for fraud and corruption and provides for efficiency in public procurement. Price transparency due to published contract award information; increased competition due to better access to and availability of public procurement information; and considerably reduced transaction costs for buyers and suppliers due to automated and streamlined procurement processes typically result in initial price reductions and savings of 10% (e.g. Korea, India, Mexico) or even more (e.g. 20% in Romania, 25% in Brazil).

9. However, it would be too easy to simply install computers and software to achieve these benefits. The successful introduction of e-GP depends on a set of foundations which go far beyond the mere application of information technology. These foundations include the need of strong government leadership & management planning, appropriate policy & legislation, extensive buyer & supplier activation, and standardization & infrastructure development.

10. Based on the draft e-GP strategy presented by USAID at the international workshop, the Ministry of Finance hired an international e-GP expert under the IDF grant who helped to finalize the e-GP strategy for Armenia and develop an e-GP Implementation Roadmap with clearly defined actions and responsibilities. Based on the roadmap, the Government of Armenia approved the Government Decree No. 137N on the "Strategy for Introducing the System of Electronic Procurements" on January 26, 2006.

11. Since then, the Ministry of Finance has tried to use the Public Sector Modernization Project for the design and development of an e-GP software application including related services such as installation, training, and operation of the e-GP platform. To date; no such application has been developed and a Request for Proposal for the development of an e-GP software application has been drafted by the MOF under the Public Sector Modernization Project.

12. While the new Government of Armenia shows interest in improving the transparency and efficiency of the public procurement system, there is some concern with regard to the appropriateness of moving forward with the e-GP implementation. To this end, the Minister of Finance welcomed the Bank's suggestion to prepare this case study on e-GP as part of the CPAR.

II. Current Status of the e-GP Program Implementation

13. The overall assessment of the current status of the e-GP program in Armenia reflects findings with regard to the following key foundations for successful e-GP implementation: government leadership & management planning, policy & legal framework, buyer & supplier activation, standards & infrastructure, and systems & applications.

Government Leadership & Management Planning

14. As recommended in the e-GP implementation roadmap, strong leadership at high government level is required to successfully implement e-GP and manage the resulting legal, institutional, and procedural changes based on a collectively agreed and supported implementation strategy. The Government of Armenia has provided leadership with a lot of progress in the area of e-GP, e.g. the development of an e-GP roadmap; approval of a Government Decree on the e-GP strategy; inclusion of e-GP in the procurement legislation; initial e-GP awareness raising and capacity building among buyers and suppliers; and the operation of a public procurement website.

15. The current situation provides a good and promising basis for the continuation of e-GP implementation and is a result of the strong leadership provided by the Ministry of Finance so far. The leading role of the Ministry of Finance in general and of its Procurement Process Regulation Department (PPRD) in particular for the e-GP

implementation agenda in Armenia was confirmed in all meetings and discussions with the different government officials.

16. It seems that some initial concerns about conflicting roles in leading the e-GP agenda between the PPRD and the State Procurement Agency (SPA) were sufficiently addressed by the mutual agreement on gradually transforming the role of the SPA from a central procuring agency to a central Electronic Procurement Servicing Center (EPSC). This approach follows the recommendation of the e-GP roadmap to assign the leading role of e-GP implementation to the PPRD and re-evaluate the role of the SPA in the context of decentralizing public procurement.

17. As much as the PPRD has provided strong leadership in adopting the e-GP agenda in Armenia, it appears that there is a lack of appropriate resources required for the successful management of the design and implementation of an e-GP system. While the PPRD is maintaining and operating a website with public procurement information, it could not hire staff with relevant e-GP experience due to the absence of such expertise in Armenia and due to the lack of attractive incentive schemes in the public sector.

18. In view of the recent political change and a new Government in place, it is encouraging to see the continuation of the strong e-GP leadership by the Ministry of Finance as well as of the collective agreement on the PPRD as e-GP lead agency and the joint commitment of the Government regarding the e-GP program implementation.

Policy & Legal Framework

19. With the approval of Government Decree (No. 137-N) on the "Strategy for Introducing the System of Electronic Procurement", the Government of Armenia has established an important component as part of the public procurement policy which promotes value for money, open and effective competition, public procurement performance, and economic development. The Government Decree provides the direction and intent to transform the public procurement system by implementing an e-GP program with the objective of decentralizing public procurement and improving its transparency and efficiency.

20. Legislation with regard to the use of electronic means in public procurement includes two major laws: the public procurement law adopted in December 2004, and the electronic document and signature law (both in effect since January 2005). The public procurement law refers to the possibility of using electronic procurement as stipulated by the Government of Armenia and does not include a set of minimum rules and requirements for e-GP. While the Government Decree on the e-GP strategy lists the main e-GP functionalities, a secondary legislation where the government would stipulate these rules and requirements in detail has not been developed yet. Similarly, the electronic signature law refers to the use of digital certificates issued by certification authorities; but no such authority has been established so far.

21. As suggested in the e-GP implementation roadmap, the use of electronic means in public procurement requires a review of traditional procurement policies and regulations with regard to the automation of rules and processes and their applicability across public agencies. The introduction of an e-GP application is subject to the design of electronic procurement processes. Government Decree No. 853N, approved on June

5, 2008, describes public procurement rules and procedures and refers to the use of electronic means mainly in the context of advertizing (e.g. official procurement bulletin, procurement plans, procurement notices). However, as mentioned in the last preceding paragraph, there is no such detailed description for the electronic procurement processes in their entirety (e.g. for e-Tendering including the rules for downloading bidding documents, uploading bids with appropriate security mechanisms, or opening bids).

22. The implementation of e-GP overlaps with other electronic government initiatives, such as e-Government policies, standards, or related legislation (e.g. e-signatures). While the Ministry of Economy is in charge of the broader e-Government agenda in Armenia, there is agreement on a coordinated approach between the PPRD and the Ministry of Economy to implement the e-GP program in line with existing e-Government standards. For instance, the e-signature law requires government agencies to use digital certificates for authentication, which would need to be taken into consideration for the e-GP application.

Buyer & Supplier Activation

23. The activation of the purchasing agencies as well as of the private industry and of the public at large is one of the most critical success factors of the e-GP program. Transforming the traditional paper-based procurement system and structures into an innovative electronic public procurement system requires the management of change through extensive awareness raising and capacity building programs.

24. The PPRD has provided a lot of leadership in raising the awareness with regard to the introduction of e-GP in Armenia. Many stakeholders in the public and private sector are aware of the e-GP agenda and the PPRD should continue to play an active role in reaching out on the subject matter, not only through common communication channels, such as TV, radio, Internet, newspaper, workshops, etc; but also by producing and marketing relevant deliverables in a phased approach to demonstrate the walk of the talk.

25. For instance, the public procurement website of the PPRD provides a lot of valuable procurement information. While public agencies and larger private companies seem to use this website, there is still room for reaching out to smaller companies on the one hand and for adding new functionalities on the other hand. In this way, buyers and suppliers can increasingly use the available electronic means and recognize the benefits for their business.

26. One of the major issues raised in all discussions with government and private industry representatives is the lack of capacity with regard to e-GP. While workshops, training programs, and international study tours have contributed to developing a good understanding of e-GP among some procurement-related government officials, it appears that the capacity in terms of designing and implementing an e-GP system and in terms of using such a system is still rather limited.

27. The lack of e-GP design and implementation capacity within the government can be addressed by using external expertise for the systems needs analysis, design, development, and roll-out. However, the PPRD should assign staff to be involved in these procedures thus creating an enabling environment and sufficient capacity for

successful e-GP implementation within the government. The planned transformation of the SPA into an e-GP support and training center requires a change management and capacity building program by itself. While the SPA is aware of its future role, it has not yet been staffed with appropriate skills and expertise.

28. On the other hand, the users of the e-GP system must be involved and educated as well. Smaller purchasing agencies, such as health care centers at Marzpetaran level, do not seem to be ready and prepared to use the Internet for the procurement of their required goods, works, and services, although they all have one or more computers, in most cases even connected to the Internet. This does not only apply to the public procurement agents, but also to the private suppliers and contractors. They will see benefits in e-GP, if it improves its confidence in the integrity, fairness, consistency, transparency and efficiency of the procurement process and provides open access to a wider range of business opportunities. To this end, a program for e-GP training and advisory support will need to be designed and delivered.

Standards & Infrastructure

29. The introduction of e-GP requires the application of procurement standards with regard to procedures and documents as well as of technical standards with regard to information technology. Procurement procedures are standardized to a certain extent in the relevant legislation and can be taken into consideration when designing an automated workflow. However, standardized bidding documents, which typically provide the basis of uniform online templates in an e-GP application, do not seem to be applied across the government in Armenia. In the absence of government-wide technical standards with regard to information technology, the PPRD will coordinate the use of such standards within the government in general and with the Ministry of Economy in particular.

30. The full potential of increasing transparency and efficiency of the public procurement system by using electronic means requires a well-developed infrastructure with regard to Internet connectivity and accessibility in Armenia. Government agencies are basically equipped with computers including Internet access and so is the private industry. More importantly, while the Internet penetration according to Internet World Stats¹² appears very low with 5.8% of the population, the Internet use growth rate of 476% over the last 8 years indicates an increasingly faster growing Internet usage in Armenia.

31. However, a more systematic approach needs to ensure that procuring units are appropriately equipped, connected to the Internet, and trained to use the technology. To this end, the e-GP program implementation should go along with the broader ICT agenda of the Government of Armenia which, among others, includes a joint initiative with the World Bank regarding ICT development in general and an ICT infrastructure component in particular.

¹² www.internetworldstats.com

32. For example, a recent World Bank mission to Armenia¹³ submitted the following recommendations in the context of developing the ICT infrastructure in Armenia:

- Promote further development of the telecom sector regulatory framework;
- Develop the national broadband backbone network;
- Develop a network of ICT tele-centers and rural broadband access facilities.

33. The latter recommendation would address the issue of excluding those potential government suppliers and contractors from e-GP participation who do not have the required infrastructure in place. The SPA as future EPSC could play an important role in this context.

Systems & Applications

34. The level of e-GP introduction is often measured against the availability of an e-GP application to conduct online procurement transactions. This, however, can only be achieved after having successfully addressed the other key foundations listed above. Some considerable work has been done in this regard under the leadership of the PPRD which, among others, resulted in the development of a central public procurement portal www.procurement.am.

35. The central public procurement portal is maintained and operated by the PPRD in the Ministry of Finance. All relevant information being posted on that website is entered by the PPRD. Besides a whole range of procurement information including legislation, procurement notices, and contract award information, the website also provides a subscription facility to receive relevant information by email. The website is available in Armenian language with English and Russian versions under construction.

36. The website also provides a link to an electronic catalogue of some 13,000 common use goods, works, and services which are subject to periodic contracts organized and managed by the SPA. While the periodic contracts so far have been similar to closed framework agreements, under which a qualified firm with the lowest unit prices was selected for a period of time (2 to 3 years) as the provider for all purchase orders, Government Decree 853-N introduced a mechanism to increase the competition under periodic contracts. The new procedure allows any interested bidder to register and qualify for a framework agreement. Every 3 months (goods) or 12 months (works, services), all qualified bidders will submit their best prices and the bidder with the lowest price will be the selected contractor for the next 3 and 12 months respectively. Since electronic means typically facilitate the procedures under framework agreements by allowing mini-competitions for each purchase order (e.g. through electronic reverse auctions or electronic requests for quotations) and subsequently online ordering and payment, the setting up and management of periodic contracts will definitely benefit from the future e-Purchasing functionalities which are planned to be implemented after the e-Tendering system.

¹³ Aide Memoire on “Armenia E-Development and Competitiveness Enhancement”, World Bank mission, May 26-30, 2008

37. The website is a great achievement and the announcement and marketing of its existence and functionalities should be intensified. In this way, all stakeholders including government agencies, private companies, and the public at large will see an initial deliverable of the phased e-GP implementation and the related benefit of improved transparency of and accessibility to public procurement information.

38. The next step includes the introduction of e-GP transactions in a phased approach as suggested in the e-GP implementation roadmap. The Government of Armenia and the World Bank agreed to use the Public Sector Modernization Project to finance the design and implementation of an e-GP system. While a contract was awarded to the Institute for Informatics and Automation Problems of the National Academy of Sciences in January 2007 to carry out a needs analysis and detailed functional and technical design study, this contract was cancelled due to a major delay in approving the public procurement rules, procedures, and regulations, which were finally approved by Government Decree (No. 853-N) in June 2008.

III. Key Issues of e-GP Program Implementation

39. The launch and initial phase of the e-GP program including the e-GP roadmap, the Government Decree on the e-GP strategy, and the development of an e-GP application under the Public Sector Modernization Project established a promising basis for the successful introduction of e-GP in Armenia. However, the following four key issues resulted in the current delay and uncertainty regarding the implementation of the e-GP agenda: political change, lack of capacity, overambitious implementation approach, and absence of a detailed action plan.

Political Change

40. Political change typically has an impact on the implementation of major projects within or driven by the government. Nothing is different in Armenia than in so many other countries all over the world: a new government is being established with new ministers who take important decisions with regard to continuing, reviewing, or stopping ongoing projects. In most of these cases, projects are delayed considerably if not cancelled. The new Government of Armenia, which has been in place since April 2008, showed some hesitation in moving forward with the e-GP agenda and asked for a procurement reform strategy that addresses a more systematic e-GP program preparation and implementation.

41. First, considerable concern was expressed on the absence of reliable information on the cost of implementing e-GP and on the return on investment. In particular the allocation of USD 2.3 million as co-financing to the USD 600,000 funded under the Public Sector Modernization Project for the development of an e-GP application has raised the question of what the Government of Armenia will get for that amount of money and whether this investment can be justified to all stakeholders. Price savings of 10% to 20% as reported in many countries due to increased price transparency and competition may not necessarily be achieved in Armenia, where the market is limited and collusion among suppliers and contractors could continue independently from the use of e-GP.

42. The mission pointed out, that e-GP performance indicators should be introduced such as changes in the average number of bidders or in average prices which will help

to measure the benefits of e-GP. In addition, e-GP will definitely reduce the cost of bidding for both government agencies and private companies. On the other hand, some non-measurable benefits of e-GP include increased transparency and compliance of public procurement. These are basic valuable principles of a good public procurement system.

43. Second, the Government feels that not all government agencies as well as private companies would be prepared to use electronic means for public procurement. A mix of infrastructure development, capacity building, and change management provides the key to address this issue. A more proactive approach to these elements would help to increase the confidence in the e-GP program implementation approach and to move the program towards the top of the Government's priority list. While existing initiatives for ICT development in Armenia should be used to improve computer skills and infrastructure of procuring agencies and private companies, the PPRD should extend current procurement curricula and include relevant e-GP training and change management content.

