

REPUBLIC OF ALBANIA

FINAL
COUNTRY PROCUREMENT
ASSESSMENT REPORT
(CPAR)

VOLUME I

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EUROPE AND CENTRAL ASIA REGION
THE WORLD BANK

ALBANIA
COUNTRY PROCUREMENT ASSESSMENT REPORT

VOLUME I

FINDINGS AND RECOMMENDATIONS

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CURRENCY

Currency Unit = Albanian Lek (ALL)
US\$ 1.00 = ALL 139.85 (January, 2001)

ACRONYMS & ABBREVIATIONS

ACS	Albanian Customs Service
ALL	Albanian Lek
ASYCUDA	Automated Systems for Customs Data
BER	Bid Evaluation Report
BoA	Bank of Albania
CAM-A	Customs Assistance Mission - Albania
CEN	European Committee for Standardization
COM	Council of Ministers
CPAR	Country Procurement Assessment Report
CPPR	Country Portfolio Performance Review
CPI	Corruption Perception Index
DP	Direct Procurement
DOPA	Department of Public Administration
DPS	General Directorate of Standardization
EBRD	European Bank for Reconstruction and Development
EFTA	European Free Trade Association
EU	European Union
FY	Financial Year
GCC	General Conditions of Contract
GOA	Government of Albania
GPA	Government Procurement Agreement of the WTO
GRD	General Roads Directorate
HSC	High State Control
IAS	International Accounting Standards
ICB	International Competitive Bidding
ICC	International Chamber of Commerce
ICR	Implementation Completion Report
IDF	Institutional Development Fund
IFI	International Financial Institution
IMF	International Monetary Fund
INSIG	Insurance Institute of Albania
INSTAT	Institute of Statistics
ISO	International Standards Organization
KESH	Albanian Power Corporation
L/C	Letter of Credit
LPP	Law on Public Procurement
MOF	Ministry of Finance
MTEF	Medium-Term Expenditure Framework
NCB	National Competitive Bidding
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
OT	Open Tendering
PER	Public Expenditure Review
PPA	Public Procurement Agency
PPB	Public Procurement Bulletin
RFP	Request for Proposals
RFQ	Request for Quotations
RT	Restricted Tendering
SBD	Standard Bidding Documents
SCC	Special Conditions of Contract

SIGMA	Support for Improvement in Governance and Management Program
SPD	Standard Prequalification Document
TA	Technical Assistance
UNCITRAL	United Nations Commission for International Trade Law
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

ALBANIA
COUNTRY PROCUREMENT ASSESSMENT REPORT (CPAR)

PREFACE

Date of the Report

This report was completed on January 22, 2001.

Basis of Report

This report was prepared on the basis of the findings of a World Bank mission to Albania from 10 to 21 January, 2000 and analysis of the laws, documents and other information collected. The mission comprised of Mr. Shaun Moss, Senior Procurement Specialist (mission leader), Mr. Jagdish Jassal, Procurement Analyst, both from the Europe and Central Asia Region of the Bank, and Ms. Silvana Rusi, Local Procurement Consultant.

On the part of the Government of Albania (GOA), the Minister of Finance, Mr. Anastas Angjeli, and the Deputy Minister of Finance, Ms. Adriana Berberi, both received the Bank's mission, offered invaluable guidance on the conduct of the assessment and emphasized the high priority which the GOA accords to reform of the public procurement system. The CPAR counterpart team from the Public Procurement Agency (PPA) met repeatedly with the Bank's mission to discuss the assessment. The Bank is grateful to the Government of Albania for this cooperation.

Following submission of the Draft CPAR to the Government in October 2000, the Government and the Bank discussed the Draft Report in a series of meetings held between, on behalf of the PPA, Mr. Arben Prifti, Director and Ms. Loreta Kriqi, Deputy Director, and, on behalf of the Bank, Mr. Sunil Bhattacharya, Regional Procurement Adviser for Europe and Central Asia Region. The findings, recommendations and Action Plan contained in this Final CPAR were agreed upon by the Government and the Bank during these meetings.

Furthermore, in a separate meeting chaired by Mr. Gjergji Teneqexhi, Secretary General of the Ministry of Finance and attended by Ms. Filoretta Kodra, Director, Public Administration Department of the Council of Ministers, the Bank's Resident Representative, Mr. Eugen Scanteie, Regional Procurement Adviser, Mr. Sunil Bhattacharya and Senior Country Officer, Ms. Sandra Bloemenkamp, the Government indicated their acceptance of the CPAR and its recommendations. The Government also undertook to support urgent measures to build the capacity of the Public Procurement Agency to discharge its functions effectively.

The Chairman of the High State Control, Mr. Mustafa Kerçuku also provided written comments on the Draft CPAR.

This report updates the previous CPAR on Albania, of March 1997, and follows the Bank instructions, issued on June 1 1998, on the preparation of Country Procurement Assessment Reports.

Purpose of the Report

The World Bank undertakes assessments of the procurement environment, covering both public and private sectors, in borrowing member countries on a systematic basis. The objective of this assessment is to provide useful feedback to Borrowers regarding the strengths and weaknesses of their public procurement systems. This enables member countries of the Bank to improve the transparency of their procurement processes and to develop an Action Plan to enhance their capacity to conduct public procurement efficiently. A further important objective is to determine the compatibility of national procurement practices with the principles of economy and efficiency and with international procurement law and best practice. The findings and recommendations of this report not only help the Bank to ensure that sound procurement practices are followed in projects which the Bank finances, but also enable Borrowers to enhance the efficiency of their public spending.

Acknowledgements

The mission members wish to acknowledge the extensive cooperation and assistance received from officials and staff of the public organizations, state agencies and private companies interviewed. Mr. Eugen Scanteie, Resident Representative of the World Bank Office in Tirana, and his staff provided invaluable support to the assessment. We are particularly grateful to Ms. Anila Iljazi, Executive Assistant in the Bank Office, for her assistance with arrangements for the mission

Executive Summary

Albania has made significant advances already in the development of its public procurement system. Foremost among these is a Law on Public Procurement (LPP) which is close to international best practice. Significant achievements have also been made in putting in place appropriate organizational arrangements to support public procurement and in training. Nevertheless, whilst acknowledging these achievements, it must also be recognized that substantial further work remains to be done in the legislative and institutional areas, as well as in increasing transparency and promoting the consistent application and enforcement of the law by procuring entities. As the Government of Albania has implemented none of the recommendations made in the 1997 CPAR, this Report identifies these as well as several other improvements to be made to the legislation. Together, they make up a set of reforms which are substantial enough to warrant a wide-ranging amendment to the current Law on Public Procurement and to the implementing regulations.

The main findings of the Country Procurement Assessment Report may be summarized as follows.

Achievements to Date

The Law on Public Procurement (law # 7971 effective January 1, 1996) is a reasonably comprehensive legislative instrument for the conduct of public procurement. It offers the simplicity of a single, unified law which decentralizes the authority for conducting procurement to procuring entities at both state and local government levels of the administration. Flexibility in the legislative process is achieved by the fact that, whilst the procurement methods and the conditions for their use are contained in the Law, specific provisions, including the relevant financial thresholds, are contained in separate implementing regulations, which may be amended quickly, without necessitating recourse to seeking amendment of the law by the People's Assembly.

The law offers a comprehensive range of procurement methods, which should enable procuring entities to cope with differing procurement requirements. One of the strengths of the law is that it establishes Open Tendering (OT), which is the main, national competitive procurement method, as the preferred method of public procurement, in practice the efficacy of this provision has to date been undermined by weak enforcement of the legislation. Other advantages of the law are that it provides a two-stage bidding method for complex procurements, a specific method for consultants' services and a simple Request for Quotations (RFQ) method for low-value purchases.

The LPP also establishes the Public Procurement Agency (PPA), reporting to the Council of Ministers (COM), as the central organ for coordination and development of the public procurement system. Whilst this organizational arrangement accords with internationally-accepted best practice, to date the effectiveness of the PPA has been severely undermined

by the weakness of this institution, characterized by under-resourcing, high staff turnover and susceptibility to political influence.

The Need for Further Legislative Reform

Whilst the LPP provides a reasonably good framework for public procurement, certain of its provisions could be strengthened further with the objective of increasing competitiveness, transparency and enforceability. Primary among these considerations is to bolster the position of Open Tendering (OT) as the main procurement method in order to minimize current abuses, whereby procuring entities may too easily avoid using it, employing less competitive procurement methods instead. The LPP also imposes excessive limitations on the participation of foreign bidders by establishing an arbitrary differentiation between domestic Open Tendering and international Open Tendering. As the procuring entities are left with the discretion to decide whether to apply OT as a domestic or an international procedure, they most frequently limit it to domestic bidders. This has the undesirable effect of reducing competition, thereby increasing procurement costs and facilitating corruption. There is a considerable amount of uncertainty and confusion among procuring entities about the specific requirements of the law and implementing regulations. They find the three different legislative instruments complex, confusing and difficult to use. This leads to errors in application and increases the risk of avoidance of the requirements of the legislation

Key Recommendations:

- Strengthen the position of Open Tendering as the basic method of public procurement by bolstering the provisions in the LPP against breaking down procurement requirements into smaller values, providing fewer exceptions to the OT method and making all applications of procurement methods other than OT, above specified financial thresholds, subject to PPA prior waiver (see Section 2.1 below).
- Clarify the conditions for use of restrictive procurement methods, including Restricted Tendering and Request for Quotations and strengthen the requirements for the minimum number of bids which procuring entities must obtain.
- Increase the use of the Request for Proposals (RFP) method for the procurement of consultants' services by removing the threshold which currently applies to it.
- More effectively control the current over-use of the Direct Procurement method by tightening the conditions for its use in the LPP and by making all uses of this method subject to prior waiver by the PPA.

It is likely that these, and many of the other recommendations in this report, will require a comprehensive amendment to the current Law on Public Procurement and to the implementing regulations.

The Need to Improve Transparency and Assess to Information

Albania's public procurement system is characterized by many obstacles to the acquisition of information by interested parties, including both foreign and local bidders, as well as the public. This lack of transparency may conceal corruption and certainly undermines the confidence of bidders in the fairness of public tenders. In order to rebuild the confidence of all stakeholders in the system, several measures are required.

Key Recommendations:

- Apply Internet technology to improve dissemination of information on bidding opportunities by launching a PPA website, advertising bidding opportunities, records of bid openings and announcements of contract awards (see Section 2.2 below).
- Resume regular publication of the Public Procurement Bulletin immediately.
- Require all procuring entities to publish, at the beginning of each year, an indicative statement of their major procurement requirements during the coming year and to update it periodically.
- Place a clear requirement on the PPA to collect, disseminate and publish comprehensive information on annual expenditures of public funds on public procurement.
- Introduce a regular series of outreach programs to the local business community, in order to inform them of on-going reforms of the public procurement system and to restore bidders' confidence in its veracity (see Section 4.5 below).

The Need to Increase Competition

Participation in public tenders is low, as many bidders are unconvinced of the fairness of the procurement system. Participation and competition need to be boosted by the following measures:

Key Recommendations:

- Abolish the current arbitrary differentiation between domestic and international Open Tendering, allowing foreign bidders to compete more freely with domestic bidders. Control the application of international OT by the imposition of appropriate financial thresholds and consider the application of an appropriate level of domestic price preference, to facilitate participation in competitive tendering by Albanian bidders (see Section 2.8 and 2.9 below).
- On domestic tenders, lengthen the bidding periods currently allowed to bidders to prepare their bids.

The Need to Improve Procurement Procedures and Practices

Whilst, as indicated above, the Law on Public Procurement provides a reasonably sound framework for conducting public tenders, there are many bad practices which have crept into the Albanian public sector. These need to be addressed by selected procedural changes and by the promulgation of good practices in several areas.

- Make mandatory, for use by all procuring entities governed by the LPP, the use of the standard procurement documents developed with earlier financial assistance from the World Bank. These standard documents should include standard pre-qualification documents and standard bidding documents for goods, works and services (see Section 2.12 below).
- Discontinue the current practice of evaluating bidders' qualifications at the time of bid opening, as it leads to the arbitrary rejection of goods bids. Apply pre-qualification for large, complex contracts and post-qualification in all other cases.
- Introduce objective methodologies for the evaluation of bids. For all procurement of goods and works, contracts should be awarded to the lowest evaluated, responsive bidder.
- Discontinue the practice of revealing to bidders in the bidding documents the estimated price, as this produces uneconomic contract awards and facilitates bid-rigging.
- On all competitive procurement methods, require public bid opening immediately following the deadline for submission of bids.

The Need to Combat Corruption and Strengthen Enforcement

In Albania, a good procurement law is being undermined by poor application and enforcement. Put simply, it is too easy for procuring entities to avoid using the law and, because of the weakness of the PPA, there is no-one to prevent them from doing so. Procuring entities too often employ uncompetitive procurement methods, which lead to poor value for money and facilitate corruption. Among the Government's top priorities should be to measures combat corruption and strengthen enforcement of the legislation.

Key Recommendations:

- At least as an interim measure, until the capacity and control environment in procuring entities improves, the number of high-value contract awards which are subject to PPA review and clearance should be increased (see Section 4.2 below).
- All bidding documents issued by public procuring entities should contain specific provisions against fraud and corruption (see Section 5.1 below).
- An administrative procedure should be put in place for debarring from participation in public tenders companies and individuals found to have engaged in procurement-related fraud and corruption.

- Auditing measures need to be strengthened at all levels of the system - both internal auditing in procuring entities and external auditing by the appropriate bodies at state and local government levels. Auditors should be trained specifically in procurement auditing. Procurement audit reports should be published (see Section 5.2 below).

The Need to Build Capacity of Institutions and Procurement Staff

The weakness of the Public Procurement Agency (PPA) has, to date, been one of the key failings of Albania's public procurement system. It is imperative that the PPA should be equipped with appropriate powers to monitor the operation of public procurement, that its staffing should be strengthened, through recruitment and training, to enable it to carry out these functions effectively, that it should have the equipment and resources needed to implement the recommendations of this report and that it should be shielded from political influence over its operations and decisions. Equally, there is a pressing requirement to develop national resources for training civil servants in public procurement.

Key Recommendations:

- The PPA should be tasked with developing a national strategy for public procurement training and the Government should devote adequate resources to implement such a strategy over the next 3-5 years (see Section 4.3 below).
- Procurement should be recognized as a profession in its own right within the civil service, thus providing Procurement Officers with their own career path.
- The PPA should develop an accreditation system for accrediting Procurement Officers working in Government service.
- Existing educational resources, including technical universities and business schools, should be encouraged to develop vocational courses in procurement, leading to the award of professional qualifications, and the Government should accredit selected institutions to conduct these courses.

In summary, this report, including the many, more detailed recommendations presented in the main text, presents the Albanian Government with a comprehensive and challenging agenda for developing the legislative, institutional and resource aspects of its public procurement system and proposes an Action Plan by which key priorities may be achieved. Given the Government's agreement to implement this agenda, the World Bank offers its support and long-term cooperation to achieve these important goals.

FINDINGS AND RECOMMENDATIONS

A – SUMMARY OF FINDINGS STRENGTHS AND WEAKNESSES OF THE PUBLIC PROCUREMENT SYSTEM

Part A: Public Sector

Section 1: Legal and Regulatory Framework

1.1. Current Legal and Regulatory Framework

Albania is a democratic, parliamentary republic, with a legal system which is based on civil law. The principal sources of law are the 1998 Constitution, international agreements approved by the People's Assembly (parliament), statutory acts passed by the People's Assembly, normative acts passed by the Council of Ministers (COM), normative acts passed by ministries or other State institutions and regulations issued by local government organizations.

During the communist era of government in Albania, that is up until 1991, all import-export activity was governed by Ministry of Foreign Trade regulations and carried out exclusively by a number of sector-specific Foreign Trade Organizations. Ministries of the Government gained no direct experience of conducting foreign trade and there was no private sector. In August 1993, a procurement decree was passed, which governed public procurement up until the adoption of the current Law # 7971 on Public Procurement (LPP), which was passed by the People's Assembly on July 26, 1995 and became effective on January 1, 1996. The LPP is supported by implementing regulations, comprising a set of COM Guidelines and COM Decision # 335, which was enacted on June 23, 2000 and repealed an earlier COM Decision dating from January 1, 1996. These contain specific provisions, including the financial thresholds applicable to the various procurement methods. The financial thresholds were substantially altered by COM Decision # 335 and time is still needed to observe what impact these measures will have on the functioning of the public procurement system.

The LPP, which is based closely on the UNCITRAL Model Law on Public Procurement, applies to all government procurement, at both state and local government levels, as well as to procurement conducted by state and local government enterprises and by companies in which the GOA is a majority shareholder. It covers the procurement of construction works, goods, consulting services and other services.

The World Bank assisted Albania with the development of its current public procurement legislation by making available, in September 1995, an IDF grant (#28548) of US\$200,000. This was used to review the draft public procurement law, prepare a set of standard bidding documents (SBDs), train some 500 officials in public procurement and purchase office equipment for the nascent Public Procurement Agency (PPA). These activities were conducted with the assistance of foreign consultants, financed by the

grant. Implementation of the grant-financed activities was delayed by the civil unrest which affected Albania in 1997 and the sustainability of the institutional aspects of the grant has been undermined by a high rate of staff turnover in the PPA and the procuring entities in the interim. The SBDs, whose development the IDF grant financed, are not currently in use, despite their having been finalized and agreed with the Bank.

Albania is in the process of developing a body of legislation in areas which impact on the functioning of the public procurement system. These include the Civil Code, Civil Code Procedure, Commercial Code, Law on the Status of the Civil Servant, Law on Commercial Companies, Law on Small Businesses, Law on Foreign Investment, Law on Income Tax, Labor Code, Law on Expropriations and Temporary Taking of Private Property for a Public Interest, Construction Law, Building Code, Law on the Construction Police, Criminal Code, Law on Concessions and the Participation of the Private Sector in Public Service and Infrastructure, Law on Insurance and Reinsurance, Budget Law, Law on Archives, Customs Law and Law on Standardization. However, the legislation is not yet comprehensive, enforcement of the law is extremely unreliable and is undermined by chronically weak state institutions, widespread corruption and a judiciary which is not yet fully effective.

1.2: Implementation of the Recommendations of the 1997 CPAR

The previous CPAR, conducted in Albania in March 1997, made a series of recommendations for the reform of the country's public procurement system. Table 1.1 summarizes the actions which the Government has taken on those recommendations in the interim.

Table 1.1: Checklist on Implementation of Recommendations of the 1997 CPAR

Checklist of Recommendations		Implemented	
Topic	Recommendation	Yes	No
Open Tendering	Remove limitations on the participation of foreign bidders		√
Restricted Tendering	Require PPA approval to award a contract in cases where 3 bids are not obtained		√
Direct Procurement	Add "emergency" as a condition of use		√
Bid evaluation	Regulation on the evaluation of price and non-price criteria, requiring pre-disclosure		√
Request For Proposals	Amend LPP to clarify conditions under which negotiation may be held, requiring that procuring entity negotiate with only the first-ranked firm		√
Contract securities	Introduce a regulation to clarify when contract securities should be required, their value and acceptable forms		√
Bidding period	Bidding period should be calculated from the date of publication of the Invitation to Tender or the bidding documents, whichever is later		√

As the GOA has introduced no substantive amendments to the LPP since 1997, no progress has been made in implementing these recommendations.

Section 2: Procedures and Practices

2.1 Applicable Procurement Methods

2.1.1 The LPP provides for the following six procurement methods:

- i. Open Tendering (OT), which may be either domestic or international;
- ii. Restricted Tendering (RT);
- iii. Two-Stage Tendering;
- iv. Request for Quotations (RFQ);
- v. Request for Proposals (RFP);
- vi. Direct Procurement (DP).

2.1.2 Open Tendering (OT) is established in the LPP as 'the preferred procedure for procurement' and other procurement methods may be used only when the conditions for their use, as specified in the LPP, are met. OT may be used for the procurement of works, goods or services and its use is mandatory where the contract value exceeds ALL5.0m (US\$35,750) for works, ALL3.0m (US\$21,450) for goods or ALL1.0m (US\$7,150) for services. OT may be either domestic or international (see 2.8 below). It requires advertising and the procuring entity must issue formal, written bidding documents, the minimum contents of which are defined in the LPP; the evaluation criteria must be pre-disclosed in the bidding documents. For domestic OT, the bidding period is 20 days for goods, works and services (reduced from 30 days for works by COM Decision # 335); for international OT, it is 45 days in all cases. Sealed bids are required to be submitted in two separate envelopes: one containing the bidder's qualifications, the other the technical and price bid. Public bid opening is mandatory. For international OT, bids must be opened shortly after the deadline for their submission; however, for domestic OT, there is no such requirement. Bid securities are also required.

Whilst OT has many good features, it is undermined by weak provisions in the LPP against breaking down procurement requirements into smaller contracts, in order to avoid the use of this method. The PPA may address this issue in the future by requiring procuring entities to submit annual procurement plans (a proposal included in the current draft amendment to the LPP), which would afford the PPA the opportunity to review procuring entities' proposals for contract packaging, in order to prevent this breaking down of requirements. Also, because the LPP leaves it to the discretion of the procuring entity as to whether OT is conducted as a domestic or an international procedure, such decisions are often made arbitrarily, which reduces the competitiveness of the method and restricts the participation of foreign bidders. This report recommends that the distinction between domestic and international OT be abolished and that the dividing line between the two procedures be controlled by the application of an appropriate financial threshold (see also 2.8

below). Domestic OT is further undermined by the absence of a requirement to open bids immediately after the deadline for their submission, which reduces transparency, by the two-envelope bid opening procedure (see 2.4 below) and by the fact that the bidding period of 20 days is too short to allow full and effective participation by bidders (see 2.2 below). Given that the bidding period applicable to OT was changed by COM Decision # 335 in June 2000, it may be infeasible to amend it again immediately; however, the PPA has indicated its willingness to lengthen the minimum bidding period in the next COM Decision relating to public procurement. OT is often used inappropriately for the procurement of consultants' services, for which it is not well suited. The position of OT as the basic method of public procurement should be reinforced by strengthening the provisions against breaking down procurement requirements. Subject to the PPA's having the resources necessary to undertake the function, it might also prove effective to make all uses of procurement methods other than OT above the specified thresholds subject to prior waiver by the PPA.

2.1.3 Restricted Tendering (RT) may be used (i) where the goods, works or services are available from a limited number of suppliers or (ii) where the estimated contract value is below ALL5.0m (US\$35,750) for works, ALL3.0m (US\$21,450) for goods or ALL1.0m (US\$7,150) for services; these are the same thresholds above which OT applies. The procedure for RT differs from that for OT in that: the procuring entity directly invites a limited number of qualified bidders, who have expressed interest in bidding for the contract. For domestic RT, the procuring entity is required to invite a minimum of 3 bidders; for international RT, the invitation must be sent to a minimum of 3 bidders from 3 different countries. Procuring entities which maintain a qualified list may conduct Restricted Tendering only among bidders on that list; there is a shortened bidding period of 15 days (reduced from 20 days by COM Decision # 335); the procuring entity has the discretion to decide whether or not to require a bid security.

Because of the weak provisions in the LPP against breaking down procurement requirements, RT is frequently used as a substitute for OT for contract values above the stated thresholds or where the other conditions for its use are not met. The above recommendation - that all uses of procurement methods other than OT above the specified thresholds should be subject to prior PPA waiver - should reduce such abuses in the future. The competitiveness of the RT method is undermined by the provisions that procuring entities may limit bidding to only those bidders who have expressed interest in a particular contract or to bidders on a qualified list; these provisions may be used to limit competition or to exclude new bidders and may facilitate collusion. This report recommends, therefore, that the LPP be amended to allow procuring entities to invite bidders whom they have identified by other means - for example, based on their own research into competitive sources of supply. Also, where a procuring entity maintains a qualified list, it should be used solely to facilitate the process of assessing bidders' qualifications, by retaining information about bidders, not as a means of excluding unregistered bidders. The procuring entity should be required to advertise regularly (e.g. at least annually) for new bidders to be added to the list. The recommendation, made in the 1997 CPAR (see

Table 1.1 above), that a procuring entity should be required to seek the PPA's prior approval to award a contract by RT where fewer than 3 bids have been received, remains valid and will help to curb abuses of this procurement method.

2.1.4 Two-Stage Tendering may be used in the case of large or complex works or goods, where the use of OT or RT is unsuitable because of difficulty in defining the procuring entity's requirements. The LPP requires that prequalification be used with Two-Stage Tendering. In the first stage, technical bids are submitted without prices and the procuring entity may negotiate with the bidders on any aspect of their bids. In the second stage, the procuring entity invites bidders who submitted satisfactory first-stage bids to submit final, priced bids based on the technical specifications developed as a result of the first stage. In all other aspects, such as advertising, content of bidding documents, bid opening, bid and performance securities and evaluation of bids, OT procedures apply.

2.1.5 Request For Quotations (RFQ) is a simplified procurement method which may be used for readily available goods or for works or services for which there is an established market and where contract values are <ALL2.0m (US\$14,300) for works, <ALL1.0m (US\$7,150) for goods and <ALL0.5m (US\$3,575) for services. The LPP requires the procuring entity to request quotations from at least 3 bidders using a simple Invitation to Quote document, the minimum contents of which are specified in the LPP. Advertising is required (see 2.2 below) and a shortened bidding period of 10 days applies. The award of contract is made to the lowest-priced quotation which meets the requirements stipulated in the invitation.

The competitiveness of this procurement method could be improved by imposing a requirement that procuring entities should, in all cases, obtain at least 3 bids and that all awards of contracts for which fewer than 3 bids have been received should be subject to PPA prior waiver.

2.1.6 Request for Proposals (RFP) may be used for the procurement of consulting or other services. It may be used with or without prequalification and as a domestic or international procedure, at the discretion of the procuring entity. For a domestic RFP, the LPP requires the procuring entity to invite a minimum of 3 and a maximum of 7 firms to submit proposals; for an international RFP, the procuring entity should invite proposals from at least 3 countries. COM Decision # 12 of 1 January 1996, defined the minimum bidding periods for domestic RFP as 10 days for construction works and services and 5 days for goods; for an international procedure, it was 45 days. The RFP invitation document must specify the evaluation criteria to be used, including the relative weightings to be given to price and non-price factors; the Guidelines require that price should be given a weighting of at least 80%. The award of contract is to the firm whose proposal is determined to be 'most advantageous' in accordance with the pre-disclosed evaluation criteria. The LPP authorizes the procuring entity to negotiate with all firms who have submitted proposals regarding the content of their proposals. It is assumed that RFP may be used up to the OT threshold for services of ALL1.0m (US\$7,150).

This method is well suited to the procurement of consultants' services, but its usefulness is restricted by the very low threshold of ALL1.0m (US\$7,150) applicable to it, above which OT is used for the same purpose. It is recommended that no financial threshold should be applied to RFP, thus facilitating its use in all cases of selection of consultants. Also, the prescribed weighting of price and technical evaluation criteria (80% / 20% in all cases) is unsuitable for consultants' services, where the technical quality of the services is of paramount importance. Therefore, this report recommends that the implementing regulations be amended to allow greater flexibility in the weighting of evaluation criteria. Article 39.3 of the LPP appears to give procuring entities the discretion to "negotiate with candidates with respect to the content of their proposals and (to) seek or permit revision thereof." Whilst there is some doubt as to whether this provision is applied in practice, its existence in the LPP potentially leaves the RFP method open to manipulation and, therefore, it is recommended that this provision be removed. Instead, negotiations should be limited to the winning firm that has been ranked highest. Given that COM Decision # 335 of 23 June 2000 repeals COM Decision # 12 but that the former is silent on the matter of the minimum required bidding period for RFP, it is recommended that this period should not be less than 30 days (see also 2.2 below), a recommendation which might usefully be implemented by the next COM Decision relating to public procurement.