44. Third, the government would like to see the e-GP program implemented in phases based on clearly defined actions and processes. A clear definition of the procurement processes and an up-to-date action plan with roles, responsibilities, milestones, and cost estimates should provide the basis for a step-by-step implementation. At present, the e-GP roadmap and the relevant Government Decree on the e-GP strategy are outdated.

45. Taking into consideration that e-GP is a major program which needs to address a set of key foundations (see Section II above), the Government of Armenia will need to invest not only in Hardware and Software to provide a tool for public procurement automation but also in establishing an appropriate environment with regard to program management & planning, policy & legislation, awareness raising & capacity building among buyers and suppliers, and standards & infrastructure. To this end and in line with a phased implementation approach to e-GP system development as suggested in Section IV, the total budget of USD 2.9 million might not be used for the e-GP system development only; but a part of it could be reallocated to cover relevant important areas such as capacity building and infrastructure development.

46. As much as the political change with a new Government in place might have contributed to the current delay and uncertainty with regard to the e-GP program implementation in Armenia, it has also contributed to identifying and raising the following issues around the e-GP implementation capacity and approach.

Lack of Capacity

47. In basically all meetings and discussions, the lack of capacity was pointed out as one of the biggest concerns in the context of the e-GP program implementation. The majority of representatives from smaller purchasing agencies, such as in regional health care centers, could not imagine using their existing computer with Internet connection for procurement. Besides the development of e-GP capacity, the planned decentralization of public procurement also requires a much broader focus on public procurement capacity building. To this end, a comprehensive training and change management program could intensify the capacity building efforts with regard to

procurement and computer skills on the one hand and introduce the planned changes in the context of e-GP introduction on the other hand.

48. In addition, effective online user training for the procurement staff in the government agencies and the private sector can only be provided when an e-GP software application has been designed and developed. However, the training program should define the modalities of the e-GP training delivery and familiarize the key players with the e-GP application from the very beginning.

49. Besides a lack of capacity among the potential e-GP users, the mission came to the conclusion that there is also a lack of capacity with regard to e-GP program management and implementation. While the PPRD lead agency was able to manage the initial e-GP program adoption including the maintenance and operation of the public procurement website, it does not have sufficient resources and skills to design, develop, and operate the e-GP software application. Even when contracting the e-GP system design to the Institute for Informatics and Automation Problems of the National Academy of Sciences, the contract was not completed mainly due to a major delay in approving the public procurement rules, procedures, and regulations as Government Decree, but also due to the lack of including appropriate e-Procurement expertise within that Institute as initially proposed and approved by the Bank.

50. ICT capacity development within the government constitutes a major problem since the private sector offers much more attractive incentives and it is hard to retain such expertise within the government. To this end, the roadmap suggested to select an e-GP business model with an expert service provider from the private industry to develop and operate the e-GP system. The related Government Decree on the e-GP strategy assigned this role to the SPA as the future non-commercial Electronic Procurement Servicing Center. While the SPA can offer expertise in the area of public procurement, it does neither have appropriate e-GP expertise nor the ICT skills required to operate and maintain an e-GP system.

Overambitious Implementation Approach

51. While comprehensive e-GP systems provide multiple functionalities including e-Tendering (e.g. e-bidding, e-RFP) for the procurement of large specialized goods, works, or services and e-Purchasing (e.g. e-catalogues, e-RFQ, e-Reverse Auctions) for the procurement of common-use goods, works or services; their successful implementation requires a phased approach. According to this lesson learned from many countries, the e-GP roadmap and approved strategy suggests to split up the e-GP system implementation into two phases: e-Tendering and e-Purchasing including contract management. Each phase could even provide for a phased implementation approach, e.g. advertizing, download of bidding documents, and electronic bid submission as part of e-Tendering.

52. However, the Terms of Reference of the contract with the Institute for Informatics and Automation Problems of the National Academy of Sciences already included the e-GP system design including detailed functional and technical requirements for a comprehensive modern e-GP system covering e-Tendering and e-Purchasing. Besides the above mentioned two reasons (i.e. absence of approved procurement rules and appropriate e-GP expertise), the overambitious approach by the MOF to the design of a fully-fledged e-GP system might be considered as a third reason for the failure of the contract.

53. After the contract for the e-GP system design was cancelled, a new Terms of Reference was planned by the MOF as part of another RFP prepared under the Public Sector Modernization Project with an even more ambitious and somewhat confusing and contradicting approach. The Terms of Reference of this most recent RFP, which is still pending approval by the Bank, does not only include the design of a fully-fledged e-GP system including e-Tendering and e-Purchasing but also the implementation including application software delivery, installation, operation, and training. At the same time, the TOR refers to off-the-shelf software with customization. Typically, system design is a separate assignment including a needs analysis which results in a more detailed definition of the functional and technical requirements of the system to be delivered as an off-the-shelf solution under a separate contract.

54. Government of Armenia and the requirement of designing and delivering a fully-fledged e-GP system under the same contract, the mission shared some concern that this is a highly risky approach which might result in another contract failure. The MOF followed the mission's suggestion to review the TOR of the RFP and transform it into a manageable and less ambitious task and deliverable the successful implementation of which is not jeopardized from the outset.

Absence of Detailed e-GP Action Plan

55. While the e-GP roadmap provides an action plan for the implementation of e-GP, the Government Decree on the e-GP strategy refers to a more general implementation plan in three phases: e-GP preparation (March 2006), e-Tendering (January 2008), and e-Purchasing (January 2009). To this end, the e-GP implementation suffers from a considerable delay and it is very important to review and update the e-GP implementation plan in line with the current e-GP program status.

56. The update of the e-GP implementation plan should result into a detailed e-GP action plan with clearly defined tasks, timeline, roles, and responsibilities based on the initially suggested action plan in the e-GP roadmap. To this end, several detailed plans with regard to important areas such as awareness raising efforts, training, change management, infrastructure development, and phased e-GP system project management need to be coordinated under an overall e-GP implementation plan.

57. A revised and updated e-GP implementation plan will provide the basis for collective understanding and agreement on how to continue the transformation and reform of the public procurement system in Armenia. It should specifically address those areas which were identified as the key issues of e-GP implementation and suggest a less risky approach including the development of e-GP capacity in the public and private sector and the definition of a feasible implementation approach in phases.

IV. Recommendations and Next Steps

58. Despite all political change and issues identified in the context of e-GP program implementation in Armenia, the most important message from the Government is the will and intent to continue to introduce e-GP as a tool to improve the public procurement system in general and its transparency and efficiency in particular. The mission is confident that the Ministry of Finance with the PPRD as lead agency will build on the achievements so far and update the e-GP implementation plan in manageable phases. The following recommendations result from the assessment of the

current e-GP status in Armenia including the broader issues identified and are provided for consideration in the context of moving forward the e-GP agenda.

General Recommendations

59. *Government Leadership & Management Planning.* The Ministry of Finance in general and the PPRD in particular should continue to lead and manage the e-GP program implementation in close coordination with the Government of Armenia and the private sector. Committees should be established with different mandates at supervisory, advisory, and working level. This approach contributes to strengthening the e-GP leadership and ownership by the Government of Armenia and supports the role of the PPRD as the lead agency for e-GP implementation.

60. *Policy & Legal Framework.* Based on the public procurement law of Armenia and relevant secondary legislation, e.g. Government Decree (No. 853-N), the PPRD should lead the initiative of developing the regulations for the use of electronic means in public procurement. This should include a review of current procurement rules and management processes on the one hand to identify those that can be re-engineered for the electronic environment. On the other hand, a review of the regulations subordinate to the public procurement is recommended to ensure compatibility with electronic processes.

61. *Buyer & Supplier Activation.* The Government of Armenia should intensify the e-GP awareness raising and capacity building efforts based on a comprehensive and appropriate communications, training, and change management strategy. In this context, it is recommended to ensure a balanced approach to developing in-house capacity vs. relying on external skills. The SPA should be involved from the outset as initial recipient and future provider of e-GP training. The planned decentralization of the procurement function combined with the use of electronic means for public procurement will require a lot of change management and capacity building initiatives among the procurement staff in public agencies as well as in the private sector.

62. *Standards & Infrastructure.* The introduction and improvement of procurement standards under the leadership of the PPRD in close cooperation with the SPA should include the design and agreement on harmonized procurement procedures, templates, and standard bidding documents across all government agencies. These standardized procedures and templates would be part of the central e-Tendering system to be used in a decentralized environment. In addition to procurement standards, the PPRD should coordinate the use of open technical standards regarding information technology with the ICT development unit of the Ministry of Economy to ensure compatibility with an overall IT standards framework of the future e-Government platform in Armenia. The coordination with the Ministry of Economy should be extended to ICT infrastructure development initiatives under which the PPRD, in close collaboration with the SPA, should focus on the existence and use of computers with Internet connectivity in the procuring agencies and in the private sector.

63. *Systems & Applications.* The PPRD should continue to manage the introduction of the e-GP system in a phased approach. Next steps should include the enhancement of the existing website functionalities and the introduction of online procurement transactions starting with an e-Tendering system to be piloted for large contracts among selected line ministries with appropriate e-GP capacity and resources. At the same time,

the new role of the SPA as EPSC should be institutionalized to provide user help desk support and gradually get prepared to take over the operation of the e-GP system from the selected private provider.

Specific Recommendations

64. The following specific recommendations address the identified key issues of the e-GP program implementation in Armenia and provide detailed next steps, partly with alternative scenarios including some related risks and the suggested scenario to go with.

65. *Stabilization of e-GP Leadership.* The e-GP program implementation in Armenia benefits from the fact that the new Government supports the continuation of the e-GP implementation and considers the PPRD as lead agency in this context. At the same time, the lead agency can benefit from the fact that the new Government expressed some concern with regard to the implementation as discussed in Section III of this case study since it helps to identify some key e-GP implementation issues. In this context, the PPRD should revise and update the e-GP implementation strategy including the identification of detailed actions and next steps with cost estimates, performance indicators, capacity development, and a manageable step-by-step implementation approach.

66. For instance, the suggested implementation of e-Tendering as the next phase should include a cost estimate based on the scope of work defined in the TOR of the simplified RFP and on some market research. On the other hand, performance indicators should be established which will allow measuring the efficiency (e.g. reductions in price and cost of procurement) and transparency (e.g. average number of participating bidders, number of complaints) of the electronic procurement process as compared to the traditional paper-based procurement process. In addressing the areas of concern of the new Government in the revised e-GP implementation plan, the PPRD will contribute to strengthening the basis for collective understanding and agreement on e-GP implementation in Armenia and to improving the confidence of the new Government in the e-GP program.

67. As suggested in the e-GP roadmap, an e-GP Advisory Committee should be established with representatives from the government (e.g. Adviser of the Prime Minister, line ministries, SPA, Control Chamber, etc.) and the private industry (e.g. business associations, Chamber of Commerce, etc.). The PPRD as the delegate of the Minister of Finance should chair the Advisory Committee which would provide advice at working level and oversee the e-GP implementation in Armenia based on an updated e-GP implementation strategy. In addition and at their discretion, the Prime Minister together with the Minister of Finance and the Minister of Economy might constitute a high-level e-GP supervisory board to support the e-GP implementation at political level and provide leadership to the Advisory Committee for mission-critical decisions.

68. *Capacity Development.* The PPRD should start to transform the SPA into the EPSC by establishing an e-GP support unit and an e-GP operations unit and developing respective TORs. While the e-GP support unit should design and deliver an e-GP awareness and capacity development program to the public and private sector, the e-GP operations unit should include IT staff to be involved in the design and implementation of the e-Tendering system. In this way, the public and private sector will be trained to get prepared for the use of the e-Tendering system on the one hand and they will

benefit from user help desk support when running into problems while using the e-Tendering system on the other hand.

69. The PPRD should continue the dialogue with the international e-GP community by actively participating in international learning events and inviting international e-GP practitioners to come to Armenia to share and learn from their e-GP experience. This will not only provide useful help to the e-GP program implementation in Armenia but also increase the visibility of Armenia’s e-GP program adoption at international level.

70. The Government of Armenia should use international e-GP expert consultancy to help the PPRD implementing the e-GP program in general and managing the contract with the selected company under the Public Sector Modernization Project in particular.

71. In the absence of e-GP skills and expertise within the Government of Armenia and given some uncertainty in terms of the cost of introducing and maintaining e-GP, a business model should be selected which involves the private industry. Besides the possibility of selecting a business model with revenue generation, e.g. by charging moderate transaction fees to the e-GP system users from the private industry, the Government of Armenia should select a sustainable business model with regard to the development and operation of the e-GP system. The MOF has agreed to follow the suggested scenario, i.e., to select a private business provider for the delivery and initial operation of the e-GP system components with subsequent transfer to the EPSC.

Alternative e-GP business model approaches:

Scenario	Result	Risks	Suggested Scenario
e-GP system development and operation outside the government	Private firm to deliver and operate e-GP system	Reliance and dependency on external capacity	
e-GP system development and initial operation outside the government with continued operation inside the government	Private firm to deliver, operate, and transfer e-GP system to EPSC	Project delays due to problems during the e-GP system transfer	X
e-GP system development and operation inside the government	Government to deliver and operate e-GP system from the outset	Failure due to lack and retention of IT expertise in the government	

72. *Phased e-GP Implementation Approach.* The e-GP roadmap and the related Government Decree on the e-GP strategy suggest an e-GP program implementation in phases. While at some point a line has to be drawn between the implementation phases, this decision should be based on the available capacity of project management as well as on the preparedness of procuring agencies and private companies to move to e-GP. The following e-GP implementation scenarios are based on the alternative ICT Development approaches in Armenia suggested in the Aide Memoire of a World Bank

mission on E-Development and Competitiveness Enhancement in Armenia, 26-30 May 2008.

Alternative e-GP implementation approaches:

Scenario	Result	Risks	Suggested Scenario
“All-inclusive” approach: one project covering all e-GP program components	Delivery of a fully-fledged e-GP system with all procurement functionalities	Major project delays and cost overruns if not to failure	
“Hub-and-spoke” approach: Multiple e-GP elements to be anchored around a core e-GP system platform	E-GP system development and implementation in phases: e-Tendering, e-Purchasing (e-catalogues, e-reverse auctions), e-contract management	Project delays and/or cost overruns are manageable	X
“Let-1,000-flowers-bloom” approach: Development of decentralized multiple e-GP systems	Development and operation of multiple e-GP systems in different government agencies	Duplication of effort and investment, interoperability issues, and confusion among private industry	

73. The failure of the initial contract with the Institute for Informatics and Automation Problems of the National Academy of Sciences on designing a comprehensive e-GP system and the resulting delay in e-GP program implementation is a fact which must be accepted by the Government should not try to compensate the project delay by asking the Bank to approve an even more ambitious TOR as part of the currently drafted RFP under the Public Sector Modernization Project. To this end, the Government of Armenia should agree with the PPRD to follow the suggested phased implementation also with regard to e-GP system development, delivery, and operation.

74. The suggested sequencing should include:

- (i) Establishment of a user-friendly single-window public procurement portal with value added (www.procurement.am) is already up and running and should be enhanced by releasing the English and Russian versions of the portal on the one hand and by adding more functionalities on the other hand, such as a decentralized entry of procurement notices with automated workflow for approval by the PPRD or a subscription facility for interested bidders to receive automated e-mail notification for sector-specific procurement notices;
- (ii) Introduction of an e-Tendering system for large contracts including the automation of the workflow for approvals within the government as well

as of the required bidding procedures and transactions with interested bidders;

- (iii) Introduction of e-Purchasing mechanisms for common-use goods, works, services under small or periodic contracts.

While the PPRD can address phase (i) on a short-term basis, it should start in parallel the work on the e-Tendering system under the Public Sector Modernization Project as suggested in the following paragraph.

75. *Review and Simplification of RFP.* The latest draft of the RFP followed the mission’s suggestion to scale down the scope of the previous TOR and limit it to the design, delivery, and operation of an e-Tendering system including required training services. The mission reviewed the latest draft with the PPRD and provided suggestions on improving some functional and technical requirements based on which the selected contractor can do the design and development of the e-Tendering system.

76. While system design and development/delivery are typically two separate assignments with potentially different procurement approaches (RFP for system design plus another RFP for software application development from scratch or ICB/NCB for delivery and customization of off-the-shelf application software, training, and operation), the second scenario in the table below is suggested and justified by (i) the ratio of consultant-type services (e.g. system design, customization, training, roll-out, operation, knowledge transfer) vs. supplier-type products (e.g. off-the-shelf application software) and (ii) the desire of using the available budget without any further project delays.

It should also be mentioned that, if the need for the continuity for downstream work is indicated in the RFP, the selected consultant for the e-Tendering system could continue to do e-Purchasing work as potential downstream work. In addition, a pre-proposal conference could be held to allow the shortlisted candidates to familiarize with the TOR.

Alternative Procurement Approaches for e-Tendering:

Scenario	Result	Risks	Suggested Scenario
Cancel current RFP and separate the e-Tendering design and implementation	Separate contracts for e-Tendering design and implementation	Major project delay, ambiguities in design and implementation, and increased cost of procurement	
Continuation of current RFP with simplified and more specific TOR	Design and implementation of e-Tendering system under one assignment	Project delays and/or cost overruns are manageable	X

Scenario	Result	Risks	Suggested Scenario
Cancel current RFP and apply different procurement approach	Use of ICB method with two-stage bidding including e-Tendering design & implementation	Major project delay and/or cost overruns	

77. *Development of a Detailed e-GP Action Plan.* The Government of Armenia should develop a revised and updated e-GP implementation plan taking into consideration the e-GP roadmap, the Government Decree on the e-GP strategy as well as other Government Decrees referring to e-GP and the current e-GP program status. More importantly, the areas identified as the key issues of e-GP implementation so far need to be addressed, i.e. the development of e-GP capacity in the public and private sector and the definition of a feasible implementation approach in phases.

78. The revised e-GP implementation plan should include the identification of deficiencies with regard to the key foundations of successful e-GP program adoption as defined in the roadmap and in Section II of this case study. Once these deficiencies are identified, specific action plans should be developed and implemented in order to address and overcome them. For instance with regard to the key foundation infrastructure and buyer activations, an assessment of the level of available procurement and IT skills, equipment, and Internet connectivity in the procurement units of each line ministry and other major government agencies would provide sufficient information to develop an appropriate action plan for the development of procurement and/or IT skills as well as for the required delivery and installation of computers with Internet access in those ministries without such resources.

79. While the PPRD should lead and manage the revision of the e-GP implementation plan, it should identify and use additional expertise inside or outside the government to develop and implement the detailed action plans to overcome existing deficiencies with regard to the different e-GP key foundations. For instance, the SPA could play an instrumental role in terms of developing procurement expertise in the line ministries, while required IT skills development and IT equipment could be provided under a separate action plan.

80. Similarly, the current absence of detailed e-GP regulation should be addressed in an action plan of reviewing the regulations subordinate to the public procurement law and related legislation to ensure compatibility with electronic processes (e.g. the rules and procedures for the electronic publication of procurement plans, notices, contract awards and other relevant information as well as for the authentication and accessibility to the e-Tendering system, electronic distribution of bidding documents and amendments, electronic bid submission including tender box management and security, and electronic bid openings).

81. The PPRD should aggregate all these relevant action plans into a comprehensive detailed e-GP action plan with a clear description of the tasks, timeline, roles, and responsibilities. In complementing the e-GP implementation plan with such detailed overall e-GP actions, the Government of Armenia will get a better idea of the

specific steps as well as of the required resources for the e-GP program implementation in Armenia.

82. The following suggested timeline for the implementation of the e-Tendering system should **Timeline for e-Tendering Implementation:**

Activity	Timeline
Review and scale down RFP/TOR	End of April 2009
Select firm for e-Tendering	End of June 2009
Delivery and acceptance of e-Tendering application	End of 2009
Piloting of e-Tendering with selected line ministries	March 2010
Roll-out of e-Tendering in all line ministries	End of 2010

83. Based on the findings of this case study, the following Action Plan has been prepared. Implementation of this Action Plan is expected to strengthen e-GP.

	Action	Priority (Immediate/Short Term/Medium Term)	Impact
1	Continued leadership and management of the e-GP program by the MOF (PPRD) in coordination with the GOA and private sector	Immediate	Collective support and acceptance of the e-GP agenda
2	Review and update the e-GP implementation strategy including the identification of detailed action plans and next steps with cost estimates, performance indicators	Immediate	Successful e-GP program implementation following a detailed roadmap
3	Establish a high-level e-GP supervisory board at Minister level	Short Term	Quick decisions with lower risk of delays and resource limitations
4	Establish an e-GP advisory committee with government and private sector representatives	Short Term	Collective decision and support of e-GP agenda
5	Develop more detailed regulations for the use of electronic means in public procurement	Short Term	Comprehensive and clear legal basis for e-GP
6	Develop a communications, training, and change management strategy to catalyze the e-GP awareness and capacity building	Immediate	Successful support and use of e-GP by all stakeholders
7	Institutionalize the new role of the SPA as EPSC and develop appropriate skills for e-GP support and operations to provide user help desk support and Gradually get prepared to take over the operation of	Short Term	Sustainable business model operated within the government

	Action	Priority (Immediate/Short Term/Medium Term)	Impact
	the e-GP system from the selected private provider		
8	Continue the dialogue with the international e-GP community by actively participating in international learning events and inviting international e-GP practitioners to come to Armenia to share and learn from their e-GP experience	Immediate	Adoption of good e-GP practices; increased visibility of the Armenian e-GP agenda at international level
9	Use international e-GP expert consultancy to help implementing the e-GP program in general and managing the contract with the selected company under the Public Sector Modernization Project in particular	Immediate	Successful e-GP program implementation
10	Coordinate across the Government of Armenia the implementation of procurement and IT standards and the ICT development initiatives	Short Term	Better procurement management due to standardized and integrated systems
11	Coordinate across the Government of Armenia the ICT development initiatives	Short Term	Improved Internet penetration
12	Enhance the existing website www.procurement.am by adding an English and Russian versions and more functionality such as decentralized entry of procurement notices with automated workflow for approval by the PPRD or a subscription facility for interested bidders to receive automated e-mail notification for sector-specific procurement notices	Immediate	Increased transparency and participation in public procurement
13	Implement an e-Tendering system	Short Term	Increased efficiency and transparency of the procurement of large contracts
14	Introduction of e-Purchasing mechanisms for common-use goods, works, services under small or periodic contracts	Medium Term	Increased efficiency and participation in small government contracts

CASE STUDY II - PUBLIC PROCUREMENT IN HEALTH SECTOR

INTRODUCTION

Objective of the case study

1. The objective of this case study is to assess the current status of procurement procedures, practices organizational arrangements, and capacity of staff in the health sector, and to make recommendations for improvements. Provision of timely and quality health services is essential to improve the health and well-being of the population and a precondition for ensuring prosperity, and continuous social and economic development. Sound procurement practices help achieve this objective by ensuring economy and efficiency in the use of public funds.

Methodology and Health Sector Institutions Covered

2. This study is based on the assessment of Armenia's public procurement system; review of procurement procedures and -related laws and decrees applicable to the health sector; and interviews with the staff of few health sector agencies.

3. The assessment team reviewed the existing procurement arrangements and assessed the capacity in health sector institutions at central, regional and local levels, viz, the Ministry of Health (MOH), State Health Agency (SHA), the "Professor R. H. Yolcu Center of Hematology" CJSC, the Armavir Marzpetaran Administration; one Marz hospital (Armavir MC CJSC), and one polyclinic and Primary Health Care Center.

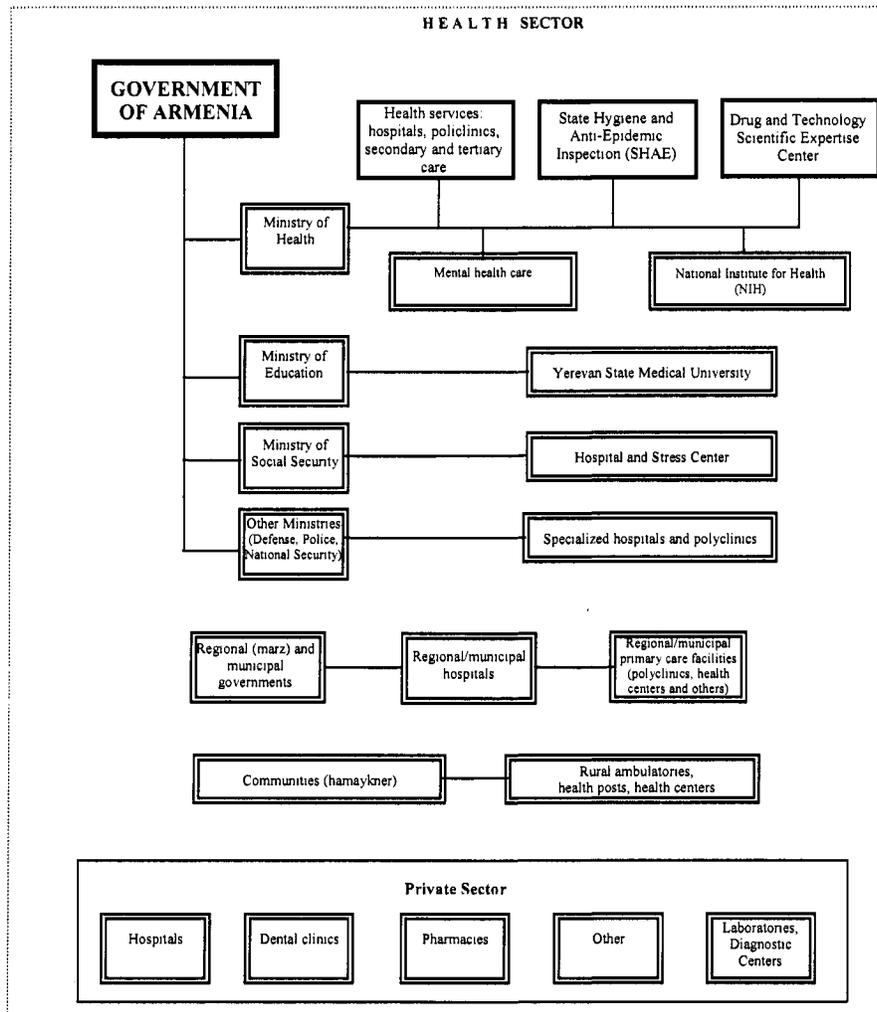
Applicable Laws and Decrees

4. The following laws and decrees are especially relevant to procurement in the health sector:

- Law On the human reproductive health and reproductive rights, dated December 11, 2002
- Law On the pharmaceuticals, dated 22 of February, 2007
- The Public Procurement Law, dated December 6, 2004
- Government Decree No 853N, dated June 5, 2008
- Minister of Finance and Economy Decree No. 426N, dated April 25, 2005
- Government Decree No. 1301 dated August 15, 2002, on the Charter and Structure of State Health Agency
- Minister of Finance and Economy Decree No 1167N dated November 6, 2005 and amended as of April 19, 2007 (Finance Minister Decree No 393N).

HEALTH SECTOR

5. The health care system in Armenia is a combination of centralized and decentralized system at three administrative levels: republican, Marz and community. While State hygiene and anti-epidemic services and several tertiary care hospitals remain centralized, ownership and operations of health services have been decentralized to communities (e.g. Primary Health Care (PHC)) and hospitals at the Marz ,level. The health sector comprises of the Ministry of Health, its affiliated agency the State Health Agency SHA, and health care facilities, Marzes and communities. At the regional level, all the ten Marzes and the City of Yerevan are responsible for health care services. The financial management of the resources allocated for health care services are managed by the State Health Agency. The Marzes are responsible for the planning and have regulatory powers for delivery of these services.



Ministry of Health

6. The MOH is responsible for the overall national health policy and health care strategies (See Organizational Chart above). It is also responsible for defining national health standards and norms, and for the national health programs. The overall objective is to enhance the effectiveness and efficiency of the health care system. The MOH is also directly responsible for the funding and management of 20 health care facilities which belong to it and for the country's network of State Hygiene and Anti-Epidemic Inspection facilities. The Project Implementation Unit (PIU) implements the World Bank-financed health system modernization project.

State Health Agency

7. The State Health Agency was established by a Government Decree No. 1301N dated August 15, 2002. It is responsible for the provision of health care services for which budgetary funds are allocated, develops mechanisms for entering into annual contracts with health care providers, and for controlling quantity and quality of services provided by health care service providers. It also finances civil works for health facilities within the framework of free healthcare services guaranteed by the state. The SHA is based in Yerevan and has 11 branches, one in each Marz. The SHA, which reports to the MOH, has the obligation of ensuring effective and efficient use of public funds for the procurement of health care services. The SHA also participates in organization, management and financing of health care, and in development and introduction of modern management mechanisms, norms and criteria.

Other Ministries

8. Other relevant ministries in the health sector are (i) the Ministry of Education, which is responsible for undergraduate, graduate and nursing education; (ii) the Ministry of Defense (iii) the Ministry of Internal Affairs, which manage health services for their employees and their families, including some PHC facilities and hospitals; and (iv) the Ministry of Labor and Social Affairs, along with the MOH, manages the provision of health care for senior citizens, refugees, veterans and the disabled.

Marz and Community Health Sector Organization

9. Marz and Community (Municipality) administrations are responsible for the health service providers, such as medical centers, hospitals, polyclinics, dispensaries, ambulances, health posts which fall under their administrative jurisdiction. The communities and municipal authorities are responsible for staffing, purchase of equipment and building maintenance and overall management.