2.1.7 Direct Procurement (DP) may be used (i) when the goods, works or services are available from only one supplier (ii) to order additional quantities of goods or works for up to 50% of the price of the original contract, where a new contract would cause problems of compatibility (goods) or be uneconomic or technically difficult (works); (iii) where the original contract was awarded competitively, to procure additional construction works for up to 30% of the price of the original contract for repetition of similar works, where the need for the additional works is identified before the original deadline for certification of completion and, for goods and services, within 3 months of the date of termination of the contract; (iv) to purchase perishable commodities (v) to purchase goods made available under exceptionally advantageous conditions arising in the short term (vi) for the continuation of design services, where awarding the continued services to another firm would violate the author's rights of the original provider (vii) to procure readily-available goods whose total contract price does not exceed ALL200,000 (US\$1,430) in a year; for the Department of Government Services, a higher annual limit of ALL600,000 (US\$4,290) applies.

Direct Procurement is heavily overused, often when the conditions for its use have not been met, and is especially open to corrupt practice. This report recommends that, in order to regain control over this method, all applications of DP should be made subject to PPA prior waiver, even where the conditions have been met. In addition, the provision allowing procuring entities to add up to 30% to the original contract price is overly lenient, leading to uneconomic procurement. It is recommended that it should be cut to no more than 15% and, even then, only under the specified conditions. As recommended in the 1997 CPAR, the conditions for use of DP should be extended to include emergency situations, with a clear definition of

such situations included in the law. At the moment, the COM grants waivers for use of DP in emergency cases, despite the fact that this usage has no basis in the law. Since discussion of the Draft CPAR with the Government, all of the above recommendations have been included in a new draft amendment to the LPP.

2.2 Notification and Advertising: For domestic OT, the LPP requires procuring entities to publish an invitation to tender (advertisement) in the Public Procurement Bulletin (PPB) and in two local newspapers. In addition, international OT requires publication of the invitation to tender in a foreign language newspaper of sufficiently wide circulation to attract foreign competition. A requirement, added by COM Decision # 335, requires procuring entities to submit invitations to tender, for the Open Tendering, Restricted Tendering and Request for Quotations procurement methods, to the PPA no later than 10 days prior to the intended date of advertising. The minimum periods to be allowed for the preparation of bids under different procurement methods are summarized in Table 2.1.

Table 2.1: Minimum Required Bidding Periods by Procurement Method

Procurement Method	Works	Goods	Services
Open Tendering: International	45	45	45
Open Tendering: Domestic	20*	20	20
Restricted Tendering	15	15	15
Request for Quotations	10	10	10
Request for Proposals	10†	5	10

* Reduced from 30 days by COM Decision # 335 of 23 June 2000.

† As per COM Decision # 12 of 1 January 1996.

Whilst the notification periods for international OT are adequate, those for domestic OT are both inadequate and frequently disregarded. These problems have been compounded by COM Decision # 335, which significantly shortened the bidding periods for domestic Opening Tendering and Restricted Tendering. The Public Procurement Bulletin (PPB), the primary vehicle for tender advertisements, was not published between July, 1999 and October, 2000, thus significantly reducing the transparency of public procurement during that period. Concerns, expressed earlier in the Draft CPAR, that bidding periods were in practice being shortened by procuring entities releasing bidding documents some time after the publication of the invitation to tender have been addressed by the requirement that all such invitations should be routed through the PPA for publication. This measure should strengthen the PPA's ability to check that bidding documents are released to bidders only after the publication of the invitation to tender. In the discussion on the Draft CPAR, the PPA also revealed its intention to require procuring entities to have bidding documents completed and ready for distribution to bidders before publication of the invitation to tender; this would clearly be a positive step and should increase the efficiency of the tendering process.

In the case of consulting services, the period allowed to submit proposals should not generally be less than 45 days and in certain circumstances can be reduced to 30 days.

The area of notification, advertising and dissemination of information on bidding opportunities is one which requires substantial reform and where much can be done to increase transparency and equality of opportunity for bidders. There are several measures which the GOA might usefully take to improve the current situation, including:

- i. publication of the PPB should be regularly maintained;**
- ii. start using Internet technology to introduce improved transparency into the public procurement system, including the publication of all Invitations To Tender on a PPA website; information should be in Albanian and, at least for higher-value contracts, a major foreign language, such as English; the PPA has indicated that the Government might be prepared to fund this development under current the Recovery Program Technical Assistance Credit.**
- iii. procuring entities should be required to publish records of public bid openings within a reasonable period - for example, 7 business days - of their being held;**
- iv. require all procuring entities to publish, early in each financial year, an advertisement outlining their major procurement requirements planned for the coming year, so that the business community is adequately forewarned of bidding opportunities, and require procuring entities to update this advertisement at mid-year;**
- v. the bidding period for domestic OT is too short at 20 days and should be extended to 30 days. The PPA has indicated its willingness, during discussions of the Draft CPAR, to effect this change in the next COM Decision pertaining to public procurement, which should follow the passage of the current draft amendment to Law #7971;**
- vi. in all cases where a procuring entity proposes to shorten the specified notification periods, this should be subject to prior waiver by the PPA and the criteria which the PPA will use in considering such applications should be stipulated in the law or implementing regulations;**
- vii. the practice, where it occurs, of procuring entities publishing the cost estimate for a procurement requirement in the bidding documents should be discontinued and standard bidding documents issued by the PPA should reflect this. Paragraphs I.2.(a) and III.3.1.(a) of the Guidelines should be amended to make it clear that, whilst the bidding documents may mention the source of funding of a procurement requirement, the cost estimate should not be revealed.**

2.3 Assessment of Bidders' Qualifications: The LPP requires that a bidder must be qualified in order to enter into a public procurement contract and provides a set of basic criteria for use in qualification, which must be applied to all procurement exercises. Prequalification, which is subject to the same advertising requirements as Open Tendering (see 2.2 above), is mandatory with the Two-Stage Tendering method and is also provided for, though not required, in the case of contracts for large or complex contracts for goods and works procured by Open Tendering. Where prequalification is undertaken, the law requires that the procuring entity should issue prequalification documents (though there are no standard prequalification documents available, those previously financed by the Bank having been discarded) which should include pre-disclosed qualification criteria and that the procuring entity should apply only those criteria to the prequalification.

Where prequalification is not undertaken, which is in the great majority of cases, assessment of bidders' qualifications is done at the time of bid opening. Bids are submitted in two separate envelopes: one containing the bidder's qualification information, including licenses, administrative and legal documents, the other containing the bidder's technical and price bid. The procuring entity first opens the envelopes containing the bidders' qualification information, assesses their qualifications during the bid opening, rejects those bidders whose qualifications it assesses as failing to meet the specified criteria, then opens the technical/price bids of only those bidders who have been assessed as qualified. There is no practice of conducting postqualification on the bidder who is recommended for award of contract.

The requirements for assessment of bidders' qualifications are generally good but are undermined by variable application through low-quality pre-qualification documents; there is a pressing need for all procuring entities to resume use of the standard pre-qualification documents which were developed under the IDF grant from the World Bank in 1995 appropriately modified to take into account latest changes in the international practices (e.g. that reflected in the World Bank documents). A requirement should also be introduced into the LPP that all prequalified bidders should be invited to bid. The current procedure of assessing bidders' qualifications at the time of bid opening is an impediment to transparent, efficient procurement, as it leads to hasty and often arbitrary decisions on qualification and to the rejection of good bids. It is strongly recommended, therefore, that the GOA should abandon this practice and, in all cases in which prequalification is not applied, clear qualification requirements should be stipulated in the bidding documents and these should be rigorously applied in postqualification only to the bidder who is recommended for award of contract.

2.4 Submission and Opening of Bids: For Open and Two-Stage Tendering, the LPP requires that bids should be sealed and submitted by the time and date specified in the bidding documents. Late bids should be returned unopened to the bidder. Bid opening should take place at the time stipulated in the bidding documents, which, for international tenders, should be shortly after the deadline for submission of bids. As there is no such requirement for domestic tenders, there is often a delay between submission of bids and

bid opening under domestic OT. Bidders' representatives are entitled to attend public bid openings. The name of each bidder and the total price of each qualified bid (see 2.3 above re. rejection of unqualified bidders) is read out and recorded; the procuring entity is required to send a copy of the written record of the bid opening to any bidder who requests it.

It is a fundamental prerequisite for fair and transparent public procurement that bids should be opened in the presence of bidders immediately after the deadline for submission of bids. It is worth noting that the 1998 survey of corruption in Albania found that the confidentiality of bids is frequently compromised during the procurement process. The current weak provisions on bid opening under domestic procedures undoubtedly facilitate this abuse. It is strongly recommended, therefore, that the LPP should be amended to extend to all procurement methods other than DP the requirement that bids should be opened in the presence of bidders immediately after the deadline for submission of bids. As noted under 2.3 above, the two-envelope system of bid opening contributes further to this lack of transparency and should be abandoned.

2.5 Examination and Evaluation of Bids: Under Open Tendering, the LPP allows the procuring entity to correct arithmetical errors in bids and to ask bidders to provide clarification of their bids, but no change in the substance of the bid, including price, shall be sought, offered or permitted. A bid may be regarded as responsive even if it contains minor deviations which do not materially alter or depart from the main requirements of the bidding documents. The procuring entity may not accept a bid when a bidder has failed to demonstrate that he is qualified (i.e. at bid opening), when a bidder does not accept a correction of a mathematical error in his bid, when the bid is non-responsive or when the bidder has offered an inducement to the procuring entity. The LPP provides that a procuring entity must evaluate responsive bids in accordance with the procedures and criteria set out in the bidding documents. Award of contract should be made to the bidder who meets the requirements of the bidding documents with either the lowest price or the lowest evaluated price, on the basis of factors specified in the bidding documents and given relative weightings in the evaluation procedure. This a merit points system in which weightings for all types of goods, works and services are generally 80% for price and 20% for technical criteria. The provisions on the evaluation of bids are subjective, untransparent and give rise to unpredictable contract award decisions.

A key element of transparent public procurement is that bidders should know, when they submit their bids, that their bids will be treated correctly in evaluation. The merit points system of bid evaluation fails to meet this requirement because it is subjective, unpredictable, untransparent and open to manipulation. This report recommends, therefore, that it be replaced with a bid evaluation methodology for goods and works which is clearly based on predictable mathematical formulae, in which all criteria, both price and non-price, are quantified. For the evaluation of proposals for consultants' services under the RFP method, a different evaluation methodology should be adopted, abandoning the current rigid weighting of price and technical criteria (80/20) and apportioning greater weight in evaluation to the

technical quality of the services. It is also necessary to ensure that bid evaluations are conducted with sufficient rigor and that, in all instances, the recommendation for award of contract is fully justified by detailed analysis. To that end, it is recommended that the PPA should publish a standard format of bid evaluation report, requiring procuring entities to document detailed justifications of contract award decisions.

2.6 Award of Contract: For domestic Open Tendering, Restricted Tendering and Request for Quotations, as well as for international OT and RT, the winning bidder is required to sign the contract within 15 days of notification of award by the procuring entity. A new requirement, introduced in COM Decision # 335 of June 2000, requires procuring entities, in all cases in which the invitation to tender had been advertised in the PPB, to announce the winning bidder in the PPB prior to contract signature.

Whilst a requirement to announce contract awards is a welcome addition to the provisions in the legislation regarding transparency and access to information, announcing the winning bidder prior to conclusion of the contract runs the risk that a "winning" bidder, having been announced in the PPB, may decline to sign the contract and that, therefore, the published announcement may prove to be erroneous. A better arrangement would be for announcement of the contract award only after contract signature.

2.7 Bid and Performance Securities: Bid securities, in the form of a bank guarantee, are required for OT in the range of 2-5% of the procuring entity's cost estimate, expressed as an amount in the bidding documents. However, the LPP lacks a specific requirement that unsecured bids should be rejected. COM Decision # 335 authorizes the procuring entity to encash the bid security of a bidder which has been recommended for contract award if that bidder fails to sign the contract with 15 days of notification of award.

Performance securities, also required for OT, must be 10% of the contract value. For works contracts, the Guidelines provide for a percentage of the performance security to be held to the end of the defects liability period. However, because of a requirement in the budget legislation which requires all state and local government procuring entities to have a "zero balance" of current assets and liabilities at the end of each financial year, procuring entities invariably return performance securities to contractors/suppliers at fiscal year-end. Domestic bidders have difficulty in raising such securities, as the availability of commercial credit is tightly controlled by the Bank of Albania, the central bank, and local commercial banks demand 100% cash cover, plus administration fees, to issue securities. As a result, many domestic bidders, especially for works contracts, prefer to bid as subcontractors to foreign bidders, particularly on high-value contracts.

It is recommended that, in order to protect the procuring entities' interests and to ensure equitable treatment of bidders, a specific requirement be introduced into the LPP that, in all cases where the bidding documents require a bid security, bids received without an acceptable bid security should be rejected. It is also recommended that bid and performance securities should be required for all

contracts for goods, works and technical services awarded by the Open Tendering, Restricted Tendering and Two-Stage Tendering procurement methods. However, given the intellectual nature of consultants' services, it is inappropriate that bid and contract securities be required from firms submitting proposals for such services. The duration of validity of performance securities should be sufficient to protect the contractual interests of the procuring entity until all the supplier's/contractor's obligations, including warranties and defects liability, have been fully and satisfactorily discharged and the procuring entity should retain the security until that juncture. Given the difficulties experienced by local bidders in raising bid securities and given the pressing economic need to develop private-sector activity, the PPA might encourage procuring entities to set the bid security requirement at the lower end of the 2-5% range in the case of procurements below the OT method.

2.8 Limitations on the Participation of Foreign Bidders: Whilst there are no threshold-based limitations on the participation of foreign bidders, the LPP specifies the use of Open Tendering "whenever the goods, construction works or services to be procured are obtainable from domestic sources and there is sufficient competition within the country." The Guidelines also establish that domestic OT is "the preferred tender procedure because it makes use of local human resources." These provisions have the effect of leaving it to the discretion of the procuring entity whether to conduct OT as a domestic or an international procedure, based on its judgement of whether the domestic market will provide a sufficient number of competitive bids. Because the PPA does not collect or publish any data on the functioning of the public procurement system, it is impossible accurately to assess how much OT procurement is done domestically and how much internationally. However, based on the interviews conducted for this assessment, it is evident that the majority of OT procurement is domestic. For domestic OT, the bidding and contract documentation is in the Albanian language but the LPP provisions on non-discrimination on the basis of nationality protect the right of a foreign bidder to participate, with the assurance that his bid will not be rejected on the grounds of nationality. Where a procuring entity chooses to conduct OT as an international procedure, the bidding documents are issued in both Albanian and a foreign language and the invitation to tender is published in an international newspaper using the same language as that of the bidding documents, usually English.

Because no financial thresholds currently differentiate international Open Tendering from domestic Open Tendering, domestic OT is applied arbitrarily by procuring entities to restrict competition, including on high-value contracts. It is understood that the purpose of this differentiation has been to encourage the participation of local bidders in public tenders and thus to promote the development of local industry, whilst offering it an appropriate level of protection from foreign competition. However, to date, domestic industry has not developed at the rate expected. Particularly in areas such as construction, procuring entities remain locked into a small pool of often poorly-performing contractors, with the result that the level of economy achieved is low and the implementation of government contracts is of poor quality and frequently delayed. This report recommends, therefore, that a financial limit be applied to domestic OT (for example, <US\$0.5m

equivalent for civil works; <US\$100,000 equivalent for goods), below which tendering may be limited to national bidding. However, as is the case under the current law, foreign bidders who wish to bid should still be allowed to. Above these thresholds, international Open Tendering should apply in all cases. Bids should be advertised internationally and the bidding documents should be in a major foreign language of trade e.g. English; domestic bidders should, however, still be permitted to bid in the local language. These arrangements will foster the development of local construction, manufacturing and trading firms, by promoting their participation in government tenders below the specified thresholds, but will also deliver better overall economy in public procurement by increasing the participation of foreign bidders in higher-value tenders.

2.9 Application of Domestic Preference: There is currently no provision for domestic preference in Albania's public procurement legislation.

In conjunction with the recommendation, at 2.8 above, that domestic and international OT be differentiated by appropriate financial thresholds, the Government might consider applying a margin of preference, in the evaluation of bids, for local goods and works under international OT. This margin might, for example, be the equivalent of the amount of customs and other import duties payable on the import of foreign goods or 15 per cent of the CIF/CIP bid price of the goods to be imported, whichever is less. To this end, a minimum qualifying criteria as a percentage for domestic inputs such as domestic labor, material and components should be specified. This measure should serve the important objective of developing domestic industry by helping local bidders to continue to compete effectively against foreign bidders, after the distinction between domestic and foreign OT has been abolished, as this report recommends.

2.10 Selection of Consultants: The LPP requires that the procurement of consultants' services should be done by Open Tendering above the stipulated threshold of >ALL1.0m (US\$7,150). Below that, either Restricted Tendering or Request for Proposals may be used. When consultants' services are procured by OT, bid and performance securities are required and the two-stage envelope system of bid opening and assessment of bidders' qualifications, as described under 2.3 above, is employed. As OT is open competitive bidding, with national or international advertising, there is no shortlisting and evaluation is based on 80% for price and 20% for technical quality.

The OT procurement method is not suited to the selection of consultants. Given the procedure for OT, the procuring entity cannot prevent unqualified firms from bidding and the evaluation methodology gives too great a weighting to price, with insufficient importance accorded to the technical quality of the consultants' services. Given that, in the selection of consultants, the overriding consideration should be the need for high-quality services, it is clear that these practices may lead to inappropriate award decisions. As described under 2.1.6 above, it is recommended that all procurement of consultants' services be done by the Request for Proposals (RFP) method, with appropriate evaluation methodologies and that the GOA should

develop standard procurement documents and forms of contract specifically for this application.

2.11 Review of Procurement Decisions: For contracts <ALL5.0m (<US\$35,750), the contract award decision may be made at the operational level of the procuring entity, generally at Head of Department level; for contracts ALL5.0m-100.0m (US\$35,750-0.72m), the award decision must be approved by the head of the procuring entity, usually the Minister at state level; and for contracts >ALL100.0m (>US\$0.72m), the bid evaluation report and recommendation for contract award must be approved by the PPA. The threshold for PPA approval was halved from ALL200.0m to ALL100.0m by COM Decision # 335 in June, 2000. Prior to that amendment, in 1999, only 3 government contracts exceeded the then threshold for PPA approval.

There is ample evidence that procurement is often delayed by the requirement that contracts in the range of ALL5.0m-100.0m (US\$35,750-0.72m) have to be approved - which, in most cases, means signed - by the Minister at state level or the head of the municipal government at local level. This requirement also increases the risk of political interference in contract award decisions. The 1998 'Combating Corruption in Albania' Report, accepted by the GOA (see 5.2 below), identifies senior staff interference in contract awards as a major source of corruption in public procurement. It is recommended, therefore, that - at least in the short-to-medium term and until the Government makes real progress in reducing corruption in public procurement - these review requirements should be changed to increase the role of the PPA in the review and clearance of contract awards, whilst the procuring entities remain in charge of the procurement process. To that end, this report recommends that, over the medium term and subject to the staffing and resources of the PPA being increased to handle the increased workload, the threshold for PPA review should gradually be reduced to US\$500,000 equivalent (see also Section 4.2 below), in order to help combat political interference in decisions affecting the award of sizeable contracts. It must be emphasized, however, that this should be an interim arrangement and that, once the capacity and control environments in procuring entities improve, the role of the PPA in contract award decisions should diminish.

2.12 Procurement Documentation: The COM has approved a standard bidding document (SBD), which is in common use by all procuring entities. However, it is a rather basic document, lacking in several key conditions and, although it is used for all major types of procurement - goods, works, technical services and consulting services - it is not suited to all these applications. Specifically, the SBD lacks important provisions required for the procurement of goods. It is particularly disappointing to note that, despite the fact that the IDF grant which the Bank extended to the GOA in 1995 (see 1.1 above) financed the development of standard pre-qualification documents and SBDs for all major applications, the Government has chosen to disregard these documents, even though they were finalized and agreed with the Bank, in favor of the inadequate standard document currently in use.

The LPP requires procuring entities to maintain records of public procurement sufficient to allow control and verification that the legislative requirements have been followed. As a minimum, such records must contain a justification of the procurement method used, if other than OT, a description of the goods, works or services procured, details of the winning bidder, as well as other bidders and the contract price. This information should be made available, on request, to the public after the contract award. For those procurement methods for which public bid openings are held (see 2.4 above), there is also a requirement to keep a written record of its proceedings. COM Decision # 335 added a requirement on procuring entities to open a "procurement record book" at the beginning of each year to record procurement procedures, though it does not specify minimum requirements for the information to be recorded.

In accordance with the Law on Archives, procurement documentation is generally retained for 5-10 years.

The availability of good-quality SBDs for all the major procurement applications will undoubtedly make a valuable contribution not only to improving the accuracy of implementation of procurement in procuring entities but also to better defining and protecting the contractual risks and obligations of purchasers and sellers. It is strongly recommended, therefore, that the GOA should immediately re-introduce the standard procurement documents already developed with IDF grant financing and agreed with the Bank, including standard pre-qualification documents and an accompanying form of assessment report; SBDs for goods and civil works, with accompanying standard form of bid evaluation report, and standard invitation documents and forms of contract for consultants' services.

The 1999 Annual Report of the PPA to the Prime Minister records that procurement decisions taken by staff in procuring entities are often not properly documented and that the individual staff members responsible for award decisions are not identified in the documentation maintained by procuring entities. The PPA identifies this as a major obstacle to its instigating disciplinary action against staff in procuring entities for breaches of the LPP and implementing regulations. This report recommends, therefore, that the PPA should prepare a Decision, for COM ratification, specifying clearly the requirements for the recording of procurement proceedings and maintenance of procurement records by procuring entities, in order to resolve this problem (see also Section 4 below). The minimum requirements on procuring entities for recording procurement information should be carefully planned, in order to be consistent with the needs of the PPA for data collection and publication.

2.13 Procurement Planning, Management and Contract Administration: In both state and local government procuring entities, the capacity to undertake procurement planning is weak. For the procurement of goods, technical specifications in bidding documents are frequently biased towards a favored bidder or scant, thus making bid evaluation difficult and its outcome unpredictable. Cost estimating is generally of a low level of detail and accuracy, which contributes to inefficient contract packaging and the

selection of inappropriate, uncompetitive procurement methods. Also, the practice of making public the procuring entity's cost estimate at the time of bidding has a negative effect on the competitiveness of the tendering process and may be contributing to collusion and price-fixing among bidders (see 2.2 above). For civil works contracts, bidding documents often lack detailed designs and bills of quantities, which not only inhibits objective bid evaluation but also facilitates collusion between the winning contractor and the works supervisor, as there is excessive room for interpretation of the contractual requirements at the performance stage. During contract administration, these problems are exacerbated by poor project and contract management skills in the procuring entities. Significant cost and time over-runs are common and there are many well-publicized instances of non-performance of contractors on construction contracts, particularly in the roads sector. Collusion between contractors/suppliers and procuring entities' staff during contract performance is also commonplace; it damages the procuring entity's contractual interests by excusing the supplier/contractor from the proper performance of its contract. It is common that contracts for civil works do not include a requirement that the contractor should insure the works during construction.

The GOA's current budget planning and management operations are also having a negative effect on the functioning of the public procurement system. The release to procuring entities of substantial budget allocations close to the end of the fiscal year, with expenditure required by year-end, drives an over-reliance on Direct Procurement and, therefore, acts as a major impediment to effective procurement planning and the reduction of procurement costs.

Procuring entities' weaknesses in procurement planning, cost estimating and contract administration need to be addressed through future procurement training courses. Subject to its being appropriately resourced and staffed, the PPA should clearly take a leading role in delivering such training. It is also recommended that the GOA should introduce a requirement for all procuring entities to draw up annual procurement plans, as soon as information about approval of annual budgetary allocations is available to them. This requirement should be linked to the earlier recommendation about the publication of procuring entities' annual procurement programs (see 2.2.v above). Performance in areas such as planning, contract packaging and cost estimating may also be improved by ensuring the involvement of appropriately qualified technical staff in the procurement process, both pre- and post-contract (see 4.2 below). For goods and civil works, it is essential that procuring entities should require, through standard contract forms, that goods in transit and civil works under construction be insured.

This report recommends that the PPA should establish a formal coordinating mechanism with the Treasury Department and the Fiscal Analysis Department of the Ministry of Finance (MOF) in order to improve the reliability of the financial plans prepared by the MOF and cash allocations to procuring entities. This may be better achieved under the public expenditure management reforms for improving budget execution practices as part of the Public Administration Reform Technical Assistance Project.

2.14 Administrative Review of Procurement Decisions: The LPP and COM Decision # 335 provide that any bidder is free to seek administrative review of an act or omission of a procuring entity which he considers to be in breach of the law. A bidder must submit his complaint, in the first instance, to the procuring entity or the central or local authority within 5 days of the announcement of the ranking of bidders (COM Decision # 335 of June 23, 2000 introduced this 5-day deadline; the original LPP had no such limitation). If the procuring entity does not respond within 5 days or if the complainant remains dissatisfied with the procuring entity's response, the complainant may, within 5 days of the expiry of the original deadline for lodging protests with the procuring entity (that is, within 10 days of the announcement of the ranking of the bidders) refer his complaint to the PPA for administrative review. Providing a contract has not already been signed, the PPA has the authority to suspend the procurement proceedings until the complaint has been resolved by the PPA. In case of administrative review by the PPA, the PPA has the right to require the procuring entity to re-evaluate the bids and present a revised evaluation report to the PPA within 5 days of being notified of the PPA's decision.

The introduction, by COM Decision # 335 of June 2000, of a five-day deadline within which bidders must submit a protest to the procuring entity represents a reduction in the protection afforded to bidders by the bid protest arrangements. Such a short deadline carries the risk that the bidder may fail to respond in time to have his complaint heard. In the interests of transparency and fairness, it is recommended that this deadline be extended to 15 days. The announcement of ranking of bidders is not necessary but, if it is done, then it should only be after the contract has been awarded.

2.15 Debarment of Bidders: The LPP provide that, in the case where a bidder is found to have submitted inaccurate information to qualify to bid for a contract, the procuring entity is required to disqualify the bidder from that particular procurement exercise and may also propose to the PPA that the bidder be debarred from all public procurement for up to one year. If the PPA approves, the bidder's debarment is published in the PPB. Whilst this provision is a useful safeguard, there are no wider arrangements for the longer-term or permanent debarment of bidders found to have engaged in corrupt or fraudulent practices.

It is recommended that the provisions on debarment of bidders for fraud and corruption be expanded to include not just the submission of false qualification information but all types of fraudulent and corrupt practice associated with public procurement. The PPA should put in place an administrative procedure for debarring firms and should regularly publish the identities of all firms and individuals thus debarred in the PPB and on its website. As a warning to all bidders against participating in corrupt or fraudulent activity related to public procurement, it is further recommended that provisions against fraud and corruption should be included in all bidding documents issued by procuring entities.

2.16 Development of National Standards: The Law on Standardization (#8464 dated November 3, 1999), establishes the General Directorate of Standardization (DPS) as the body responsible for managing the country's activities in the areas of standardization, accreditation, certification and quality assurance, including the drafting and approval of Albanian standards. International, European or other national standards may be modified or adopted as Albanian standards, provided they do not present technical barriers to trade with other countries. In reality, DPS is under-resourced and has so far made little headway with developing a set of national standards or with adopting other standards (e.g. CEN or ISO) into Albanian legislation.

As the existence of a comprehensive set of national standards for all major product groups is a necessary precondition for competitive bidding and for development of accurate technical specifications in bidding documents, it is recommended that the GOA accord increased importance to the development of national standards, perhaps with the assistance of international organizations such as the European Union.