Donors' Support to Health Sector

10. In addition to World Bank-financed projects, several international and bilateral donors are also involved in implementing programs and projects in the health sector. These donors include WHO, UNICEF, UNFPA, KfW, UNDP, World Vision, MSF, Project Nova, PHCR, USAID, CDC-America, Mission East Humanitarian Aid Organization (Global Fund HIV/AIDS). The World Bank and EU have provided

support for building capacity in public procurement at the country level, but not at the health sector level. Given the centralized nature of public procurement, the current organizational structure of public procurement in Armenia limits the development of procurement capacity at the sectoral level.

Health Sector Financing

11. The main source of financing for the health sector is the Republican budget. Other sources of financing for health services are donor funding, formal user charges, informal payments, and humanitarian aid. The Republican budget derives its funds from a variety of taxes, including customs duties, VAT, income tax, property tax, etc. No tax revenues are specifically earmarked for the health sector. The health budget in Armenia has been increasing by about 5.9 billion AMD annually.

PUBLIC PROCUREMENT AT COUNTRY LEVEL

12. The public procurement in Armenia is centralized in some respects and decentralized in others. While all health-related entities using public funds must procure goods, works and services according to the PPL of January 2005, the role of the MOH and Marz Administrations is limited to preparation of technical specifications and appointment of tender committees. The actual conduct of procurement, regardless of the procurement method being used (targeted, periodic or restricted tender), is carried out by the SPA. It appoints a secretary to every tender committee and has the authority to annul the procurement process, which is in accordance with the provisions of the PPL. Furthermore, the SPA signs all contracts on behalf of the MOH while the MOH is responsible for contract administration.

13. This organizational setup has led to two undesirable consequences: (i) fragmentation of responsibility and dilution of accountability as procuring entities, including MOH, are inclined to believe that since the SPA actually conducts procurement, it should be held responsible and accountable for all procurement related issues; and (ii) lack of opportunity among procuring entities of incentives to develop their own capacity to conduct procurement.

PUBLIC PROCUREMENT IN HEALTH SECTOR

Ministry of Health

14. The Department of Health Economy and Accounting of the MOH is responsible for carrying out procurement. The Head of the Department reports to the Minister of Health. The Department has eleven staff dealing with different tasks, of which only one staff has been assigned procurement responsibilities among other tasks. Training in procurement organized by the AB has been provided.

15. The procurement related problems faced by MOH are lack of timely identification of needs which is reflected in weak procurement planning. The MOH submits requests for procurement to the SPA once every quarter.

16. The MOH uses two types of tenders, viz., (i) targeted tenders for the goods specific to the health sector; and (ii) periodic open tenders which are used for recurrent

and common use items. These items are listed in MOF Decree No 1167N, dated November 6, 2005 and amended April 19, 2007. In case of both the targeted and periodic tenders, the MOH establishes a tender committee. The MOH prepares technical specifications and establishes a delivery schedule and after internal approvals passes these to the State Procurement Agency (SPA). The SPA appoints a secretary to the tender committee who guides the procurement process up to contract signature. The MOH is responsible for contract administration. The same procedure is applicable to the agencies reporting to the MOH.

17. At Marzpetaran levels, Marz administrations conduct procurement for their projects through the SPA, while their affiliate bodies, such as hospitals, diagnostic centers, polyclinics, have the right to carry out procurement without the involvement of the SPA.

State Health Agency

18. The State Health Agency (SHA) was established in 1998 and is responsible for the procurement of health care services with budgetary funds. The Ministry of Health provides to the State Health Agency (SHA) a portion of the state health budget to contract the health service providers. SHA has a list of public and private hospitals and polyclinics (which includes almost all private and public providers, except for few private diagnostic centers/clinics) to be contracted for provision of outpatient and inpatient services. SHA contracts health facilities, included in the above mentioned list, for provision of health services, receive and verify the claims from providers. Based on approved claims, the Treasury through its local branches issues the payment. The payments are channeled through SHA and are used only for procurement of medical services which are included in the BBP. There is no “selective contracting” (i.e. no competition for above mentioned contracts). Contract prices for provision of PHC (primary health care) services by polyclinics are calculated based on the per capita cost and number of the enrolled population.

19. Hospitals are contracted by SHA using the “case based contracting method” which uses the number of treated cases in the previous years as the basis. In both the contract forms, described above, the rate is defined by the Ministry of Health and includes medical staff fee; pharmaceuticals; utilities; hospital building maintenance, administrative costs and etc.). The costs are subject to the annual revision by the SHA and are subject to the approval of the Ministry of Health. The contract is signed with the provider after negotiations concerning the volume of the services being provided during the contract period. SHA through its 10 branches (one in each Marz) is responsible for the implementation of the contract administration. The contracts are signed for a one year period, which may be amended or modified as needed.

Professor R. H. Yolan Center of Hematology

20. The “Professor R. H. Yolan Center of Hematology, is a 100% state owned joint stock company. It receives 70% of its budget from the State and the remaining 30% from paid medical services. The procurement of all goods, works and services are carried out in accordance with the PPL. The procurement activities are carried out by a trained procurement specialist. The budget for 2008 was AMD 240 millions, including AMD 90 millions for hematology services and AMD 150 millions for other clinical

services. About 60% of the budget is used for salaries, about 30% (about AMD 70-80 millions) for the procurement of pharmaceuticals and reagents, and 10% for utilities, taxes etc. The staff of the Center expressed concern over the poor quality of the pharmaceuticals, which were procured, which could be due to the stipulation of awarding the contract to the lowest price bidder.

Armavir Marz Administration

21. Armavir Marz has a population of 255,000 (according to the 2001 census) and is located about 40 km from Yerevan. Medical services are delivered through two medical centers; one hospital; two polyclinics; one maternity hospital; one blood transfusion center and 58 ambulatories (8 Marz level ambulatories and 50 ambulatories are under the responsibility of communities). Coordination and supervision of health service delivery is carried out by supervisors in the Marz administration. Procurement of the health supplies is organized by the SPA and the MOH.

City Hospital in Armavir

22. Armavir city hospital is one of the biggest in the Marz. The hospital reports to and is under the supervision of the Marz Administration. Out of the 75.00 million AMD provided to the hospital for 2008, 60.00 million AMD is the allocation for medications. The remaining amounts are used for utilities, minor repair, maintenance, etc. The city hospital also indicated that the MOH would provide medical equipment worth about 12.00 million AMD.

As prescribed by the law, the hospital is required to provide outpatient drugs for special groups of population with prescriptions that authorize them to purchase the medicines from a pre-selected and designated pharmacy at a 50% discount. There is no cost-sharing arrangement for the drugs needed for the hospital treatment. Ideally it should be included in the case reimbursement. However, the state reimbursement for the hospital cases is below the real costs, which results in a situation when patients have to buy the drugs.

23. The hospitals are required to follow the PPL for the procurement of medicines for inpatient and outpatient drugs, i.e., define the list and volume of the medicines based on the needs and prepares technical specifications, and sends it to SPA for review and organizing the tender process. Potential bidders obtain this information from the SPA procurement website, obtain bidding documents from the hospital and submit their bids to hospitals. The tender committee established by the hospital selects the supplier, and the hospital provides instructions on the locations of the delivery of the medicines. Since the majority of the hospitals have pharmacies within the hospital, they instruct the supplier to deliver the drugs to their pharmacies. All hospitals, however, do not follow this procedure. Furthermore, there is no effective mechanism for cost control and verification that the patient actually received the medicines and that the pharmacy has not just used the prescription for billing the hospital. The absence of an effective auditing practice increases the possibilities for misuse.

Polyclinic in Echmiadzin

24. Polyclinic in Echmiadzin is located in one of the wings of the city hospital, which was recently renovated with the budget support from the Marz Administration. The polyclinic delivers primary health care services to 56,000 inhabitants of Echmiadzin. Its annual budget for 2008 was 240.00 million AMD, which consisted of 180.00 million AMD for salary; 20.00 million AMD for pharmaceuticals; 16.2 million AMD for goods and minor repair; 4.0 million AMD for miscellaneous items. The chief accountant, who is responsible for procurement, has not been given any procurement training. She expressed interest in upgrading her knowledge of procurement but regretted that such opportunities were not available. As a result, the public procurement law is not applied.

25. The mission was informed that as per the recommendation of MOH, the local wholesale company (“Natalipharm” www.natalipharm.am/) was selected for medical supplies. The polyclinic has also contracts with two local pharmacies (holding a license for psychotropic drugs) where the patients may obtain discounted prices under the special prescriptions issued by the polyclinic. The polyclinic’s manager indicated that there were several instances when the patients were not satisfied with the quality of the medications they were prescribed and provided.

Primary Health Care Center in Tairov village

26. The Primary Health Care Center (PHCC) in Tairov village (with a population of 2800) was constructed in the framework of the Health System Modernization Project financed by the IDA Credit. The PHCC has a “per capita financing” based contract with State Health Agency for health services delivery. PHCC has three staff. The annual budget is 12.00 million AMD (1.00 million AMD per month). In addition to the pharmaceuticals centrally supplied by the Marzpetaran, PHCC is also authorized to spend 56,000 AMD per month for pharmaceuticals. The patients may get discounted prices in the pre-selected pharmacy in Echmiadzin (20 km from the village) under the prescriptions issued by the PHCC. According to the PHCC doctor, selection criteria for the pharmacy were: location; low prices; valid license for psychotropic drugs. The selection process does not appear to be transparent. The patients indicated that they were not satisfied with the quality of medicines prescribed to them.

Arrangements for Oversight of Procurement

27. Internal controls are weak, although the MOH has a designated internal auditor. External audits are carried out by the Chamber of Control; the Audit Department of the Ministry of Finance. The Review Department of the President’s Administration and the Supervision Department of the Prime Minister’s Office also carry out audits in the health sector. While there are a large number of audit bodies, it appears that the audit practices are not effective and are not consistent with international audit practices.

FINDINGS AND RECOMMENDATIONS

28. **Procurement Capacity.** Based on the discussions with the health officials of the agencies included in this review, it is clear that there is a lack of procurement capacity at the central, provincial and local levels. Because of the centralization of the actual conduct of procurement vested in the SPA, there is no incentive for procuring entities to develop their own procurement capacity. On the other hand, the entities which have the right to carry out their own procurement, do not find it necessary to procure according to the PPL because they are not given adequate training in procurement and the oversight functions are not effective.

Recommendations.

- (i) Procuring entities, such as the Ministry of Health, Marzpetaran Administrations, should be vested with full procurement authority. This authority should include not only preparation of procurement plans and technical specifications but also drafting of bidding documents, receiving, opening and evaluating bids, issuing contract award notifications and signing contracts to carry out their procurement in accordance with the public procurement legislation, with or without using the services of the SPA. During the period when the procuring entities are developing their own procurement capacity, they should be supported by SPA as a technical assistance provider/adviser, rather than for making decisions on their behalf;
- (ii) The procuring entities in the health sector, especially the Ministry of Health should establish a procurement unit, with qualified and experienced procurement staff.
- (iii) The Ministry of Health in collaboration with the AB and SPA should design and conduct periodic training in procurement for its staff, especially for the heads of departments and divisions. Specialized and more detailed training programs should be prepared for those involved in procurement, including engineers.
- (iv) AB should design a training program for procuring entities at Marz and local level with a view to making them fully aware of the requirements of the PPL, and to familiarizing them with the consequences and actions which would be taken in case of violations of the PPL.

29. **Procurement of Pharmaceuticals.** The staff of the entities in the review expressed concern about the poor quality of medicines received from framework contracts which are managed by the SPA in collaboration with the MOH. Similar concerns were expressed about the medicines prescribed to special groups of patients to obtain them at a discounted price from designated pharmacies. Poor technical specifications, procurement practices, including use of the lowest bid price as the main contract award criterion contributes to the poor quality.

Recommendations.

- (i) The MOH should review the procurement practices used for the procurement of pharmaceuticals, including quality and relevance of technical specifications, qualification criteria in bidding documents to ensure that only qualified and experienced bidders are selected to supply medicines, quality assurance provisions in the bidding documents and upon receipt of pharmaceuticals, and use of both price and non-price criteria, i.e., contract award decision to be made not on the basis of the lowest price alone but consideration of other factors such as responsiveness to technical specifications, especially quality parameters, delivery period, should be included.
- (ii) Given the importance of procurement of pharmaceuticals and in light of the issues raised during the case study, it is recommended that a more detailed assessment of the procurement of pharmaceuticals be carried out. This case study should also examine the manner in which pharmacies are selected to provide medicines to special groups of patients, the cost of which are borne by the Government. The case study should specifically review if there are any inefficiencies or potential for misuse in the current system.
- (iii) The Government should strengthen both the existing capacity and procedures for internal and external controls of procurement of goods, works and services, and use and maintenance of these in the health sector at all levels.

CASE STUDY III - PUBLIC PROCUREMENT IN TRANSPORT SECTOR

INTRODUCTION

Objective

1. The objective of this case study is to assess the current status of procurement procedures, practices, organizational arrangements and capacity of staff in the transport sector and to make recommendations for improvements. Sound procurement procedures and practices help ensure transparency, equality and fairness and obtain the best value for public money.

Methodology

2. The case study is based on the assessment of the public procurement system in Armenia; review of procurement procedures and related laws and decrees applicable to the transport sector; and interviews with the staff of the Ministry of Transport and Communication (MOTC), Armavir Marzpetaran Administration and Yerevan Municipality.

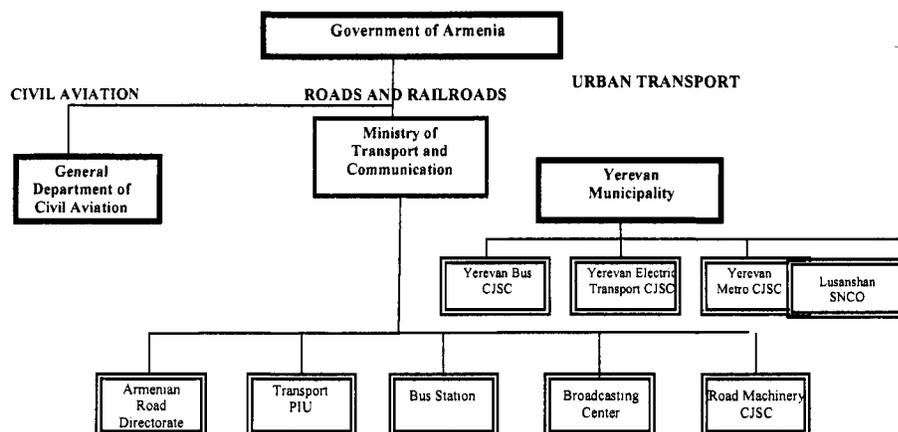
Applicable Laws and Decrees

3. The following laws and decrees are especially relevant to procurement in the transport sector, including the MOTC, Marzpetaran and Community transport entities:

- Law on transport, dated February 3, 1998 (amended on March 13, 2001 and on December 5, 2006)
- Law of RA on automobile transport, dated December, 2006
- Law of RA on railway transport, dated November 28, 2007
- Government Decree No. 1497N on the priority measurement in the sector of rail away transport, dated October 12, 2006
- Government decree No.83N on approving of draft of the concession contract on transferring of Armenian railway system to “South Caucasian railways” CCJSC (established by the Russian railways” OJSC), dated February 7, 2008
- The Public Procurement Law dated 06 of December, 2004
- Government Decree No 853N, dated June 5, 2008
- Finance and Economy Minister Decree No. 426N, dated 25 of April, 2005
- Finance and Economy Minister Decree No 1167 N dated 06 of November, 2005 and amended as of 19 of April 2007 (Finance Minister Decree.No 393N) and as of 05 of November, 2008 (Finance Minister Decree N908).