2.17 Price Adjustment: The Institute of Statistics (INSTAT) publishes a monthly Consumer Price Index and Retail Price Index, as well as construction and labor indices. To date, however, the common practice in contracts of long duration has been that the procuring entity awards a fixed price contract, regardless of the duration of the contract. Price increases during execution of the contract are generally agreed through ad hoc negotiations between the procuring entity and the supplier/contractor, without any basis in the terms of the contract itself. This practice fails to afford adequate protection of the contractual rights of both parties to the contract and may facilitate corrupt collusion between the employer and supplier/contractor during execution of the contract.

It is recommended, therefore, that the implementing regulations be amended to require the use of price adjustment formulae in contracts of long duration - e.g. more than 18 months – and that the price indices published by the Institute of Statistics be used for this purpose.

Section 3: Strengths and Weaknesses of Public Procurement Procedures and Practices

3.1 Strengths

1. There is a single, unified law governing both state and local government procurement.
2. Authority to conduct public procurement is fully decentralized to individual procuring entities at both state and local government levels.
3. The Law on Public Procurement (LPP) establishes the Public Procurement Agency, reporting to the Council of Ministers, as the central organ for coordination and development of the procurement system.

4. Flexibility in the legislative process is achieved by the fact that, whilst the procurement methods and their conditions for use are contained in the Law, specific provisions, including financial thresholds, are contained in Guidelines and a COM Decision, which may be readily amended without recourse to the passage of legislation through the People's Assembly.
5. The LPP establishes Open Tendering as the preferred method of public procurement.
6. There is a comprehensive range of procurement methods available, including a two-stage bidding method, a specific method for consultants' services and a simple Request for Quotations (RFQ) method for low-value purchases.
7. The LPP places on procuring entities an obligation to verify the qualifications of bidders to perform contracts.
8. For Open Tendering, which is the main, national competitive procurement method, formal, written bidding documents are issued to all bidders; minimum contents of bidding documents are specified in the Law and the criteria for evaluation of bids must be pre-disclosed in the bidding documents.
9. In the case of domestic OT, the LPP provisions on non-discrimination on the basis of nationality protect the right of a foreign bidder to participate, with the assurance that his bid will not be rejected on the grounds of nationality.
10. The LPP requires that bids be opened in public. However, this provision is undermined by the fact that, for domestic tenders, there is no requirement that the opening of bids should follow immediately after the deadline for their submission.
11. There is a somewhat modified Standard Bidding Document (SBD) in use by procuring entities, although it is not entirely suited to all applications.

3.2 Weaknesses

1. The status of Open Tendering as the preferred procurement method is substantially undermined by the inadequacy of the safeguards in the LPP against the breaking down of procurement requirements into smaller-value contracts. Also, given that enforcement of the law is weak, procuring entities may easily avoid using OT, adopting less competitive procurement methods instead.
2. Excessive limitations on the participation of foreign bidders in public procurement is maintained by an arbitrary differentiation between domestic Open Tendering and international Open Tendering, which is subject to manipulation by procuring entities. Particularly in areas such as construction, procuring entities remain locked into a small pool of often poorly-performing contractors, with the result that the level of economy achieved by procurement is low and the implementation of government contracts is frequently delayed.
3. The Restricted Tendering procurement method is too often used as a substitute for Open Tendering in the procurement of high-value contracts. The lack of competitiveness in this method is exacerbated by the fact that the LPP allows procuring entities to conduct Restricted Tendering only among those bidders who are on a qualified list.

4. Under the Request for Proposals procurement method, the LPP allows the procuring entity to negotiate with all bidders, an arrangement which lacks transparency and could give rise to corruption.
5. There is excessive use of the Direct Procurement method, which is open to manipulation and yields poor economic results.
6. The effective operation of the public procurement system is being severely hampered by the Government's budget planning and management system, particularly by the release to procuring entities of budgetary allocations late in the fiscal year, sometimes as late as November. The effects of these practices on procurement include procuring entities avoiding the use of Open Tendering, as the timing of their receipt of budget allocation comes too late in the year to allow them to complete this procedure by the end of the financial year.
7. The Public Procurement Agency lacks authority and is grossly under-staffed and under-resourced to perform even its current functions, let alone the enhanced functions which it will need to have if it is to restore order to the functioning of the public procurement system. Its stability has also been undermined by a high rate of staff turnover: it has had three Directors in the past two years. The Agency is also directly susceptible to political influence in the performance of its functions.
8. There is a considerable amount of uncertainty and confusion among procuring entities about the specific requirements of the law and implementing regulations. They find the three different legislative instruments complex, confusing and difficult to use. This leads to errors in application and increases the risk of avoidance of the requirements of the legislation.
9. The advertising requirements for public bidding opportunities are inadequate and not implemented consistently: the Public Procurement Bulletin, in which all Open Tenders are required to be advertised, has not been published since July 1999.
10. The bidding periods allowed for domestic procurement methods are too short to enable all interested bidders to learn about bidding opportunities and to prepare their bids. The bidding periods should be lengthened.
11. The current practice whereby procuring entities make public their cost estimate for a contract at the time of bidding restricts competition in tendering and may lead to collusion and price-fixing among bidders.
12. Whilst there is a standard bidding document approved by the COM, it is a limited instrument and not suitable for all applications. There are no standard pre-qualification documents for goods and works and no standard bidding documents tailored to specific types of procurement: goods, works and services
13. For domestic tenders, the law does not require procuring entities to conduct public bid openings immediately after the deadline for submission of bids, which is a fundamental requirement for fairness and transparency in public procurement. The confidentiality of bids, between submission and opening, is often compromised as a result.
14. The current practice of establishing the qualification of bidders at the time of bid opening, by the use of a two-envelope system, is not conducive to efficient bidding, promotes hasty decision-making and results in the unnecessary rejection of good bids.

15. Current bid evaluation methodologies are subjective, using a Merit Points Systems and rigid weighting price and technical criteria (80/20), leading to unpredictable and uneconomic outcomes. This leads to a lack of objectivity in bid evaluation and to inappropriate contract awards in cases where technical quality should be an important consideration.
16. Other than the limited provision regarding the submission of false qualification information (see 2.14 above), there is no procedure for debarring bidders for fraudulent or corrupt activity related to public procurement.
17. The protests and appeals system fails to afford bidders adequate opportunity to seek administrative review of mistaken or inappropriate decisions taken by procuring entities, because of the foreshortened review period stipulated in COM Decision # 335.
18. There is a lack of enforcement of the LPP by the audit authorities, as the audit institutions are inadequately resourced and trained to carry out their duties in respect of the public procurement legislation.
19. There is no regular capacity or system to train public officials in procurement.
20. Most procuring entities do not maintain registers of assets procured with public funds, making it difficult for procuring entities and auditors to track the whereabouts or ownership of assets and facilitating their theft or misuse.
21. Fraudulent and corrupt practices are widespread. Their many manifestations include the bribing of public officials responsible for awarding contracts, submission and acceptance of false procurement documentation, suppliers and contractors colluding with the staff of procuring entities to avoid full performance of their contractual obligations. Many good bidders, both local and foreign, have lost confidence in Albania's public procurement system and no longer participate in government tenders because they consider them to be unfair.

Section 4: Organization and Resources

4.1 The Public Procurement Agency (PPA): The Law on Public Procurement establishes the PPA as the central organ for coordination and development of the procurement system. The PPA reports to the Council of Ministers and is headed by a Director, who is appointed and dismissed directly by the Prime Minister.

4.1.1 The following are the PPA's mandated duties :

1. submits proposals for procurement regulations to the COM;
2. promotes and supports training of central and local government officials engaged in public procurement;
3. edits and issues a Public Procurement Bulletin (PPB) to be used for invitations to tender and other announcements relevant to public procurement;
4. prepares instructions and/or requests, advice and assistance to procuring entities in undertaking procurement;
5. presents an Annual Report to the COM on the overall functioning of the public procurement system;
6. inspects the records of the procuring entities to the extent it deems appropriate in order to check on the proper application of the Law by them;
7. performs administrative review of complaints;
8. cooperates with international institutions and other foreign entities in matters related to the public procurement system;
9. plans and coordinates foreign technical assistance in the field of public procurement;
10. prior to award by procuring entities of contracts >ALL100.0m (US\$0.72m), reviews the choice of procurement method, if other than Open Tendering, and the bid evaluation report and approves the proposed award of contract.

The PPA's organizational position within government is, at least in theory, independent and, as such, accords with internationally accepted best practice. In reality, however, the Agency is subject to direct political influence. Also, because the Agency is chronically under-staffed and under-resourced, it does not effectively implement the functions currently accorded to it under the law.

It should be a top priority of the Government, in its efforts to improve the functioning of the public procurement system, to bolster the autonomy of the PPA. The Agency must be given the mandated functions it needs to enforce the public procurement law and to monitor and oversee the operation of the system effectively. It should also be given the staff and physical resources needed to discharge these functions fully.

To this end, this report recommends the following measures.

1. In order to ensure that the Director of the PPA is afforded an appropriate degree of protection from political pressure, it is essential that the provisions of the Civil Service Law should be fully implemented and their application to the PPA staff, particularly the Director, should be guaranteed.

2. The requirements for procuring entities to apply to the PPA for waivers for certain procurement actions should be tightened and should include:
 - all uses of a procurement method other than Open Tendering for contracts above the stipulated financial thresholds. The criteria which the PPA uses in assessing applications for waivers should be stipulated in the Regulations.
 - all uses of Direct Procurement;
3. The PPA should be required to report regularly - e.g. quarterly - to the Council of Ministers on the number and values of such waivers which it grants and to justify them in the light of the pre-defined criteria.
4. The PPA should establish and maintain its own Internet website, for the advertising of tenders, publication of contract award notices, promulgation of standard procurement documents and examples of best procurement practices. The use of a website for these purposes, in addition to the publication of the PPB, will increase transparency in the public procurement system and improve access for both domestic and foreign bidders.
5. The PPA should have a much stronger mandate in the collection and dissemination of comprehensive, reliable information on the planning and implementation of the public procurement system. Its Annual Report should be published.
6. The staffing of the PPA will need to be appropriately increased to allow it to discharge these greater responsibilities and careful attention should be paid to recruiting and training staff with the necessary procurement experience, technical capacity and integrity. The PPA has recently submitted to the COM an application to increase its staffing and for the additional financial resources necessary to do so. It is strongly recommended that the COM approve this application.

4.2 Organization of Procurement in Procuring Entities

4.2.1 The Guidelines provide that:

1. a Procurement Unit, where a procuring entity has one, should comprise no fewer than 2 specialists and one lawyer;
2. for each procurement undertaken by procuring entities without a dedicated Procurement Unit, a bid evaluation commission should be set up, comprising no fewer than 5 members and made up of discipline specialists and 1 economist;
3. the Deputy Head of the procuring entity - for example, a Vice-Minister - is recommended to be the Chairman of the bid evaluation commission. The head of the procuring entity, who signs the Procurement Order required to authorize the procurement, may not also head the evaluation commission.

4.2.2 The practice of organizing procurement in procuring entities varies widely. In some entities, the bid evaluation commission both drafts the bidding documents and evaluate bids, whereas, in others, the commission plays an active role only at the bid evaluation stage. In most procuring entities, there is a lack of staff qualified to write good-quality bidding documents, including detailed and accurate technical specifications

for goods or works or Terms of Reference for consultants' services. The requirement that, at state level, the Minister should both initiate the procurement process and approve or sign the contract leaves room for political influence over contract award decisions, which has been identified as an area open to corrupt activity. It is clear that the current arrangements for making, approving and reviewing contract award decisions will have to be substantially revised, if greater reliability and integrity are to be introduced into the procurement process. To this end, it is recommended that, at least in the larger procuring entities where staffing and workload warrant it, the PPA should promote the creation by procuring entities of a two-tier approach to the management of all sizeable procurement exercises e.g. >US\$100,000 equivalent. This structure would comprise:

1. a **Procurement Committee**, comprising three members of the senior management team of the procuring entity, for example at Director General or Head of Department level. All members should be professional civil servants, accountable under the civil service law. The functions of this Procurement Committee would be to:

- approve annual procurement expenditure programs and ensure adequate planning of all tenders >US\$100,000 equivalent;
- oversee the entire procurement procedure of each tender, to ensure its probity and compliance with the LPP, including adherence to advertising requirements;
- ensure that the most appropriate and competitive procurement method is used;
- critically appraise any proposal to use a procurement method other than Open Tendering, for purchases above the OT threshold, before the submission of such an application to the PPA;
- appoint the members of the Bidding Committee for each procurement and nominate its Chairman;
- approve the bidding documents before their issue to the bidders;
- approve the bid evaluation report and recommendation for award of contract made by the Bidding Committee.

2. For each procurement >US\$100,000, an ad hoc **Bidding Committee**, comprising up to five staff, including Procurement Officers, Technical Specialists/Engineers in the discipline relevant to the subject matter of the procurement, Finance/Economics/Accounting Specialist and Lawyer. For each procurement, the end user department of the procuring entity should be represented in the Bidding Committee. The members of each Bidding Committee would vary from one procurement exercise to another, depending on the subject matter of the procurement. The functions of the Bidding Committee would be to:

- select the procurement method, prepare a procurement plan and cost estimate for each procurement;
- implement the procurement procedure in accordance with the LPP;

- draw up the bidding documents, including the technical specifications, to be approved by the Procurement Committee;
- evaluate bids and prepare the bid evaluation report and recommendation for award of contract, to be approved by the Procurement Committee for contracts >US\$100,000 and by both the Procurement Committee and the PPA for contracts >US\$500,000 (see 2.11 above).
- after approval of the recommendation for award by the Procurement Committee, place the contract with the winning bidder.

In addition, the PPA might consider requiring that all evaluation commissions should contain at least one accredited Procurement Officer (see 4.3 below).