TRANSPORT SECTOR

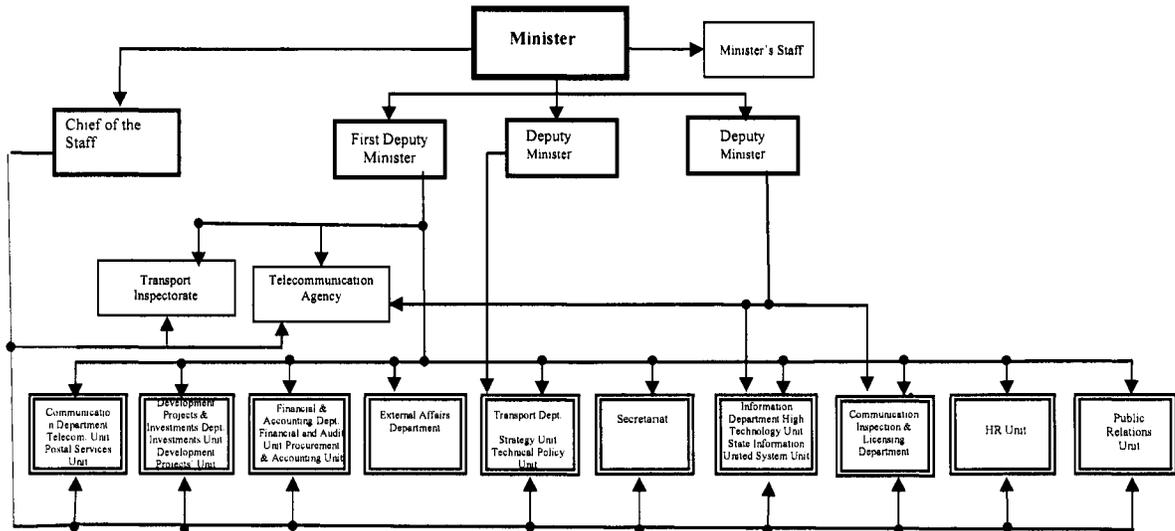
The transport sector in Armenia consists of public road network, railroads, civil aviation, and urban transport. The different components are presented in the following diagram.



4. Armenia has a road network of about 11,000 kilometers. The Armenian Roads Directorate (ARD) is a non-commercial agency, which reports to the MOTC, and is responsible for roads' maintenance including republican roads. The ARD has four divisions, viz., (i) planning and feasibility studies; (ii) procurement; (iii) construction monitoring; (iv) maintenance monitoring; and safety. The Armenian Railway operates under the concession agreement signed in June 2008 by the South Caucasian railway - a subsidiary of the Russian Railways. The office of the Prime Minister is responsible for Civil Aviation through Civil Aviation Department. Urban transport, is mainly concentrated in Yerevan, is the responsibility of the Transport Department of the Yerevan Municipality (YM). The YM has a number of affiliate bodies, such as YerevanTrans, which is responsible for surface public transport, Lusanshan SNCO (State Non Commercialized Organization), a non-commercialized entity which manages the traffic, and Yerevan Metro which is responsible for the metro.

5. The MOTC has the responsibility for policy, regulation and planning of roads, road transport and railways. The MOTC organizational chart is given below.

Ministry of Transport & Communication of Armenia
Organizational Chart



DONORS' SUPPORT TO TRANSPORT SECTOR

6. In addition to the World Bank-financed projects in the transport sector, there are a number of ongoing projects which are currently being supported by various international donor organizations such as ADB, Rural roads sector (USD 47 million), Lincy foundation, and the US Government financed MCC project (US\$67 million for rural roads rehabilitation).

PUBLIC PROCUREMENT AT COUNTRY LEVEL

7. Public procurement in Armenia is centralized in some respects and decentralized in others. While all transport-related entities using public funds are required to procure goods, works and services according to the PPL of January 2005, the role of the MOTC and Marz Administrations is limited to preparation of technical specifications and appointment of a tender committee. The actual conduct of procurement, regardless of the procurement method being used (targeted, periodic or restricted tender), is carried out by the State Procurement Agency (SPA) which appoints a secretary to every tender committee with the authority to annul the procurement process, in accordance with the provisions of the PPL. Furthermore, the SPA signs all contracts on behalf of procuring entities while the latter are responsible for supervising their performance.

8. This system of procurement has led to: (i) fragmentation of responsibility and dilution of accountability as procuring entities like the Ministry of Transport are inclined to believe that since the SPA actually conducts procurement, it should be held responsible and accountable; and (ii) absence among procuring entities of the incentives to develop their own capacity to conduct procurement. The transport sector has a large number of targeted tenders compared to periodic tenders. While it is a good practice to procure recurrent and common use items in bulk, the large number of targeted tenders could be better managed by MOTC and other procuring entities (e.g.,

Yerevan Municipality, Marz Administrations) and therefore should be given complete procurement authority.

PUBLIC PROCUREMENT IN TRANSPORT SECTOR

Ministry of Transport and Communication

9. Procurement activities are conducted and coordinated by the Deputy Head of the Financial Department. Procurement process starts with the application for budget allocation. Application should be submitted not later than December of the previous year. The application includes description of the items (goods, works, services) which need to be procured for the year. Reallocation of the budget funds among procurement items should not exceed $\pm 15\%$. Main procurement activities done by the MOTC are the contracts for maintenance of roads (international and republican roads) and infrastructure (bridges, tunnels).

10. Procurement procedure for periodic items is used for contract awards. The periodic contracts signed by the SPA are for a three year period. Prior to starting the procurement process, the MOTC submits to the SPA the following documentation (i) technical specifications; (ii) payment schedule; and (iii) nomination of its representatives to the Evaluation Committees. Maintenance of the local roads is the responsibility of the municipalities and communities. The procurement of periodic tenders is carried out in the same manner, except that the MOTC establishes an evaluation committee to which the SPA appoints a secretary. The MOTC assigns a staff member in its Department of Accounting and Finance to be responsible for procurement. This staff has received some training in carrying out the procurement process. However, he has no practical experience of carrying out actual procurement as this function is the responsibility of the SPA.

11. The budget allocation for 2008 was as follows: road maintenance 12.00 billion AMD; ; infrastructure: 1.4 billion AMD. The budget allocation for 2009 are :road maintenance 16.12 billion AMD infrastructure 0.54 billion AMD. Payment under the signed contracts is based on the quarterly budget allocations and each contract in its payment conditions includes a provision that: "... payment will be effected once the budget funds will be made available..." According to the MOTC authorities there were no payment delays. Paid amount corresponds to the actual volumes of works done and stipulated in the Acceptance Certificate.

Armavir Marzpetaran Administration

12. The annual transport budget allocation for Armavir Marz is about 22 million AMD, which is for road rehabilitation and maintenance works during the winter. It is up to the Marz authorities to decide which roads need to be rehabilitated. The Administration is responsible for carrying out procurement within its budgetary allocation. Procurement of works is carried out in accordance with procurement legislation of the RA. According to the legislation, Marzpetaran assigns procurement to its Department of Finance and Accounting (DFA). The DFA has a staff member whose job description also includes procurement activities. The Head of DFA and the above mentioned specialist attended procurement training. According to the DFA Head they are familiar

with the official procurement website (www. procurement.am). and make use of it as needed. The members of the tender committee assigned by the Marzpetaran for the targeted tenders visit the SPA office for any clarifications and discussions. The Periodic tenders are implemented by the SPA.

13. Contract administration is the responsibility of Marz Administration while any amendments to contracts must be dealt with by the SPA. Marzpetaran conducts an annual tender for passenger transportation and about ten domestic private firms compete for the operation of 24 passenger lines in the Marz. The Marz Administration is required to carry out procurement with the support and involvement of the SPA which, after completing the procurement process, awards and signs contracts. The functions of the internal audit are implemented by Marzpetaran's Chief of Staff. In addition, the Chamber of Control's representative in the Marz carries out external audit.

Yerevan Municipality

14. The Yerevan Municipality's Transport Department is responsible for the operation and maintenance (O&M) of the traffic lights, which are installed in the intersections of Yerevan. Procurement of O&M services is funded with the state budget. The SPA, based on the technical specifications and design provided by the Yerevan Municipality conducts the bidding process. During the past two years, Lusanshan SNCO, which is a non-commercialized entity under the Yerevan Municipality, has been the sole bidder and has received the O&M contracts. Lusanshan SNCO is also responsible for traffic signals and road signing and marking in Yerevan. This raises conflict of interest issues as Lusanshan SNCO as an entity of the procuring entity, i.e., the Yerevan Municipality, should not be allowed to participate in the O&M tenders as a supplier of services.

Internal and External Controls

15. The MOTC has a designated internal auditor who is reviews all procurement carried out by the MOTC. External audits are carried out by the Chamber of Control, the Audit Department of the Ministry of Finance. The Review Department of the President's Administration and the Supervision Department of the Prime Minister's Office also carry out audits in the MOTC. While there are a large number of audit bodies, it appears that the audit practices are not effective and are not consistent with international audit practices.

FINDINGS AND RECOMMENDATIONS

16. **Findings.** Public procurement in the transport sector is centralized. While the MOTC has the responsibility for the preparation of technical specifications and establishment of evaluation committee, the State Procurement Agency carries out the procurement process. This has resulted in the MOTC established little or no procurement capacity. Procurement contracts are signed by the SPA but administered by the MOTC. The current public procurement institutional arrangement results in fragmentation of responsibility and dilution of accountability.

Recommendations.

- (i) Procuring entities, such as the MOTC and Marz Administrations, should be vested with full procurement authority. This authority should include not only preparation of procurement plans and technical specifications but also drafting of bidding documents, receiving, opening and evaluating bids, issuing contract award notifications and signing contracts to carry out their procurement activities in accordance with the public procurement legislation, with or without using the services of the SPA. During the period when the procuring entities are developing their own procurement capacity, they should be supported by SPA as a technical assistance provider/adviser, rather than for making decisions on their behalf;
- (ii) The procuring entities in the transport sector, especially the MOTC should establish a procurement unit, with qualified and experienced procurement staff. The main task of the procurement specialist(s) in this unit should be to help the other departments of the MOTC in carrying out the procurement of goods, works and services in compliance with the PPL.
- (iii) The MOTC in collaboration with the AB and SPA should design and conduct training in procurement for its staff, especially for the heads of departments and divisions: Specialized and more detailed training programs should be prepared for those involved in procurement, including engineers.
- (iv) The AB should design a training program for procuring entities at Marz and local level with a view to making them fully aware of the requirements of the PPL, and familiarizing them with the consequences of violating the PPL.
- (v) In order to initiate the implementation of the e-GP agenda, the MOTC should become a pilot in using e-GP for improving the procurement process. For this purpose an e-GP pilot project should be developed which should provide step-by-step introduction of e-GP beginning with the use of the MOTC website for publishing tender notices, contract award information, and for dissemination of procurement rules and regulations.

17. Finding. Internal and external audit procedures and practices and capacity are weak. Multiple bodies have the authority for carrying out inspections, monitoring, etc. Some of these institutions prepare reports on their activities; while others do not prepare or file any reports. This makes the audit of procurement ineffective and inefficient.

Recommendation.

Internal and external audit of procurement in the transport sector should be strengthened by preparing clear rules of audit and designating the audit bodies, such as the Chamber of Control, and the Ministry of Finance, to carry out such audits.

CASE STUDY IV - MITIGATION AND MANAGEMENT OF RISKS OF LEAKAGE AND CORRUPTION IN PUBLIC PROCUREMENT

Executive Summary

1. The attached Annex on OECD-DAC World Bank “Methodology for Assessments of National Procurement Systems” already provides a framework to highlight indicators and principles pertaining to a country’s legislative and regulatory framework along with indicators dealing with integrity and transparency of the public procurement system. This case study on "Mitigation and Management of Risks of Leakage and Corruption in Public Procurement" further teases out the issues already highlighted in the main OECD-DAC assessment on integrity and transparency and distills the findings with a view to further articulating the type of concerns and corresponding recommendations and action plans. It is worth stating at the outset that the public procurement system in Armenia suffers from an acute perception of lack of integrity and transparency in terms of practice and compliance with the regulatory framework and best practices. As further discussed in the case study, the assessment and consultations conducted have revealed that certain procurement practices in Armenia have been a source of concern and are indicative of ongoing or potential abuse of the legal framework. These weaknesses in the area of integrity and transparency in the procurement system have been a result of a defective or weak framework, non-compliance with norms, manipulation of the market, or due to misconduct by key players. The case study also includes a discussion on related background literature or previous analytical work on the topic, on risk assessment and red flags, summary of reported Cases and some key recommendations and action plan.

2. Essentially the findings during assessment and according to various reports that were gathered point to a variety of issues relating to: weaknesses and overreliance on and abuse of restricted tendering (mainly sole sourcing); a lack of confidence in the independence and effectiveness of the complaint review mechanisms; numerous reports of poor quality of works and services and instances of non-delivery or non-performance; deficient rules on conflict of interest and codes of conduct; indications of anti-competitive agreement prior to submitting bids (eg. collusion); abuse of the qualification and evaluation process to favor pre-determined bidder; faulty specifications that favor certain suppliers; lack of significant participation and oversight by civil society groups and other stakeholders; deficient mechanisms for transparency, information access and feedback systems; unclear and overlapping audit systems with no significant follow-up of findings; lack of integration with overall national anti-corruption strategy and reference to the appropriate criminal legal framework; abuse of use of “monopoly” privileges; dismally low level of tender participation; and general lack of capacity of procuring entities.

Background

3. The World Bank Institute's Control of Corruption Indicator¹⁴ indicates that the control of corruption has improved in Armenia in 2006 (-0.58), compared to previous years. In terms of ranking, Armenia ended up in 35 percentile rank among 209 countries, occupying second place among CIS countries. Armenia's 2006 control of corruption index is lower than the average for ECA countries and other Central and Eastern European countries. Transparency International's (TI) Corruption Perception Index (CPI), which ranks countries based on the perceived level of corruption, rated Armenia with a CPI of 2.515 in 1999-2000 and at an index that fluctuates around 3.0 in the next few years (except for 2001-2002). Armenia compares favorably both to other CIS countries but ranks only 99th among 163 other countries. The World Bank in 2006 issued the report "Anticorruption in Transition 3: Who Is Succeeding...and Why?" which indicated that Armenia was significantly worse along many dimensions of corruption compared to 2002.

4. The EBRD-WB Business Environment and Enterprise Performance Survey (2005 BEEPS) indicates that Armenian companies consider that unofficial payments are most frequently made when dealing with tax collection and customs/imports, government contracts, business licenses and permits, public utilities (electricity and telephone), and various inspections. The number of companies who felt this way with respect unofficial payments for the public procurement system increased dramatically between 2002 and 2005 to about tenfold.

5. In general, other assessments note that there is a significant gap between the positive reform in the area of legal norms and architecture as opposed to how these are implemented in practice. Although the legal and regulatory framework had been much improved, the perception of and confidence towards public procurement remains unsatisfactory.¹⁶

6. The Government of Armenia has undertaken a series of reform measures in the area of anti-corruption in 2001-2003 when policies as well as legislative and regulatory frameworks were adopted. The Anti-Corruption Strategy and Action Plan for 2003-2007 were also subsequently developed. In April 2008, the National Assembly adopted the program of the government which acknowledged anti-corruption as one of the main components. The Government also undertook to implement commitments under the GRECO and OECD Anti-Corruption Network for Transition Economies, as well as the UN Convention against Corruption. Under the OECD Anti-Corruption Network (ACN) Istanbul action Plan, Armenia agreed to adopt 24 recommendations on anticorruption developed by OECD.

¹⁴ The Control of Corruption Indicator (CCI) of the World Bank Institute is based on a more comprehensive examination of governance indicators, which is drawn from 37 separate data sources constructed by 31 different organizations. Data is grouped by six main dimensions of governance: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption.

¹⁵ CPI scores countries on a scale of 0 to 10, where 0 means highly corrupt and 10 means highly clean in terms of the perceived level of corruption.

¹⁶ See TI indicator on public perception in the field of procurement and GTZ, ProSME "Entrepreneurship Survey" 2007.

7. Some proposed steps on the issue to corruption and civil society participation in governance and transparency of the public administration system are also articulated in Republic of Armenia, 2007¹⁷,. “Reforms of Governance System and Fight against Corruption.”

Procurement Practices: Risk Assessment and Red Flags

8. The assessment and consultations conducted have revealed that certain procurement practices in Armenia have been a source of concern and are indicative of ongoing or potential abuse of the legal framework. These weaknesses in the area of integrity and transparency in the procurement system have been a result of a defective or weak framework, non-compliance with norms, manipulation of the market, or due to misconduct by key players. The initial findings indicate:

- The architecture of the complaint review system is not independent and the fairness of the system of review is negatively perceived by potential users.
- There is overreliance on sole-source methods (although there is a reported marked improvement from previous years).
- There is a dismally low level of bid participation- a numerical average of mere 1.5 bidders per tender.
- There are many reports of poor quality of works and services and some instances of non-delivery or non-performance.
- In some instances, there were indications that participants reach an anti-competitive agreement prior to submitting bids. This was recently recognized by the AB in its draft strategy for procurement reform.
- Bidders are disqualified on flimsy and inappropriate grounds for the purpose of leaving just one bidder at the time of evaluation. The sole and winning bidder was allegedly previously pre-determined as the winning bid.
- Some few companies have been observed to participate in certain markets, indicating possible collusion, parceling of opportunities and even alluding to possible participation by procuring entities in the arrangements.

Some Examples of Reported Cases

9. Information has been published discussing specific cases reflective of weaknesses or abuse of the procurement system. Although not independently verified during this assessment, these cases nevertheless portray a lack of trust or confidence by users and the public in the integrity and fairness of the system. These examples of Reported Cases also help reveal and zero in on the typology of cases, regulatory capture/monopoly, vulnerable sectors and need for targeted enforcement measures.

¹⁷ This is part of the Government program as stated in the section on “Reforms of Governance System and Fight against Corruption”, Section 4.2.1, Government Effectiveness. Republic of Armenia, page 9.

(A) Independent Reports

Indications of abuse of the procurement process in Armenia manifests itself in other ways as discussed in a study carried out by the Center for Regional Development, Transparency International in Armenia in 2007¹⁸:

- (i) Bid preparation: use of inaccurate bidding requirements, inadequate information was provided to the bid participants, and inconsistent data. These were specifically observed in the purchase of vehicles;
- (ii) Bidding procedures: insufficient time for the preparation of bids, disclosure of the budget and late submission of bids;
- (iii) Evaluation: the common problems were those associated with compliance with requirements set forth in the procurement guidelines and/or respective Request for Proposals. An example of this was in the evaluation stage of the procurement for the design and construction and supervision of six main canals where a discrepancy between the lowest and highest prices proposed by the three bidders was more than four times, while between the two lowest ones it was almost three times.

TI has also recently provided its “Comments and Recommendations on the Draft of the Procurement System Reform Strategy which also details certain practices in the public procurement that needs addressing (*e.g.*, anti-competitive agreement and a bid submitted by single bidder; weak internal audit capacities; low bid price and inferior qualification criteria).

(B) Government Reports:

- The Armenia Chamber of Control (COC) has recently reported its findings. The COC Chairman briefed the media that a complete review of the marz authorities, municipalities of the cities of Sevan, Vardenis, Gavar and the villages of Artanis, Sarukhan, Tsovak, Noradous, Lchashen, Nerqin and Getashen revealed violations amounting AMD 597 million, including AMD 150 million in public procurement. He stated that “[T]he process of procurement does not function at all as required; thus, the COC will present more serious document on this issue to the government early next year.”
- Three cases, according to the COC, were sent to the General Prosecutor’s Office.
 - (1) The first case involves the results of audits of the municipality of Vardenis. The most serious violation relates to construction works of the water supply system in the village of Geghamasar. Significant amount of money was spent to connect the village and

¹⁸ The study was initiated by the Millennium Challenge Corporation (MCC) which signed a \$235 million compact with the Government of Armenia.

the surrounding territories to the water system but, at the time when connection to the main pipe was to be made, it was discovered out that there was no main pipe.

(2) The second case involves the city of Sevan where two schools and a kindergarten were sold in violation of requirements of the law and without authority from parliament.

(3) The third case relates to the lease of land in the Sevan National Park at grossly disadvantageous terms and involving irregularities in construction works.

- The COC also stated that a judicial reform project financed by the World Bank was allegedly subject to several procedural and payment violations. Separately, the Yerevan Municipal Development Project has also been subject of numerous write-ups, including a published report by the Government Accountability Project (GAP), a Washington DC whistleblowing protection advocacy group.
- In a previous meeting, the COC also decided to send to the General Prosecutor's Office other cases including one involving a Company which did not sign a contract with the community until specified deadline to implement gas connection works. During the last three years the company received AMD 57 million from the community budget, but has not completed any works.
- The COC also reported that two companies were involved in the purchase of substandard and insufficient apartments for children's patronage organizations despite receiving the full price payment.

(C) Media Reports

Investigative reports by journalists also cited numerous deficiencies in public works construction. (See for example the site www.hetq.am). Although these were journalistic reports and not results of official audits or investigations, they nevertheless paint a picture of an acute lack of trust in the efficiency, transparency and fairness of the public procurement system that needs to be seriously addressed. Blogs and reports have also been published (including a report by the Washington -based Government Accountability Project [GAP] and involvement of the UK Serious Fraud Office) regarding alleged irregularities in the World Bank funded Armenia's Municipal Development Project. One often cited example is a case reported in *Aravot* daily where luxury vehicles were procured on alleged urgent basis circumventing the requirements of transparent and competitive procedures.

- A disturbing picture is portrayed in another journalistic investigation report involving the fairness and transparency of the tender process (See Hetq Online, June 25, 2007). The journalists observed the pattern of

disqualification of other bidders on trivial and non-material grounds, such as not having submitted the original document, having the “wrong” date on one of the non-material documents, and absence of stamp. Most of these documents could have been easily clarified or rectified since they do not refer to the competitiveness of the bid or the essential qualifications of the bidders. Some of the disqualifications related to some alleged deficiencies in documents such as the state registration certificates, and licenses, financial reports, tax and social security documents, missing pages in bank deposit book, etc. One bidder observed that the tender committees can always find something deficient in the document in order to disqualify a bidder and to favor a pre-determined winner. In many instances, several bidders were disqualified resulting in just one bidder proceeding to evaluation. The article noted that there are clear indications that awards are pre-determined in advanced and that participants have divided the markets amongst themselves.

- One report questioned the capability of a company to build the 6.3 km, 700 million Drams Voskepar-Baghanis roundabout located on the Ijevan-Noyembery stretch of the Armenia –Georgia highway. (Sargsyan, 2008). The article claims that the company lacked adequate construction equipment and manpower to carry out the works and cited the delay in completion and significant cost overruns. The same company was also awarded several other contracts for large road projects in the border areas, which included the 330 million dram project to build a 10-kilometer stretch from Koghb to Zikatar and completion of the 25-kilometer stretch along the Georgian border.
- One example of poor construction of kindergartens was reported in a newspaper article, which pointed out that 15 million drams was spent to repair the kindergarten in the village of Getaazat in the Ararat Marz, but the result was far from satisfactory. (Nazaryan, 2008). The work was considered incomplete and unsatisfactory and the Principal was quoted as saying that “the kindergarten hasn’t been completely refurbished and it is not possible to work here”.
- Another cited irregularities in the works involving clean up of riverbed in the Gavaraget River, including issues relating to performance certificates. Poor quality roads and repairs crucial to access to a hospital was also noted. Purchase of mobile homes for victims of landslides was reported to have been significantly overpriced. The water supply pipeline project in the village of Garni was also reported to have serious irregularities, including non-completion and poor quality of works.

Key Recommendations and Action Plan

10. To enhance transparency, Armenia should focus on reforms in the areas of: mechanism for audit and control; clarity of governance and accountability structures; reporting and whistleblowing portals and protections; access to information/appropriate information systems/ freedom of information regimes, civil Society/Stakeholder/NGO

voice, participation and oversight; and business/industry role and initiatives in the promotion of integrity and fight against corruption. The procurement system in Armenia should include stakeholders as part of the control system and as partners in reform. A welcoming and respectful attitude of government for civil society contributions to these efforts is a key to a successful partnership.

(A) Civil Society/Stakeholder/NGO voice, participation and oversight

- i) Consider establishment of an informal network of interested parties and stakeholders on consultative basis or a formal council that meets regularly to discuss policy issues, reform proposals and systemic problems in the procurement process.

Good Practice: Procurement Watch (Philippines)

Public Procurement in Philippines was faced with problems of delays, lack of transparency, excessive use of discretionary criteria and lack of competition in the late 90s. To address some of these problems, Procurement Watch incorporated (PWI) was established as a non-profit, non-partisan civil society organization to promote good governance by addressing graft and corruption in public procurement. The Organization measures procurement irregularities by accessing public agency documents possessed by government auditors at the same time as formal government audits of these agencies. It helped the passage of the Government Procurement Reform Act Number 9184, which is also known as the Government Reform Act (GPRA) which laid the foundation for streamlining the entire public procurement process. The most notable achievement was the standardization of the procurement procedures which need to be adopted by all agencies of the government requiring the issuance of procurement manuals and standard bidding documents. The passage of the act was followed by the creation of an inter-agency technical working group for implementation. PWI also monitors public biddings of various agencies.

PWI is now regarded as a legitimate and valuable contributor to the promoting governance in public procurement in the Philippines. Its board members consist of eminent members of the civil society, and individuals familiar with government practices, policies and procedures. It is independent of the government and receives funding from external sources, including the World Bank. Its role over the years has changed from one of advocacy and public dissemination to carrying out independent research, provision of training, preparation of training materials and promoting grass-roots organizations at the local level and transforming PWI to monitor and oversee public procurement policy formulation and execution. This experience is illustrative of mechanisms and strategies of how to build effective reform coalition in the area of public procurement.

- ii). The PPL provides some platform for civil society engagement in the procurement process. The PPL requires the establishment of a standing unit in the AB to perform

review functions of complaints which may engage representatives of the stakeholders who are not procurement entities or NGOs, on unpaid basis.(A16(2)(3). GD853, Annex 2, para. 4(2), now provides mechanism for others who are legitimately interested in the bidding process, including representatives from civil society, to attend. In its current formulation, these “advisers” are considered “members” with an “advisory vote.” This should be further clarified since the membership implies participation in the decision-making process (albeit on an advisory capacity). In designing the system, consideration should be given to the value of maintaining the independence and oversight roles of these “observers”, and measures introduced for preventing co-optation. In order to perform an effective oversight role, these “observers” should have a mechanism to note their observations and provide instant feedback. Thus, at their option, they should be allowed to note their comments in the minutes or be provided with some formal vehicle to report their observations. Again, this should not be made obligatory on their part in all cases. It has been confirmed that Transparency International Armenia has participated as observer in several previous tenders. In summary, representatives from civil society should remain as observers, monitors or oversight agents and not participants or advisers in the decision-making

(B) Mechanisms for Transparency, Information Access and Complaints and Feedback Systems

Reporting and Whistleblowing Portals and Protections:

- Portals, including website and hotlines and mailing addresses, should be available and easily accessible for people who want to report allegations and anomalies, with assurances of protection of anonymity or confidentiality. Recent amendments¹⁹ to the Criminal Procedure Code provides for protection of persons participating in a criminal trial but the law legislation does not address the protection of whistleblowers or informants, who voluntarily provide information about allegations of corruption to relevant authorities.

Complaints System:

- It is recommended that an appeals system be set up that is totally independent of the MOF, AB, SPA and government entities, that operate in an environment free from a perception of conflict of interest, which builds confidence from participants, and which would be efficient, timely and responsive to procurement needs and effective in providing meaningful remedies. The architecture and configuration of this body has to be organic to Armenia and will ultimately rely on the domestic legal structure. But a varied membership, for a fixed term or on rotation basis, from persons of known probity and independence such as members of NGOs, media, academia, retired jurist or judges, industry and privates sector representatives will inspire confidence in terms of fairness and transparency. The AB, given its expertise and organizational advantages, may serve as a secretariat with organization

¹⁹ Law Amending the RA Criminal Procedure Code, May 25, 2006

and clerical functions for purposes of supporting the appeals proceedings and for carrying out the implementation of decisions.

- Armenia should promote a complaints system that inspires confidence among potential users considering that such complaints system is a vital source of information about fraud and corruption (although complainants may not initially use such terms in their initial allegations).

Information Systems and Freedom of Information Regimes:

- Vigorously implement access to information and appropriate information systems and freedom of information regimes and more importantly mechanisms that implement a meaningful culture of compliance. A separate study with detailed recommendations should be conducted by the governments in this important area. An NGO, the Center for Freedom of Information, has already taken some initiative by regularly publishing a list of state officials who violate individual's right to seek information.