This separation of functions should deliver the following benefits:

- increase the control of procuring entities’ senior management over the planning and execution of annual procurement programs and individual tenders >US\$100,000;
 - reduce the opportunity for political interference in contract award decisions;
 - reduce the opportunity for individual employees of procuring entities to exercise discretion in the award of contracts or to forge corrupt relationships with bidders, by varying the membership of Bidding Committees;
 - increase the accountability of procuring entity staff involved in procurement.
3. For procurements <US\$100,000, where the regular involvement of the procuring entity’s senior management is not warranted, procuring entities should put in place appropriate organizational arrangements which balance decision-making authority with accountability for probity and compliance with the LPP. This might involve such purchases being handled by a Procurement Officer or Procurement Unit, where the procuring entity has one, or by the end-user department directly. Senior management in procuring entities should require a periodic (e.g. quarterly) report on all procurements <US\$100,000 and should also ensure that the conduct of such procurements is subject to regular audits by the procuring entity’s Internal Audit function, in addition to the routine scrutiny exercised by external audit bodies.

Table 4.1: Proposed Interim Arrangements for Approval and Review of Contract Awards

Contract Value (US\$ equivalent)	Award Decision Made by	Award Decision Approved by	Award Decision Reviewed by
<US\$100,000	End-User Department		
US\$100,000-500,000	Bidding Committee	Procurement Committee	
>US\$500,000	Bidding Committee	Procurement Committee	PPA

In addition, certain provisions should apply to all public officials who participate in public procurement:

- before participating in a Procurement or Bidding Committee, all public officials should be required to sign a statement that they have no conflict of interest in doing so and no personal or financial relationship with any of the bidders;
- all members of bid evaluation commissions should be named on and required to sign bid evaluation reports, in order formally to indicate their agreement to the recommendation for award of contract and to ensure the accountability of individual evaluators.

4.3 Training and Capacity Building for Public Procurement

Albania lacks its own permanent capacity for training government officials in public procurement. In the past, provision of training has been financed primarily by the IDF grant, which the Bank made available to Albania, which financed the training of some 500 public officials in public procurement in 1996-97. However, since then, provision has been sporadic and the GOA has made no progress in building the country's own sustainable training capacity. Many staff in procuring entities who handle procurement have received no training in procurement at all.

It is essential, therefore, that the Government should increase its efforts to expand the provision of procurement training. It is recommended that PPA should focus its limited resources on developing at least a modest level of sustainable training capacity in existing institutions. To meet this objective, the following steps are recommended:

1. The PPA should adopt a proactive role in fulfilling its obligation to develop and maintain a training system for government and municipal clients, suppliers and contractors.
2. The PPA should also appoint a full-time Procurement Training Coordinator, to take the lead in developing and delivering procurement training materials and courses and to coordinate and encourage the activities of different providers.
3. The PPA should develop and implement a national training strategy for public procurement.
4. The PPA should prepare and disseminate, to all procuring entities operating under the LPP, standard training materials for public procurement which are consistent with the legislation; specific areas of weakness, which need to be addressed by training, should include:
 - procurement planning, contract packaging and scheduling;
 - cost estimating, particularly for civil works contracts;
 - writing comprehensive, generic technical specifications;
 - drafting of comprehensive, appropriate bidding documents;
 - bid evaluation; and
 - contract administration.

5. The PPA should also adopt a more proactive role in promoting the growth of a range of sources of training provision from institutions, such as technical universities and management schools, and should develop collaborative efforts with such institutions to develop and conduct procurement courses. including providing teaching materials and lecturers.
6. The PPA should promote the development of an accreditation system for procurement training courses, whereby procurement courses run by training or educational institutions can be independently accredited to a defined quality standard, leading to the award of a recognized, professional procurement qualification to delegates who successfully complete the courses.
7. The PPA should also consider a scheme for accrediting Procurement Officers, once they have undergone accredited training programs and achieved recognized procurement qualifications. As in other Eastern European countries (e.g. Slovakia), the PPA might then consider making it a requirement that each procuring entity should employ an accredited Procurement Officer and that all procurement commissions should include at least one accredited Procurement Officer.
8. PPA staff should be trained in procurement auditing.

4.4 Development of the Procurement Profession

Furthermore, it is important that the GOA, led by the PPA, should take steps to develop procurement as a profession in Albania. Because it is not yet recognized as a profession in its own right, procurement positions in government service are invariably occupied by non-specialists, with no definable career path to aim for. Staff working in the procurement function are employed and paid on the same terms as other public-sector employees. It is clearly in the interests of all concerned – national Government, local government and the individual employees - that Albania should develop a cadre of professional public Procurement Officers, adequately trained and accredited, professionally qualified and appropriately remunerated. Such a strategy is key to improving the quality and probity of the public procurement function and to attracting and retaining high-caliber staff to the profession. It is recommended, therefore, that the PPA should initiate a dialog within Government, particularly with the Department of Public Administration (DOPA), the objective of which should be to have procurement established as a separate career stream in the civil service, both at national and local government levels. This action should be supported with separate job descriptions, qualifications requirements, career structures and salary scales for procurement officers.

4.5 Relations between the Government and the Business Community

As the 1998 *'Combating Corruption in Albania'* Report recognized, because of the pervasive presence of corruption in the public procurement system, many bidders have lost faith in government contracting and no longer participate in public tenders. The negative effects of this situation impact not just upon the domestic economy - fewer local bidders benefit from the economic stimulus of winning government contracts - but also

on public expenditure - fewer participating bidders means less competition, leading to higher prices and less value for public money spent. It is imperative, therefore, that the PPA should take the lead in mounting an outreach program to the business community. The aims of these efforts should be to rebuild the business community's confidence in the public procurement system and to boost participation by private-sector companies, both local and foreign, in tendering for government contracts. This report recommends that the PPA should launch a regular (e.g. monthly) series of short business seminars, at which it should present to the business community the opportunities which public procurement offers and explain the program which the GOA is undertaking to reform public procurement and to combat corruption. A further objective of such seminars should be to brief companies, in generic terms, on how to compile good-quality bids, thus improving the competitiveness of bidders and the responsiveness of bids received by procuring entities. Furthermore, the business community should be consulted on the future development of the public procurement legislation in Albania.

Section 5: Audit & Anti-Corruption Measures

5.1 Anti-Corruption Measures

In January 1998, after consultations with the World Bank, the Council of Ministers approved a set of anti-corruption initiatives, which included:

1. the appointment of a high-level Steering Group to undertake inter-ministerial coordination of anti-corruption measures;
2. collection of evidence on corruption, through diagnostic surveys of enterprises, households and public officials;
3. launching an open workshop on anti-corruption and public-sector performance;
4. an Anti-Corruption Program, encompassing reform of public procurement, reform of the civil service, the judiciary, customs and tax administrations, measures against illegal trade and money laundering, steps to improve financial auditing, reform of the budget and Treasury functions, as well as of economic policy and regulatory reform and a public awareness campaign to communicate the Government's commitment to combating corruption.

5.2 Survey Findings on Corruption in Public Procurement

The survey evidence revealed that corruption is pervasive in Albania. Many households and businesses had paid bribes and many officials had accepted them. Perceived as being among the most corrupt institutions were the Customs, judiciary, tax administration and privatization agency, as well as local government. More than half of firms surveyed admitted to having paid bribes to public officials, with trade and construction companies paying more than those engaged in manufacturing and services. Public procurement was found to be a particular target of corruption, with more than half of all firms stating that they did not participate in government procurement because competition is unfair. Almost 50% of firms requiring some form of clearance to participate in public

procurement admitted to paying bribes to obtain such clearances and those firms paid bribes 70% of the time. Experts surveyed perceived Albania as having one of the highest rates of corruption among transition economies and a very weak rule of law.

The survey found the following to be the most common irregularities in the implementation of public procurement:

at the pre-contract stage:

1. tailoring of technical specifications to favor a particular bidder;
2. restricted dissemination of information about contracting opportunities;
3. abuse of urgency as a excuse for overuse of Direct Procurement or for restricting competition to a small number of bidders;
4. breaches of the confidentiality of bidders' bids after submission to the procuring entity.

during bid evaluation:

5. interference by senior staff of the procuring entities in the decisions of evaluation commissions;
6. senior staff making contract award decisions directly themselves, by-passing evaluation commissions;

during contract administration:

7. poor supervision of contracts, allowing suppliers or contractors to supply lower-quality products than specified in the contract or to falsify quantity or quality certificates;
8. contract administrators colluding with and accepting bribes from suppliers/contractors to allow them to escape their contractual obligations;

information dissemination:

9. insufficient information being addressed to all parties, including officials with responsibility for public procurement, bidders, suppliers, contractors and the public.

The CPAR assessment found that all of these abuses remain prevalent in Albania, in part because the GOA has made little headway in implementing the public procurement agenda of the Anti-Corruption Program.

5.3 Audit

5.3.1 Inspections by the PPA

The provisions in the LPP on the auditing of public procurement include the following:

1. Procuring entities must make records and documents regarding public procurement available for inspection by the PPA and must submit reports regarding their procurement activities in such detail and at such intervals as the PPA may require.
2. Among the authorized functions of the PPA is that of inspecting the records of procuring entities "to the extent it deems appropriate in order to check the proper application of the law by them";
3. the High State Control or local authority, when it identifies a breach of the provisions of the law or procurement regulations, has the right to penalize, for administrative infringement, the responsible staff of the procuring entity with a fine amounting to between ALL50,000-100,000 (US\$360-720). The procuring entity staff member may appeal to a district court against the imposition of such a penalty.

Whilst these provisions are already weak, it appears that they are not regularly enforced. The 1998 Annual Report of the PPA records that it conducted inspections on procuring entities for the first time since its establishment in 1996, but that, even then, these inspections were conducted on only four procuring entities and only one mis-application of the LPP was recorded. The 1999 Annual Report records no such inspections but does record that it had experienced problems, when overturning a procurement decision as a result of a complaint, in identifying the responsible public officials, as the procuring entities do not identify the officials responsible for such decisions. The recommendations presented under Section 2.11 of the report are designed to address this problem.

5.3.2 Internal Audit in Budget Institutions

Whilst the Organic Budget Law makes Ministers responsible for accounting and internal inspection of the revenue and expenditure transactions of budget institutions, the internal financial controls within budget institutions do not work effectively. The 1998 Anti-Corruption Program set up a Working Group on Financial and Performance Management, which was tasked with identifying ways to improve internal controls and independent audits of public accounts. Improving the internal auditing function in procuring entities should go some way towards reinforcing the application of the LPP, as well as to identifying and punishing violations of it. It is important that, as the internal audit function is strengthened, internal auditors in procuring entities should be trained in the accurate interpretation of the LPP.

5.3.3 Inspections by the Ministry of Finance (MOF)

The Organic Budget Law also gives the MOF the right periodically to inspect the records of revenues and expenditures of budget institutions and local government authorities and to impose penalties for violations of the Budget Law. However, the Public Expenditure Review (PER), which the World Bank recently conducted in Albania, found that:

1. frequent revenue shortfalls are accompanied by ad hoc measures to cut expenditures across the board, with little consideration for program or activity outcomes;
2. oversight and control of the budget remains problematic. The absence of performance indicators inhibits the ability of central authorities to draw conclusions about the efficiency of public expenditures.

The CPAR assessment also found that unplanned cuts to the annual budget allocations of procuring entities severely disrupts their ability to meet payment obligations under existing procurement contracts. Also, the release to procuring entities of additional budget funds late in the financial year, with the requirement that such funds be spent by year-end, encourages the use by procuring entities of uncompetitive procurement methods. Much of this money is spent by Direct Procurement, with no competition, poor value for money and a high level of susceptibility to corruption.

An improvement of MOF's budget management process is an essential prerequisite to holding procuring entities accountable for good procurement planning, based on firm annual budgets and for the use of the most competitive, transparent procurement methods. Equally, it is essential that MOF's budget management be strengthened, in order that reliable financial information on the application of public funds through procurement should be available to MOF and that violations of the budget legislation may be prosecuted.

5.3.4 Audit by the High State Control (HSC)

The High State Control supervises the economic activity of state institutions, the use of state funds by the organs of state and local government and the economic activity of institutions in which the state owns more than half the shares or when their debts, credits or obligations are guaranteed by the state. HSC is required to submit an annual report to the People's Assembly on the implementation of the state budget, which includes reporting on the expenditure of public funds through public procurement.

The audit of procurement transactions periodically forms part of HSC's activities and its most recent annual reports have identified several alleged breaches by procuring entities of the procurement legislation. However, the scope of HSC's auditing of public procurement transactions is relatively limited, as it lacks the capacity to undertake comprehensive audits of public procurement. As a result, the performance of public procurement by procuring entities is not being audited as regularly as is necessary to ensure compliance with the legislation. This under-capacity results not only from a lack

of adequate numbers of staff but also from the fact that its existing staff have not been adequately trained in the interpretation and application of the public procurement legislation. There is a clear need to train HSC auditors in the correct interpretation and application of the LPP and its implementing regulations and in methodologies for conducting procurement audits (as opposed to financial audits). It is also important to ensure that HSC's audit findings are regularly and widely published and to ensure that violations of the public procurement legislation which its audits identify are referred to the appropriate authorities for prosecution.

5.4 Recommendations for Strengthening Audit and Anti-Corruption Measures

Whilst Albania is to be commended on its efforts to date to combat corruption, the following additional measures are necessary:

1. The GOA should introduce into all bidding and contract documents specific prohibitions against fraudulent and corrupt activities by bidders.
2. An administrative procedure should be put in place for debarring from participation in public procurement all firms and individuals who have engaged in fraudulent or corrupt activity and PPA should publish a list of those debarred in the PPB and on its website.
3. The accuracy and reliability of audit findings on procurement should be improved by the development of procurement training courses specifically for internal auditors and HSC auditors.
4. All procuring entities should establish their own internal audit functions, which should undertake regular audits of the conduct of public procurement.
5. Procurement audit reports should be published.
6. The decisions, clearances and waivers granted by the PPA should be subject to regular, independent audit.
7. The PPA should set up an anonymous telephone hotline to facilitate the reporting of procurement-related fraud and corruption.
8. The PPA should strengthen its measures for monitoring low-value procurements made by procuring entities, in order to identify inappropriate uses of restrictive procurement methods and to deter fraud and corruption in this area of procurement.

Section 6: Public-Sector Management Performance

6.1 Performance of the Public Procurement System

Because the PPA neither collects nor publishes any data on public procurement, there is no reliable information on which to base an analysis of the functioning of the public procurement system. This is one of the key areas in which the performance of the PPA urgently needs to be strengthened.