Feedback and Report Cards:

- Introducing citizen report cards to obtain user feedback on the performance of public services, as a systematic analysis of user perceptions on the quality and satisfaction of public services is lacking in Armenia. The focus of the citizen report card will be to determine the degree of satisfaction of the common citizen of the delivery of public services with respect to access, use, reliability and affordability. Introducing community scorecard activity to compliment the citizen report card by its focus on the performance evaluation of government services, projects and administrative units. This would be used to track expenditures on important sectors; generation of benchmark performance criteria which can be used in resource allocation and budget decisions; comparison of performance between Marzs, developing a direct feedback mechanism between the providers and users; building local capacity and strengthening citizen voice and community empowerment.

(C) Check and Balance, Control Systems and Enforcement Mechanisms

Audit and Control:

- In 2004, the Government promulgated Decision No. 1376-N “On Approving the Strategy for the Development of the System of Internal Audit for the RA State and Local Bodies, Organizations Reporting to Them and State and Local Non-Commercial Organizations.” The Oversight Department of the MOF was renamed “The Internal Audit and Oversight Department”. Education and training of staff of internal audit departments in various public administration bodies is taking place. As for external audit, the Law on Control Chamber, passed by the National Assembly, established a principally new, constitutionally independent body.
- There are provisions for external audits by multiple entities, including the MOF, from the Prime Minister's Office and the Chamber of Control. The National Prosecution Service has likewise been involved in audit and control

functions. The effectiveness of audit mechanisms is questionable in most cases, undermining the intent of the provisions. Furthermore, having undifferentiated, and multiple entities performing “audits”, with no clear demarcation of responsibilities, might provide possibilities for multiple facilitation payments. Similarly, there is generally confusion or overlap of what is considered “audit” and what is “control”, which further undermines the quality and effectiveness of audit. It is recommended that functions of various bodies be reviewed and redefined to exclude unwarranted interference in the procurement process (along the lines recommended in the CFAA) and that pertinent laws or regulation be amended accordingly.

- Findings of audits and reports obtained through the complaint system or through the internal and external control system, including investigative reports of journalists and NGOs, should be followed up with investigation, prosecution and other enforcement measures and subsequent publication or disclosure of results.

Tender Committee Composition:

- Consider varying membership of tender committees to include other employees of related and appropriate agencies in order to promote transparency and check and balance.

Sole Source:

- Tighten requirements for sole sourcing on the basis of urgent need or emergency. It must be used only in extreme and exceptional circumstances, limited in application and duration and only if such circumstance did not result from lack of foresight, poor planning or negligence on the part of the entity concerned. The framework should identify which state entity, and applying which legal framework, is responsible in the determination of what constitutes urgent need or emergency.
- Discontinue use of registry of the State Commission for the Protection of Economic Competition (Anti-Monopoly Commission) as a proxy for justifying sole sourcing on the basis of lack of competition. Alternatively, it is recommended that in order to depart from the default rule of competitive bidding, any such record should be supplemented by an articulation of the actual position and market share of the firm, including identification of the other dominant and marginal players in the specific market, and by an explanation by the firm as suggested in the 2004 CPAR. These concerns have been identified in the 2004 CPAR but have not been sufficiently addressed by the government.
- Extension of contract on sole source- Further safeguards may be considered including limiting the amount and duration of the extended contract (eg. since this is for additional supplies, the contract amount and/or scope and duration or period should not surpass or for a longer period than the original contract). More importantly, such extension must be justified for economic and efficiency reasons, including the lack of advantage to be obtained in proceeding with competitive methods. Additionally, it may also be required that such extension of contract on sole source basis would only be appropriate

provided that the current or original contract has been obtained through competitive process (and not through original sole source).

Corruption Offenses in Procurement:

- The PPL will be greatly improved if it provides a direct reference to specific offenses under criminal laws and illustrate what constitutes corruption and fraud in procurement processes (eg. collusion, falsified bid security, fraudulent documents, bribery, etc.), and accordingly set out responsibilities and accountabilities of persons involved in the procurement process for misconduct and breach of codes of conduct.
- Tender, contract and other model documents should be developed and should include provisions addressing corruption, fraud, conflict of interest and unethical behavior. The relevant provisions should also set out the consequences and sanctions for such behavior.
- Design and implement government education and awareness campaigns as part of efforts to influence behavior away from corruption and impunity.
- AB procurement reform strategy will be much improved if it goes beyond general principles of anti-corruption to detailed recommendations on mechanisms to address corruption in procurement.
- Align and link the government's general anti-corruption strategy with the procurement system. Need for codes of conduct, ethics rules, and conflict of interests provisions for participants in the procurement process. Capacity building for specialized anti-corruption bodies, in line with international best practices should be pursued.
- The operation of the debarment and blacklisting system under the PPL should be clarified with articulation of applicable procedures and principles to ensure fairness.
- Capacity building and awareness raising to ensure that employees engaged in procurement have a practical understanding of fraud and corruption schemes; have harmonized set of tools to identify red flags at each stage of procurement cycle; have ability to articulate, in practical terms, procurement risks, and can devise mitigation strategies and conduct steps basic due diligence

Collusion:

- As discussed above, reports and assessments indicate a prevalent and pronounced concern about collusion in the bidding process in Armenia. The government must devise a systematic and targeted policy and enforcement mechanism for detection and prevention of such practices. Among others, procurement officials should be trained to focus on red flags indicating unusual bid patterns such as: distinct bids by a systematic or uniform percentage; bids inexplicably too close or too far apart; losing bid prices are rounded or of unnatural numbers; unexplained inflated bid prices; losing bidders become subcontractors; apparent rotation of losing bidders; unusual repeated extension of bid security; delay in completing BER or contract award signing indicating efforts to negotiate corrupt terms; cartel like behavior in the market; and a general scheme of coordination of preparation of bids by designated winner. Subjecting bids at close review may indicate similar offices, addresses, employees, telephone and fax numbers, bids with sequential

bid security numbers, same type face or print style used, same spelling mistakes, etc.,

- The government should seriously look into the phenomenon and address the problem of “state capture” in certain markets or sectors where firms are able to encode preferential treatment (such as monopolistic privileges) for themselves in the basic rules of the game in the market, and creating a wide range of policy and institutional distortions that generate highly concentrated gains to narrow sectors and groups..

(D) Others Key Recommendations

- Develop model documents, standard and objective qualification and evaluation criteria, and general and special conditions of contracts.
-
- Develop a robust system of supervision with mechanisms for accountability.

Action Plan:

Sr#	Action	Priority (Immediate/Short Term/Medium Term)	Impact
1	Establish network/council of interested parties and stakeholders	Medium term	Encourages feedback, confidence and civil society participation and oversight
2	Review PPL provisions on civil society engagement in the procurement process	Short term	Preserves independence of oversight role and encourage robust participation
3	Establish effective portals to report allegations and anomalies	Short term	Encourages feedback and allow early detection and correction
4	Set up independent complaints system	Immediate term	Promote independence and build confidence
5	Vigorously implement an access to information and appropriate information systems and freedom of information regimes	Medium Term	Promotes transparency
6	Explore citizen and community report cards	Medium term	Provides feedback and checks
7	Streamline and rationalize overlapping audit and control systems and promote meaningful follow-up	Short term	Promotes checks, and early detection and enforcement measures

Sr#	Action	Priority (Immediate/Short Term/Medium Term)	Impact
8	Vary membership of tender committees	Immediate term	Promotes transparency and check and balance
9	Tighten sole source requirements and use of monopoly certificates	Immediate term	Reduce overreliance and prevent abuse. Promotes resort to competitive process
10	PPL should refer to criminal laws and set out responsibilities and accountabilities of persons involved; bidding documents should refer to fraud and corruption	Medium term	Set out clear rules of accountability
11	AB procurement reform strategy should detail recommendations on mechanisms to address corruption in procurement	Immediate term	Sends a clear signal and allows for immediate implementation
12	Debarment and blacklisting system under the PPL should be clarified with articulation of applicable procedures and principles	Short term	Ensures fairness and prevents abuse
13	Capacity building and awareness raising on fraud and corruption in procurement	Medium term	Ensure employees engaged in procurement have practical understanding of fraud and corruption schemes; have harmonized set of tools to identify red flags at each stage of procurement cycle; have ability to articulate, in practical terms, procurement risks, and can devise mitigation strategies and conduct steps basic due diligence
14	Develop specific strategies to address collusion	Short term	Promote competitive bidding; break down cartels

Sr#	Action	Priority (Immediate/Short Term/Medium Term)	Impact
15	Develop model documents, standard and objective qualification and evaluation criteria, and general and special conditions of contracts	Medium term	Tightens requirements and encourage strict compliance
16	Develop a robust system of supervision	Medium term	Promotes accountability

CASE STUDY V - PUBLIC –PRIVATE PARTNERSHIP IN PUBLIC PROCUREMENT

I. Introduction

1. Armenia is a lower middle-income country with a gross national income per capita of \$3,960 (GNI per capita, Atlas method).²⁰ The country is comprised of 10 regions (marzes) and the capital city of Yerevan, which also has the status of a marz. The total population of Armenia is about 3.2 million (as of 1 January 2003),²¹ of which about one-third, nearly 1.2 million have been recorded as living in rural areas. Agriculture generates 18 percent of Armenia's gross domestic product (GDP) and employs about 46 percent of the labor force. The services sector, concentrated in public administration and trade, generates 32.2 percent of GDP. As a small developing economy, Armenia depends critically on external markets for sustaining high growth and reducing poverty.

II. Purpose of the study

2. The main purpose of this case study is to review the status of public private partnership as it relates to public procurement in Armenia and to make recommendations for strengthening the relationship and involvement of the private sector in public procurement.

III. Basis of the study

3. This case study is based on a desk review of available reports on public –private partnerships and discussions with a few selected private sector firms and associations in Armenia. The findings and recommendations made in this report are subject to review and approval by Bank management and will then be sent to the Government of Armenia for their comments.

IV. Private sector

4. Private sector constitutes about 70 percent of the GDP in 2003 and its share of employment is about 75 percent (see table 1). The private sector has been rapidly growing in recent years (the business directory (2008) and earned the name of “the Caucasian Tiger”. The private sector includes 2300 small, medium and large companies and organizations involved in the provision of over 10,000 items of goods, works and services). These are also accessible through the website: www.spyur.am. Growth has been especially in the construction and services sub-sector fueled mostly by remittances by the Diaspora. Private sector development is also one of the focus

²⁰ Source: World Bank. October 2008. Country Brief. Link to web-site:
<http://www.worldbank.org.am/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ARMENIAEXTN/0,,contentMDK:20628754~menuPK:301586~pagePK:141137~piPK:141127~theSitePK:301579,00.html>

²¹ NSSA. 2003.

areas for the Bank’s CAS as well as for other bilateral and multi-lateral development agencies. In terms of public expenditure, excluding the defense sector, education and science constitutes the largest percentage share of about 15 percent followed by social insurance and social security; and general public services (which is about 10 percent each) and transport, roads and communications which is about 7 percent. Health expenditure is also about 7 percent of the total public expenditure.

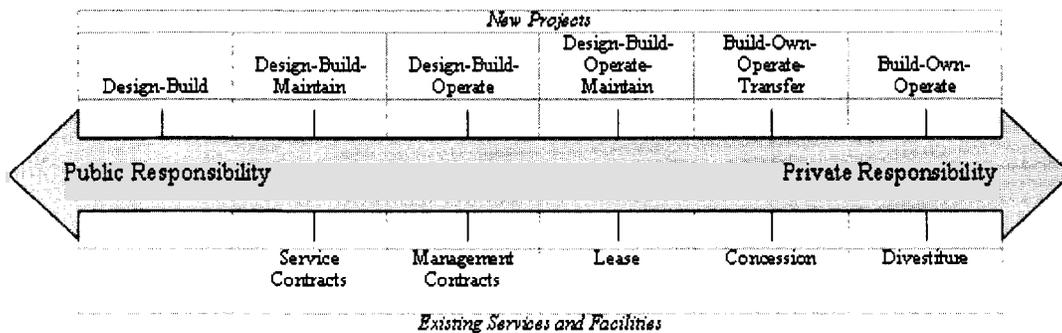
Table 1: Armenia: Private Sector Indicators

Indicator	1998	1999	2000	2001	2002	2003
Private sector share in GDP (%)	60	60	60	60	70	70
Private sector share in employment (%)	68.5	71.7	72.9	N/A	76.9	75.0
Foreign direct investment, net of inflows (% of GDP)	12	7	5	3	5	4

Source: World Bank. 2005. Private Sector Indicators. World Bank. Washington DC. Link: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/EXTECAREGTOPPRVSECDEV/0,,contentMDK:20508282~pagePK:34004173~piPK:34003707~theSitePK:570955,00.html>

V. Status of Public Private Partnership

- Public Private Partnership (PPP) refers to a contractual agreement between a government agency and a private sector, which allows for greater private sector participation in the delivery of public infrastructure projects and services. PPPs are being used more frequently by many countries in different stages of development to build new and upgrade roads, power supply, water and waste water facilities, prisons, public housing, hospitals, schools, etc. As compared to traditional public procurement methods, the private sector under a PPP arrangement assumes a greater role in the planning, financing, design, construction, operation and maintenance of public facilities. The associated risks with a PPP are transferred to the party, which is best suited to manage the PPP. Most of the common models of PPP are: Design-Build, Design-Build-Maintain, Design-Build-Operate, Design-Build-Operate-Maintain, Build-Own-Operate-Transfer, Build-Own-Operate, Design-Build-Finance-Operate/Maintain, Service Contract, Management Contract, Lease, Concession, and Divestiture. These models vary in the degree of private and public responsibility – which is depicted in the following diagram:



Source: The National Council for Public Private Partnerships

6. Armenia has had an impressive track record of implementing PPPs in the infrastructure sector, especially in the areas of FIEF, Water Supply and Road Services.²² Investments in PPP in Armenia up to 2006 amounted to \$560 million and places Armenia among the PPP leaders in the CIS countries. PPPs can now be found in every major part of the infrastructure, including energy (where it has been successful – see example below), telecommunications, transport, postal service, water distribution, etc. The development of PPP in Armenia, however, has been stifled by the following problems in public procurement:

- Pricing mechanisms do not reflect current market conditions: Prices specified in procurement contracts do not reflect the existing average market prices. This include, in individual cases, where pricing through non-market mechanisms are used. Moreover, the Committees do not evaluate whether financial proposals of the bidders are justified. Public procurement prices differ from market prices for some specific services (e.g. health, education, etc.), which results in the use of non-competitive methods.
- Perception of the private sector of public procurement: The overall perception of the private sector of the public procurement is that the evaluation process is not very transparent, especially in the setting of qualification criteria and technical specifications.