However, the following data, taken from the Government's budget, give an indication of the scale of public expenditures which might be spent through the public procurement system.

Table 6.1: Budgeted Government Spending on Capital Expenditure and Operations & Maintenance, 1999-2000

Category of Expenditure*	1999	<i>US\$m Equiv</i>	2000	<i>US\$m Equiv</i>	Variation
Operation and Maintenance	20,500	<i>146.6</i>	23,692	<i>169.4</i>	+16%
Capital Expenditure:					
- Domestic Financed	10,720	<i>76.7</i>	14,662	<i>104.8</i>	+37%
- Foreign Financed	<u>15,170</u>	<i>108.5</i>	<u>20,000</u>	<i>143.0</i>	+32%
Sub-total Capital Expenditure	25,890	<i>185.1</i>	34,662	<i>247.9</i>	+34%
Total O&M + Capital:	46,390	<i>331.7</i>	58,354	<i>417.3</i>	+26%

* All figures in millions of Lek. US\$ equivalents shown in italics.

Therefore, the total value of domestically-financed capital and recurrent expenditures was ALL31,220m (US\$223m) in 1999, rising 23% to ALL38,354 (US\$274m) in 2000. These figures indicate – and this was borne out in interviews with several senior public officials conducted during the assessment - that procuring entities have increasing funds available for expenditure on procurement. The assessment found, however, a slow rate of disbursement of public funds, which was due in large part to poor performance by procuring entities in implementing procurement. As described at 2.13 above, there is also evidence that, because of poor procurement planning and the release of supplementary budget allocations late in the fiscal year, there is a peak of procurement expenditure at year-end, most of it by the Direct Procurement method.

6.2 State Enterprises

Whilst no hard data are available on the performance of procurement by state enterprises, it became evident, during the conduct of this assessment, that the commercial activities of these enterprises are being impeded by the requirement that they adhere to the often cumbersome provisions of the LPP.

Experience in other countries suggests that state enterprises, because of the requirement on them to operate in a more commercial environment, need greater flexibility in their procurement decision-making than a national public procurement law, such as the LPP, affords. In order to promote the successful commercialization of these organizations, it is recommended that the GOA should consider legislating that a commercialized, parastatal organization may be governed by the existing LPP unless and until it has introduced a set of in-house procurement regulations approved by the PPA.

Section 7: Performance on Bank-Assisted Projects

7.1 Procurement and Portfolio Performance

As of June 30 2000, the IDA-financed portfolio comprised 21 projects under implementation for a total value of US\$315.5m. During FY2000, 7 projects closed, the closing dates of 4 others were extended to facilitate completion of implementation and 6 new projects were signed. The portfolio contains two projects rated as unsatisfactory – Power Transmission & Distribution and Durres Water – both of which are under suspension of disbursements.

Despite this, the FY2000 CPPR found the overall performance of the portfolio to be satisfactory and noted the significant progress which the GOA had made, in the past year, in the restructuring of PIUs and with improving the allocation of counterpart funds. Nevertheless, the CPPR noted that procurement skills continue to be weak in public transactions in Albania and that the effectiveness of 2 of the 6 recently-signed projects is delayed, pending the GOA's appointment of Procurement Specialists to the respective PIUs.

Since the beginning of the Bank's lending program in 1991, there has been a heavy reliance on foreign Technical Assistance in project implementation, including procurement, and this continues until the present. Nevertheless, there is now a small cadre of Albanian personnel in Ministries who are becoming skilled in Bank procurement.

7.2 Strengths and Weaknesses in Procurement Management on Bank-Assisted Projects

7.2.1 Strengths

1. The restructuring of PIUs implementing Bank-financed projects has been completed, all PIUs Directors and staff have been appointed and PIUs have been given autonomous status. PIU staff are paid market-related salaries, which enables them to compete with the private sector to attract and retain high-caliber staff.

2. The GOA has recently made progress with the timely allocation of counterpart funds to projects – for example, for the payment of import duties - though the situation is not yet entirely satisfactory.
3. With a few exceptions, procurement performance on Bank-financed projects is generally satisfactory and compliance with the Bank's procurement procedures is usually of an acceptable level.
4. Contracts are usually awarded within acceptable time frames and most implementing agencies perform procurement in a reasonably efficient manner.
5. Experience of conducting procurement under Bank guidelines has been accumulated in 7 national Ministries, as well as several different national agencies, municipalities and municipal enterprises.
6. Bidders generally consider implementing agencies to be fair and efficient in their handling of Bank-financed procurement.

7.2.2 Weaknesses

1. The requirement, contained in the national public procurement legislation, that the Minister should issue a Procurement Order authorizing the start of a procurement procedure and sign the contract is being applied unnecessarily to procurement on Bank-financed projects, often causing delays. Also, different thresholds have been established by different PIUs to determine the contract value above which the Minister's signature is required, which means that different PIUs have varying level of decision-making autonomy for procurement. These practices should be discontinued for Bank-financed projects and the authority for initiating procurement and making procurement decisions should be invested in the PIU Director.
2. Although the situation has improved in the past year, implementing agencies have had repeated problems raising counterpart funds in good time to pay VAT and import duties on Bank-financed contracts, leading to delays in procurement. Lack of counterpart funds has also caused delays to the installation of Bank-financed equipment, where the implementing agency could not pay for such installation. The procedures for allocating counterpart funds still require streamlining.
3. There have been instances of attempted price-fixing and collusion between local bidders, particularly for civil works contracts procured by NCB.
4. Delays have resulted from the failure of many implementing agencies to prepare procurement plans at the outset of a project or of an individual procurement exercise.
5. Implementing agencies' staff are not qualified to undertake cost estimating thoroughly, particularly for civil works contracts.
6. Little technical expertise exists within the Ministries properly to prepare technical specifications for goods and works. For consulting assignments, the quality of the Terms of Reference drafted by the implementing agencies is generally poor.
7. Many PIUs lack the technical expertise needed to undertake technical evaluation of bids for goods, works or services.
8. In the evaluation of bids, implementing agencies frequently recommend award of contract to the lowest-priced bid, whether it is substantially responsive or not,

- because of their concern about being accused of corruption if the lowest bid is rejected.
9. Post-qualification, where it is carried out, is seldom done effectively, with the result that contracts have been awarded to suppliers/contractors who do not have the capacity to perform the contract. (e.g. textbooks).
 10. There is little expertise and no appropriate procedures in effect to inspect goods for compliance with the technical specifications. Procuring entities lack a culture of employing third-party inspection agencies to conduct pre-shipment inspections on their behalf, even when the technical complexity of the goods warrants it.
 11. There have been repeated problems with the timely performance and quality of civil works constructed by local contractors. In some cases - for example, on road construction contracts procured by NCB with prequalification - contractors lack the equipment and cashflow to continue construction in line with the contracted work program, suggesting that prequalification criteria have been set too low.
 12. There have been delays to roads projects caused by the employer's difficulty in expropriating land.
 13. There have been instances of false documentation having been submitted by bidders, both local and foreign, including prequalification information and fraudulent bid securities.
 14. Most implementing agencies lack formal mechanisms for monitoring procurement performance and contract administration. Independent, third-party audits have found that implementing agencies do not maintain fixed asset registers, making it difficult to track the ownership and whereabouts of Bank-financed goods and equipment after delivery. PIUs seems to believe that their responsibility for procurement ends at award of contract.
 15. There have been a number of complaints - currently 3 outstanding against a single Bank-financed project. Complaints mostly relate to the purchaser's evaluation of technical specifications.
 16. The high turnover of PIU staff means that trained procurement personnel often leave and are replaced by untrained staff, undermining implementation and thus prolonging the implementing agencies' reliance on foreign technical assistance.

Section 8: General Risk Assessment

Albania's experience of operating comprehensive public procurement legislation is brief, covering just four years since the Law on Public Procurement came into effect in January 1996. Whilst the Government introduced, at the same time, implementing regulations to complement the LPP, the totality of this legislation is complex, in some cases contradictory and frequently difficult for staff in procuring entities to apply. As the Government has made few substantive changes to these legislative instruments in the interim, the situation has not improved and adherence to the legislation has never reached a satisfactory level. The serious civil disturbances which swept Albania in 1997, resulting in widespread disregard for the rule of law, have made it particularly difficult for the Government to enforce the public procurement legislation and have laid many other

trade-related operations, such as import-export commerce and customs, prey to corruption and a chronic failure of law enforcement.

It is clear, therefore, that any attempt to improve the functioning of Albania's public procurement system will succeed only if it simultaneously addresses the shortcomings in the legislation and the challenge of enforcement.

The LPP contains a number of weaknesses which reduce the transparency of public procurement and inhibit economy and efficiency. Chief among these is that it is too easy for procuring entities to avoid using Open Tendering. Restricted Tendering is too often used as a substitute for Open Tendering in the procurement of high-value contracts; Direct Procurement is over-used, delivers poor economic results and is open to corruption. Arbitrary limitations on the participation of foreign bidders in Open Tendering restrict procuring entities to a limited domestic market and protects local bidders unnecessarily from competition, whilst depriving procuring entities of the economic stimulus of full competition.

Transparency in public procurement - essential if the system is to be seen as fair - is undermined by inadequate advertising and notification requirements, opaque bid opening procedures, subjective methodologies and criteria for evaluating bids and the absence of any requirement to advertise contract awards. These deficiencies both facilitate and conceal corrupt practices.

The situation is made worse by weak anti-corruption provisions. Because there is no procedure for debarring bidders who engage in fraudulent or corrupt activities, they may participate repeatedly in public tendering. Where procuring entities make mistaken or erroneous procurement decisions, a weak protests and appeals system deprives bidders of adequate redress. At all levels of government, inadequate provisions and resources for auditing procurement transactions allow wrongdoing to continue unchecked. The Public Procurement Agency (PPA), which should take the lead in ensuring enforcement of the LPP, not only lacks the necessary powers to do so but is under-staffed and under-resourced to perform even its current functions.

In view of these findings, this report ranks Albania as a **high risk** country in respect of its public procurement system. However, if the Government commits itself to rectifying the deficiencies in its procurement legislation identified in this report, to strengthening enforcement of the law and increasing transparency, it should be able to improve this rating within the time span of the Action Plan presented below.

Part B - Private Sector

Section 9: Commercial Regulations

9.1 Commercial Regulations

The Civil Code contains, in Part V, basic provisions on contract law, including on offer and acceptance, express and implied contract terms and the application of standard conditions of contract (which is of importance for the use of SBDs by public procuring entities). There is also a set of specific provisions on Sale of Goods contracts, governing the obligations of the seller and buyer, delivery and payment, documentation, defects liability, transfer of risk during transportation of the goods, as well as installation. These provisions provide a reasonably comprehensive framework within which procurement transactions may take place. However, as described under 9.2 below, because of the weakness of the judiciary and the unreliability of legal redress, most private companies do not rely on the law for the interpretation or application of contract terms.

The Law on Commercial Companies governs the operations of private and public companies, defining the different types of company permitted, including general partnership, limited partnership, limited liability company, state company and public company. As it applies to public companies, the law contains salient provisions on their management, the treatment of share capital, the holding of annual general meetings; auditing of public companies is required to be carried out by Certified Public Accountants and the law specifies the minimum contents of the annual report. However, as the auditing profession in Albania is not well developed, there may be some doubt as to the veracity of annual reports published by public companies.

The Law on Foreign Investment (#7764 dated November 2, 1993) allows foreign investment in Albania without prior authorization, excluding the ownership of land, which is regulated separately. This law establishes the rights of foreign investors to transfer all assets (revenues, payments, return on shareholders' equity etc.) out of Albania after payment of taxes due. The law also contains provisions on the resolution of investment disputes. Where a dispute arises between a foreign investor and an Albanian private company or state enterprise, the foreign investor has the right to choose to have the dispute referred to any applicable dispute resolution procedure, including international procedures. Where a dispute arises between a foreign investor and the state administration, the law establishes the foreign investor's right to have it referred to the International Center for Settlement of Investment Disputes.

The Code of Civil Procedure contains the legal provisions and procedure on commercial arbitration, which apply to all arbitration conducted on the territory of Albania when one or both parties to the dispute are registered in Albania. The law has authority equally over privately-owned companies, the state and any organization controlled by the state. Where both parties to a dispute are Albanian, the Code on Civil Procedure requires that the arbitration court applies Albanian law; where one party is foreign, the parties may choose to have the arbitration proceedings conducted under the

law of another country. The arbitration procedures are broadly consistent with the UNCITRAL rules. However, the one major departure from UNCITRAL is that a decision of an arbitration court is implemented by an execution order issued by a district court, which may not be appealed, except under specific conditions appertaining to faulty procedure of the arbitration court. There is also a new draft Law on Arbitrating Trade Issues under preparation.

The infrastructure for arbitration proceedings in Albania is very weak. There are no arbitration institutions and the country lacks a tradition of resolving contractual disputes by arbitration. Most potential contract disputes are either resolved by informal negotiation or by one party simply abandoning the contract; the latter practice is particularly common with contracts for construction works. As Albania is not yet a signatory to the New York Convention on the Recognition of Foreign Arbitral Awards, the likelihood of having a foreign arbitral award enforced is low. However, Albania is currently preparing to sign both the NY Convention and the European Convention on Arbitration. The Bank-financed Legal and Judicial Reform Project in Albania contains a component for the establishment of an independent Center for the Out-of-Court Settlement of Commercial Disputes, the aim of which is to strengthen the local institutional framework for arbitration.

As the development of arbitration services and qualified arbitrators is essential to the functioning of commercial activities in the country (both private-private and public-private), it is recommended that the Government of Albania should dedicated appropriate resources to developing training courses for arbitrators, in order to promote the development of the arbitration profession and practice in the country.

The **Albanian Customs Service** (ACS) is still recovering from the widespread civil disturbances of 1997, when it lost control of the ports and border crossing points, import duties could not be collected and wholesale smuggling of goods became the general practice. With the support of the EU-financed Customs Assistance Mission - Albania (CAM-A), the service has gradually been restoring its ability to collect revenue and efforts continue to build ACS into a modern, viable customs service. A new **Customs Code** (#8449 dated January 27, 1999) has been passed, the level of tax collection has stabilized and there are plans to automate customs documentation and procedures through the introduction of the ASYCUDA system. Nevertheless, smuggling remains a serious challenge; bribery and the presentation of fraudulent customs documentation are also reported to be commonplace.

During the past six years and with the active assistance of international organizations, foremost among them the OSCE and EU, Albania has adopted numerous new laws and regulations, amounting to a fairly well developed legislative framework. However, this flurry of legislation has given rise to difficulties in interpretation, particularly in the many instances where provisions are conflicting. In addition, there remain serious challenges in implementation, in making sure that the rule of law functions effectively and in building a competent and corruption-free judiciary.

Section 9.2: Commercial Practices

Private sector activity in Albania started only with the passage of the Law 'Sanctioning of Private Property, Free Initiative and Privatization' in 1991, which allowed the transfer of state property to private ownership and the establishment of new private businesses. By 1996, the private sector accounted for 75% of GDP and comprised some 62,000 registered enterprises, most of them small. This rapid private-sector growth necessitated corresponding adjustments by public institutions performing regulatory and oversight functions, including the collection of customs and tax revenues, settlement of legal disputes and the registration and licensing of private activities. It is perhaps not surprising that the development of these public functions has not kept pace with that of the private sector. As a result, much private-sector purchasing activity is conducted in the "gray" economy, is often undocumented and paid in cash. Because most private firms are young, they do not have established management or administrative procedures. Even the most advanced enterprises have established only basic procedures, which describe mainly managerial hierarchy, rather than technical or operating responsibilities.

Although the country has not yet developed a recognizable set of commercial practices, there are some recurrent practices common to most private firms.

1. Contract award is invariably to the lowest-priced offer which meets the basic technical specifications.
2. Written contracts are used mainly in construction works and for the import of goods from abroad.
3. Purchasing of goods from the domestic market is done mainly by a simple purchase orders, paid in cash and, in the majority of cases, without an invoice.
4. There is a high incidence of contracts not being performed. Given the weak judiciary, many enterprises prefer to not involve themselves in formal dispute resolution procedures but choose, instead, to resolve such cases through informal negotiations or through intermediaries.
5. Given the weakness of the judicial system, most business-to-business commercial relationships are based primarily on trust, built on satisfactory past performance. Private companies are very conservative with regard to entering into new supply relationships, which has the effect of limiting competitive sourcing.
6. Direct contracting is widely used and price negotiation is the norm.

B - RECOMMENDED ACTION PLAN

Section 10: Strategic Approach

With only 4 years of experience in applying its first comprehensive public procurement legislation, Albania has already made some significant achievements, foremost among them being a law which provides a sound basis for the conduct of public procurement. However, the Government has yet to build on this good start and, because it has made few continuing efforts to develop the legislation once introduced, the result has been a confused and incomplete body of legislation. There is little doubt that, had it not been for the civil disturbances of 1997, greater progress would have been made by now. However, it is imperative that the GOA should expend strenuous efforts to make up this lost ground.

It is recommended that the GOA's strategy for public procurement should be built upon increasing the level of competition in the system, introducing transparency so as to rebuild the confidence of the business community in the fairness of the government tenders and strengthening the capacity of its own institutions to carry out procurement accurately and efficiently. These objectives can be served by a strategy which is built on the following key considerations:

1. maximum use of the most competitive procurement methods, particularly Open Tendering (OT);
2. stricter requirements on procuring entities to seek waivers for exceptions to the use of OT;
3. improved consistency and clarity between the procurement legislation and implementing regulations;
4. stricter requirements for advertising public bidding opportunities and for notifying stakeholders of contract awards, supported by a stronger physical infrastructure to deliver these requirements, including the use of Internet technology;
5. achieving better economic value by increasing the participation of foreign bidders in public tenders, whilst offering appropriate opportunity for domestic bidders to participate fully and effectively in bidding;
6. replacing the current, arbitrary discriminatory provisions against participation by foreign bidders in public tenders with a clear, rational and transparently-applied domestic price preference policy, which still helps local bidders to compete effectively;
7. improved accuracy and consistency in implementation of procurement by the immediate reintroduction of the standard pre-qualification and bidding documents already developed and agreed with the Bank;
8. development of a strong, independent Public Procurement Agency, equipped with the statutory functions and resources necessary to carry out its duties;
9. strengthened audit functions at all levels of the system;
10. development of sustainable resources for training public officials in procurement;
11. building a cadre of qualified government procurement staff.

Section 11: Measures to be Taken by the Government & Timetable

The GOA should implement the recommendations made in this report, in accordance with the time-based Action Plan presented at Attachment 1. Implementation of some of the recommendations may be financed by the current Public Administration Reform Project (Credit # 3328-ALB). It is likely that the GOA will need to contract appropriate Technical Assistance to help in the implementation of various of the recommendations contained in the Action Plan. Given the wide-ranging nature of the recommendations, a comprehensive set of amendments to the LPP and implementing regulations will be necessary.

Section 12: Measures to be Taken by the Bank

12.1 The Bank should continue and further develop its dialog with the Government of Albania on the development of its public procurement system, both the legislative and operational aspects, as well as related areas of activity. Specifically, the Bank should:

1. discuss the CPAR with the Government and agree on a timetable for implementation of the recommendations in the Action Plan;
2. hold an annual review with the GOA of its progress in implementing the Action Plan and of the overall functioning of the public procurement system;
3. finance specific recommendations from the Public Administration Reform Project;
4. conditional upon satisfactory progress with implementation of the agreed Action Plan, consider an application from the GOA for a further IDF grant to finance public procurement reform;
5. conduct regular training programs in Bank procurement for the staff of PIUs implementing Bank-financed projects;
6. assuming that the GOA progresses with the above recommendation to develop and accredit procurement training courses in local educational or training institutions, the Bank should also support these efforts by making training materials available to these institutions and provide occasional training inputs.

12.2 Based on the findings of this assessment, a number of amendments to the Open Tendering procurement method under the LPP would be necessary for that method to be acceptable to the Bank for NCB on Bank-financed projects:

1. all tenders should be advertised in at least one local newspaper of general circulation;
2. pre-qualification should be conducted for large or specialized works;
3. minimum experience, technical and financial requirements should be stated clearly in the pre-qualification documents or, in the case of postqualification, in the bidding documents;
4. Government-owned enterprises in Albania should be permitted to bid only if they are legally and financially autonomous and operate under commercial law;

5. the bidding period should not be less than 30 days from the date of publication of the Invitation To Bid or the date of issuance of the bidding documents to the bidders, whichever is later;
6. procuring entities should use the Bank's regional standard NCB bidding documents, which should be satisfactory to the Bank prior to their issue to bidders;
7. the opening of bids should follow immediately after the deadline for bid submission and bidders' representatives should be permitted to attend;
8. a single-envelope procedure should be used for the submission of bids;
9. where prequalification has not been undertaken, postqualification should be conducted only on the lowest evaluated bidder; no bid should be rejected at the time of bid opening on qualification grounds;
10. bidders who contract as a joint venture should be held jointly and severally liable;
11. bidders should be required to submit bid and performance securities in an amount appropriate to the estimated value of the contract and in a form acceptable to the Government;
12. award of contract should be to the lowest evaluated, substantially responsive bidder who is determined to be qualified to perform in accordance with pre-defined and pre-disclosed evaluation criteria;
13. contracts of long duration (more than 18 months) should contain appropriate price adjustment provisions.

Section 13: Technical Assistance

The Government will need substantial resources to implement the proposed recommendations and Action Plan. In order to strengthen the PPA to enable it to discharge its proposed widened functions, qualified local staff will have to be hired and developed with skills in procurement and training. Expert advice will also be needed for training a large number of public officials throughout the country, starting up training courses in educational institutions and initiating an accreditation system for procurement professionals. It is recommended that the GOA identify funds from its own budgetary resources, in addition to exploring the possibility of seeking technical assistance from international organizations, such as the European Union, OECD, EBRD and bilateral donors. In the current Public Administration Reform Project, there is a component specifically for the reform of public procurement, which may be used to finance some of these activities. The World Bank would also consider an application from the GOA for a further IDF grant for public procurement, subject to agreement being reached between the GOA and the Bank on the implementation of the recommendations made in this report and on the proposed timetable for the Action Plan.

Section 14: Recommended Bank Approach for Supervision

Giving the rating of Albania as a high-risk country from a procurement point of view, the Bank's approach to supervision should be suitably cautious. Specific approaches to supervision should include the following:

1. the Bank should conduct procurement capacity assessments on all institutions charged with implementing new Bank-financed projects;
2. given the lack of any regular capacity in Albania to train the country's own procurement staff, project launch workshops on new Bank projects should be conducted for every project and should contain at least two days of project-specific procurement training;
3. for civil works contracts, the appointment of consultants to carry out design and construction supervision should be required;
4. contract packages should be designed in such a way as to promote increased participation in tendering by foreign bidders, particularly for civil works contracts;
5. for all procurements where prequalification is done, the Bank should ensure that the qualification criteria are set at levels which will ensure that prequalified bidders can implement the contract and ensure that postqualification is done rigorously, in order to make sure that the bidder recommended for award of contract still meets all the prequalification criteria at the time of contract award;
6. Bank staff should exercise particular diligence in reviewing requests received from Albanian implementing agencies to award contracts on a Direct Contracting or Single Source basis;
7. Bank procurement staff should review bid evaluation reports (BERs) with particular diligence and insist on a full and detailed justification of the recommendation for the award of contract. In all cases where an implementing agency initially submits a BER with insufficient information, this should be returned to the implementing agency with a requirement that full information be provided to justify the recommendation;
8. the Bank should place an obligation on all implementing agencies, through Credit Agreements and/or Sub-Credit Agreements, to establish and maintain an asset register for all goods and works financed by Bank funds;
9. the Bank should maintain current prior review thresholds at US\$100,000.
10. the threshold for International Shopping should be set at US\$75,000 and that for and National Shopping at US\$30,000;
11. Bank Task Team Leaders should make sure that procurement post reviews are conducted by every supervision mission and that the Back-To-Office report of every supervision mission contains a specific annex dealing with procurement post review, which should be sent promptly to the Regional Procurement Adviser;
12. the Bank should ensure that the requirement, contained in the LPP, that the head of the procuring entity should sign a Procurement Order before procurement may be undertaken is not applied to Bank-financed projects, as it adds delay. The authority to initiate procurement should be vested in the PIU Director.

13. procurement reviews by supervision missions should check that implementing agencies have in place formal mechanisms for monitoring procurement performance and contract administration;
14. the Bank should have an independent procurement audit conducted in Albania during FY2001;
15. in the case that the Bank accepts the Open Tendering procurement method, according to the LPP, as NCB in Bank-financed projects, the Bank should pay special attention to the supervision of this procurement method.

Given that this report rates Albania as a high risk country in respect of its procurement operations, it is recommended that only the Bank's procurement **service function** should be carried out from the Bank's Tirana office for the time being. The decentralization of the procurement **fiduciary function** could be considered only after adequate procurement capacity is built in the Bank's Tirana Office and Albania moves forward on the path of achieving significant improvements in the legislative, regulatory and institutional aspects of its procurement system, thus reducing risk.

Section 15: Action Plan

The time-based Action Plan, appended to this Report at Attachment 1, proposes detailed steps for implementing all of the above recommendations and time schedule by which they might be achieved.

Action Plan

Actions	Responsibility	Year 1	Year 2	Year 3
Reforming the Legislation				
1. Strengthen the position of Open Tendering as the basic method of public procurement	PPA	X		
2. Clarify the conditions for use of restrictive procurement methods and strengthen the requirements for the minimum number of bids	PPA	X		
3. Increase the use of the Request for Proposals (RFP) method for the procurement of consultants' services	PPA	X		
4. Control the current over-use of Direct Procurement by making all uses subject to prior PPA waiver	PPA	X		
Improve Transparency and Assess to Information				
5. Launch and maintain a PPA Internet website to disseminate information on bidding opportunities, publish records of bid openings, announcements of contract awards	PPA		X	X
6. Maintain regular publication of the Public Procurement Bulletin	PPA	X	X	X
7. Require procuring entities to publish comprehensive information on the expenditure of public funds on public procurement	COM PPA		X	
8. Require all procuring entities to publish an annual announcement of their major procurement requirements	PPA		X	
9. Introduce outreach programs for the business community	PPA		X	
Increase Competition				
10. Abolish the differentiation between domestic and international Open Tendering. Control the application of international OT by the imposition of appropriate financial thresholds. Consider domestic price preference to facilitate participation in competitive tendering by Albanian bidders.	PPA	X		
11. Lengthen the bidding periods for domestic tenders	PPA	X		

Improve Procurement Procedures and Practices				
12. Make mandatory the use of the standard procurement documents developed with earlier financial assistance from the World Bank	PPA	X		
13. Discontinue the practice of revealing the cost estimate in the bidding documents	PPA	X		
14. Discontinue the current practice of evaluating bidders' qualifications at the time of bid opening. Apply pre-qualification for large, complex requirements and post-qualification in all other cases	PPA	X		
15. Introduce objective methodologies for the evaluation of bids	PPA	X		
Combat Corruption and Strengthen Enforcement				
16. Introduce into all bidding documents specific provisions against fraud and corruption	PPA	X		
17. Put in place an administrative procedure for debarring companies and individuals found to have engaged in procurement-related fraud and corruption	PPA	X		
18. Increase the number of high-value contract awards which are subject to PPA review and clearance.	PPA	X		
19. Strengthen internal and external auditing. Train auditors in procurement auditing. Publish audit findings.	PPA	X	X	X
Build Capacity of Institutions and Procurement Staff				
20. Development and implement a national training strategy for public procurement	PPA	X	X	X
21. Recognize procurement as a profession in its own right within the civil service	DOPA PPA		X	
22. Introduce an accreditation scheme for procurement officers	PPA		X	X
23. Encourage educational institutions to develop vocational courses in procurement, leading to the award of professional qualifications. Accredited selected institutions to conduct procurement courses	PPA Educational institutions		X	X

Attachment A

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