VI. Successful case of public private partnership – the case of the power sector

7. Armenia faced a severe power crisis following the collapse of the Soviet Union, which was further exacerbated by the Nagorno-Karabakh war, economic blockade by Azerbaijan and Turkey and cut –off of Armenia’s only source of gas and oil for its thermal plants, shut down of the Medzamor nuclear power plant following the massive earthquake in 1988. Power supply was merely two hours of electricity per day, which placed severe hardship on the consumers – especially during the harsh

²² Alam, Asad. 17 February, 2009. Armenia: Country Partnership Strategy – Pre-Upstream Review. Power Point Presentation. The World Bank. Washington DC. (some lessons have been learned – from CAS CR and other sources).

winter months. The Government of Armenia took bold steps to address these problems. This consisted of a two-pronged approach,

- The first one was reform of the tariff structure, which involved setting the tariffs for industrial, commercial, and household customers at equal levels and rebalancing of tariffs to remove cross-subsidies – especially since subsidies to the power sector had reached a level of 11 percent of Armenia’s GDP by 1995. (Sargsyan, et al. 2006).
- The second involved public private partnership - The first attempt to privatize the distribution system in 2001 did not receive much support, and bidding documents were flawed. Despite this the tender took place with a few major international players showing interest, which gave an additional boost to the reformers in the Government. Despite the international situation in the financing of power projects facing severe crises in 2001 (due to the collapse of Enron in November 2001), a management contractor, Midland Resources Holding (MRH), a UK Guernsey company, with no experience in power operations, was selected and given the control to operate the distribution system in late 2002. This led to further privatization in the generation sector, which included the ownership of the Hrazdan thermal power plant, the Sevan- Hrazdan hydropower cascade, and financial control of Medzamor to several Russian companies under a state debt forgiveness arrangement of US\$96 million. These public private partnership arrangements resulted in greatly improved power supply to the customers – who now had 24-hour service throughout the country, collections are at nearly 100 percent of sales.

Key lessons learnt

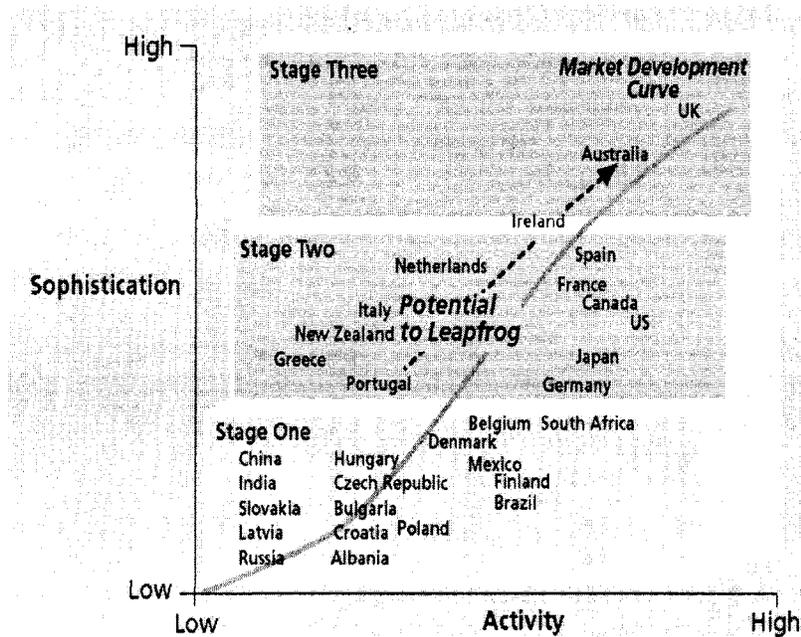
8. The main procurement related lessons learnt from this public private partnership in the power sector are:
 - Political will to reform is of paramount importance – and a champion to lead the reform effort and build consensus
 - Learning from failures: the bidding documents and legal and regulatory framework were not satisfactory the first time – but subsequent revisions took into consideration the lessons learnt from the failed tender process
 - Need for regular communication between the bidders and owner is crucial which is helpful in establishing confidence. Some Governments has used a two stage bidding process for tendering private sector participation contracts
 - More attention should be placed on service quality of the private operator rather than on the level of investment an operator is willing to commit
 - Governments and donors should consider adapting standard bidding requirements and procedures to accommodate new types of PPP arrangements.

Which stage is Armenia in Public Private Partnership?

9. Using the PPP market maturity curve (developed by Deloitte), shown below, based on the discussions held during the CPAR mission with both public and private sector officials, Armenia could be placed in stage one of the PPP market maturity along with countries such as Latvia, Russia and Slovakia, etc. This stage is characterized by the following features: (i) policy and legislative framework for PPP is being developed; (ii) Deal structures are being formulated and implemented; (iii) Process of getting the public –private transactions right has begun; (iv) Process of building a marketplace for PPP has commenced; and (v) lessons from PPP in sectors where this has been tried are being adapted to other sectors. Some of the constraints inhibiting the further growth of PPP are lack of clarity, consistency and transparency in PPP processes and its administration, failure of the legal and regulatory framework to ensure a fair and transparent competitive bidding process, protection of public interests, insufficient capacity to conclude and manage PPP contracts, lack of impact assessment – ex-post and ex-ante, lack of well-developed financial institutions which makes dependency on grants and soft loans. (Polishchuk, 2008).

Recommendations

10. Develop a comprehensive Public Private Partnership (PPP) strategy and a road map, which would assess the strengths and weaknesses and make practical and realistic recommendations to take Armenia to the third stage of the PPP maturity curve.



Source: Deloitte. William Eggers and Tom Startup. 2006. Closing the Infrastructure Gap.

VI. Enabling environment for Growth in Public Private Partnership

Business climate

11. Overall, the business climate in Armenia for the growth in public private partnership needs further improvement as indicated by Armenia’s overall ranking of 44 out of 181 countries in the ease of doing business in 2009 (Singapore is the top ranked economy in the ease of doing business). See table 3 below for detailed comparison of doing business indicators in 2008 and 2009. Armenia ranks 61 in enforcing contracts. There is a lack of interest in private companies to do business with the Government – which was also one of the findings of the May 2004 CPAR. The major problems cited by the private sector involved the processes used in public procurement, most important of which were the following:

- Qualification criteria and technical specifications in the bidding documents were not very well defined, and were set at low levels which enabled poorly qualified bidders to participate with low prices
- Evaluation process of the tenders submitted were not transparent

12. Since the last CPAR, not much improvement has taken place in improving the qualification criteria and technical specifications in the bidding documents. However, there is some improvement in the in the area of the provision of information about procurement opportunities in the web site as well as through bulletins and newspaper advertisements.

Table 3: Doing Business – 2008 and 2009

<i>Ease of doing business</i>	<i>Doing business 2008 rank</i>	<i>Doing business 2009 rank</i>	<i>Change in rank</i>
1. Overall doing business	41	44	-3
2. Starting a business	49	66	-17
3. Dealing with construction permits	73	42	+31
4. Enforcing contracts	63	61	+2
5. Employing workers	52	54	-2
6. Registering property	2	5	-3
7. Getting credit	25	28	-3
8. Protecting investors	84	88	-4
9. Paying taxes	147	150	-3
10. Trading across borders	131	143	-12
11. Closing a business	47	47	0

Source: World Bank. 2009. Doing business in Armenia. www.doingbusiness.org

Implementation guidelines of public procurement to define private sector role

13. The implementation guidelines of public procurement currently does not define the role of the private sector, but provides for the expert assessment of the design estimates of civil works. Recommendation: The CPAR recommends: (i) changes be

made in the public procurement law to make provisions for private sector participation in the building of infrastructure and provision of basic services, such as health, education, etc and establishing clear procedures for public private sector participation – should be modeled along the UNCITRAL model legislative provisions on privately financed infrastructure. (See reference UNCITRAL. 2003 Model legislative provisions on privately financed infrastructure projects).²³ Also, the EU Directives 2004/18 and key interpretative documents on PPP issued by the EC would be relevant for purposes of Armenia’s efforts to harmonize with EU and WTO requirements; and (ii) define clearly the role of the private sector in the expert assessment of the design estimates of civil works and that this should be carried out by the private sector.

14. Good procurement practices which encourage public private partnership, include the following:

Two-stage tender process is recommended. First stage: First stage is the prequalification stage, which consists of

- (i) Pre-qualification to narrow down to 5 to 6 qualified sponsors and or consortium of sponsors
- (ii) Pre-qualification to be done on a pass-fail basis based on objective and quantifiable criteria, which should test the financial strength, development experience, construction experience and operation and maintenance experience

Second stage: The second stage is the tender process, which consists of:

- (i) Technical proposal – to be evaluated on a pass-fail basis
- (ii) Legal statement, bid bond, accepted final project agreements
- (iii) Financial proposal – which should be evaluated using current market prices

15. The two-stage approach would promote transparency and objectivity, leaving little or no room for dispute. Using the pass-fail system in the pre-qualification stage ensures that all bidders have a level playing field and are equally qualified and in the technical proposal stage ensures that there are no deviations to the bid. Project agreements are pre-negotiated with pre-qualified bidders prior to bid and bidders must accept the final project agreements in tender with no material deviations. This minimizes the post bid negotiations and leaves adequate time for the signing of the public-private partnership agreement.

²³ United Nations Commission on International Trade Law. UN. Sales number E.04.V.11 ISBN 92-1-133583-3. This can be accessed through the link:
<http://www.uncitral.org/pdf/english/texts/procurem/pfip/model/annex1-e.pdf>

Private sector representation and organization

16. The organization of the private sector in Armenia is at an early stage, a few of which are the union of employers, association of builders, association of investigative journalism and citizen groups. These need to be nurtured and developed to take an active role and increased involvement in the public procurement process and facilitate market access. There is limited competition due to lack of interest, procurement policies, and monopolistic or oligopolistic features, especially in infrastructure projects. New types of PPP are models are being tried out, such as the housing project in earthquake affected areas led by Ministry of Urban Development.

Procurement Practices

17. Continued practice of the award criterion applied to the local procurement on the basis of lowest price only, often results in the Government purchasing lowest quality products and discourages serious, reputable bidders to participate in the public procurement process. There is however, a continuing perception among the private sector that the winners are pre-determined which prevents eligible companies to participate – but this is not a consistent practice

Recommendation

Evaluation criteria for the procurement of goods, works and services should be revised to take into consideration both price (based on current market conditions) and quality

Improper procurement practices and mitigation measures

18. Armenia ranks 109 in the improper procurement practices index according to Transparency International with a CPI score of 2.9²⁴. Denmark, New Zealand and Sweden were ranked as number one in the 2008 improper procurement practices index with a score of 9.3.²⁵ Singapore and Finland were ranked as number four and five with scores of 9.2 and 9.0 respectively.²⁶ The countries with the lowest scores were Eritrea, Ethiopia, Guyana, Honduras, Indonesia, Libya and Mozambique²⁷ with a score of 2.6 and had a ranking of 126 among the countries analyzed.
19. Improper procurement practices in public procurement in Armenia occurs in a variety of ways – such as collusion between bidders, sole source contracts, awarding contracts to non-qualified contractors, limited dissemination of procurement

²⁴ Transparency International used seven surveys to arrive at this score and the confidence range is between 2.6 and 3.1.

²⁵ The number of surveys used to determine this score was six and the confidence ranged between 9.1 and 9.5.

²⁶ The number of surveys used was 9 for Singapore and 6 for Finland with a confidence range of 9.0 to 9.3 for Singapore and 8.4 to 9.4 in the case of Finland.

²⁷ The number of surveys used for Eritrea, Ethiopia, Guyana, Honduras, Indonesia, Libya and Mozambique were 5, 7, 4, 6, 10, 5, and 7 respectively and the confidence ranged between 1.7 and 3.6.

opportunities, acceptance of low quality works in relation to the expenditure, favoring selected contractors and suppliers for the provision of goods, works and services, etc.

Mitigation measures

20. The Government is taking steps to reduce improper procurement practices. In this regard, the Government proposes to expand civil society participation in governance and increase transparency of the public administration system. (Republic of Armenia, 2007)²⁸.

Recommendations

Following are some recommendations to reduce improper procurement practices in public procurement:

- Development of a comprehensive, user friendly procurement guidelines which should be publicly disseminated
- Provision of information on the schedule of procurements being planned and the status of previously announced bidding opportunities,
- Improve the design of the request for proposals, including specifications and the selection criteria which would ensure competition and proper evaluation of bids
- Enforcement of the implementation of procurement guidelines and RFP requirements during the review, evaluation and selection of bids
- Maintain consistency of data within the procurement documents
- Adopt measures to prevent conflicts of interest at all stages of the procurement cycle.
- Introduce citizen report cards to obtain user feedback on the performance of public services, as a systematic analysis of user perceptions on the quality and satisfaction of public services is lacking in Armenia. The focus of the citizen report card will be to determine the degree of satisfaction of the common citizen of the delivery of public services with respect to access, use, reliability and affordability.
- Introduce community scorecard activity to compliment the citizen report card by its focus on the performance evaluation of government services, projects and administrative units. This would be used to track expenditures on important sectors; generation of benchmark performance criteria which can be used in resource allocation and budget decisions; comparison of performance between

²⁸ This is part of the Government program as stated in the section on “Reforms of Governance System and Fight against Improper procurement practices”, Section 4.2.1, Government Effectiveness. Republic of Armenia, page 9.

Marzs, developing a direct feedback mechanism between the providers and users; building local capacity and strengthening citizen voice and community empowerment.

VII. Action Plan to promote Public Private Partnership - Key Recommendations and Priorities

Key Recommendations	Priorities		
	Immediate	Short Term	Medium Term
I. Legislative and Regulatory Framework			
Incorporate provisions for public private partnerships and use of a variety of models, such as Design-Build, Design-Build-Maintain, Design-Build-Operate, Design-Build-Operate-Maintain, Build-Own-Operate-Transfer, Build-Own-Operate, Design-Build-Finance-Operate/Maintain, Service Contract, Management Contract, Lease, Concession, and Divestiture as applicable to different sectors, draft and adopt a public-private partnership act	✓		
II. PPP strategy and action plan			
Develop a comprehensive Public Private Partnership (PPP) strategy and a road map which would assess the strengths and weaknesses and make practical and realistic recommendations to take Armenia to the third stage of the PPP maturity curve		✓	
Carry out a review of procurement procedures of small, medium and large private sector firms involved in the provision of goods, works and services in agriculture, communications, education, health, power, water sectors and Develop a guide for PPP		✓	
III. Institutional Framework and Management Capacity			
Establish a PPP unit/agency in the Ministry of Economy with qualified and experienced personnel to develop PPP policies, procedures and monitor the implementation of PPP strategy and action plan.	✓		
Develop a register of PPP contracts and a monitoring system for the implementation of PPP contracts		✓	
Design and implement a continuous education and training program in PPP for the staff of the PPP unit as	✓	✓	✓

Key Recommendations	Priorities		
	Immediate	Short Term	Medium Term
well as the private sector and institutionalize the training program in a recognized national university/training institution			
IV. Public awareness			
Create the enabling environment for the development of association of private sector, and citizen groups whose main objective would be to serve as an independent oversight body in all aspects of public procurement.	✓		
Design and implement a continuous awareness raising campaign on PPP	✓	✓	✓

