9th Public Procurement Knowledge Exchange Platform

Efficient Implementation of Procurement: Centralized Purchasing

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INTRODUCTION

IMPROVING PUBLIC PROCUREMENT REGULATION IN THE REGION

Since its establishment 20 years ago, the EBRD has fostered the transition to the market economy in the countries of from Central and Eastern Europe to Central Asia. As a major investor in the region, the Bank understands that robust public procurement legislation encourages investment. It engenders confidence in the transparency of public procurement and stimulates private sector bidding for government contracts. Greater competition means governments receive better value for money.

The EBRD promotes reform of public procurement legislation, and seeks to lead by example. The Bank requires that all goods, works and services procured under Bank-financed projects adhere to the Bank’s Procurement Policies and Rules, aligned with the Government Procurement Agreement of the World Trade Organisation. We are proud of the fact that the Bank’s operations over the past 20 years have been without significant procurement problems. This is the outcome of procurement policies based on international best practice which have engendered confidence in the transparency of decision-making and stimulated private sector bidding for public contracts. In the regions where we work, it has also increased cross border trade opportunities. Greater competition in public procurement ensures governments receive better value for money and this is what we advocate.

Building on the Bank’s experience in assessing the state of transition in its countries of operations, the EBRD Legal Transition Programme (LTP), in collaboration with the Bank’s Procurement Department, conducted its first public procurement sector assessment in 2010. The study covered the Bank’s 29 countries of operations. The results highlighted the different approaches to public procurement reform across countries, with a number of success stories, like in Albania, Georgia, Montenegro and Turkey. In other countries, the reforms lacked political support or were abandoned due to implementation difficulties, leaving the sector with sub-optimal regimes. In 2011 the EBRD’s mandate was extended to cover four countries in the South and Eastern Mediterranean, Egypt, Jordan, Morocco and Tunisia (SEMED region) and the LTP conducted an assessment of the public procurement sector of these countries. Results of this research can be accessed at: http://semed.ppl.ebrd.com. The EBRD will initiate new research on public procurement sector across the EBRD countries of operations in 2014 and the assessment report on public procurement laws and practice in the EBRD region will be published in early 2015.

Interim, in order to offer up-to-date policy advice and support in development of modern public procurement regulation in the EBRD countries of operation, the LTP continues looking at reform progress in the region. In 2012, we approached national regulatory authorities in the EBRD countries of operation for an update on their public procurement policy developments, in the format of the online self-assessment. The analysis of the self-assessment data is still in progress; nonetheless, out of responses received we have selected results for Georgia and Kazakhstan, to bring to your attention a progress made in development of their public procurement policies and institutional and enforcement framework. The public procurement reform projects in Georgia and Kazakhstan are of particular interest for the Bank since both countries are in the process of accession to the Government Procurement Agreement (GPA) of the World Trade Organisation. The EBRD recognises importance of the 2012 GPA accession as a milestone in development of modern public procurement policies and supports countries in their negotiations with the WTO GPA Secretariat through technical cooperation initiatives. We hope that this research, on case of Georgia, in particular, will assist other countries in the region which are currently embarking on the GPA negotiation process.

These days, due to fiscal restraint in public spending and new tools and practices emerging in the market, public procurement is at the heart of the reform agenda for many governments.

Together with the World Bank, the Asian Development Bank and the Islamic Development Bank we are joining representatives of the national public procurement authorities from the Europe & Asia region for the 9th Public Procurement Knowledge Sharing Platform in Skopje, Macedonia to tell you that we understand the pressure that a commitment to reform brings and we are prepared to be of assistance within the Bank’s mandate.
EBRD LEGAL TRANSITION PROGRAMME – PUBLIC PROCUREMENT

PUBLIC PROCUREMENT SECTOR

Most of the major infrastructure projects are commissioned as public contracts. The significant need for investment in public infrastructure throughout the EBRD region means that good public procurement regulations are crucial.

The effectiveness of public procurement is strictly related to the legislation in force, efficiency of the public procurement regulatory authorities and professionalism of procurement officers. The challenge is to develop a legal regime that will balance the transparency safeguards and efficiency aspects in the public procurement. The public procurement framework forms an essential part of the market economy; purchases by public entities are realised through the market and market mechanisms should be applicable.

When developing such a legal regime, one needs to create a framework that is consistent and easy to enforce in order to ensure that the rules are respected. To comply with this regime, all of the stakeholders – the contracting entities, the suppliers and contractors – and the general public have to be aware of the fundamental principles of public procurement. Transparency and competition both play an important role in ensuring the achievement of the best results while spending public money, but also, the public procurement regulations should maintain integrity of the process.

The EBRD’s intention is to support legal and institutional transition in the field of public procurement and ensure that investments in the public sector contribute to the development of a market economy. To enhance the transition impact of the infrastructure projects financed by the Bank, procurement of the supplies, services and works in these projects is conducted in compliance with international procurement good practice. The EBRD is dedicated to sharing its experience as a direct investor and financier of transition projects and helps to develop international standards and guidelines for achieving fairer and better quality procurement. The EBRD also provides technical assistance to authorities that are committed to undertake the reforms needed.

WHY REFORM IS NEEDED

Strategic government activity involved

- Public contracts are a basis for major & expensive public sector projects (infrastructure, education, health)
- Public procurement has a significant impact on economic performance and national development
- Public contracts are a basis for provision of essential everyday services to the public (electricity, transport, communication)

Amounts involved in public procurement

- 10-20 % of GDP, 45% government spending (World Bank, OECD)
EBRD Legal Transition Programme – Public Procurement

• Systemic corruption = 20-30% of budget for public contract is wasted (World Bank)

• Capacity problems = 80% of waste is inefficiency, not corruption (research on the Italian public procurement system)

• Procurement reform could yield 10% efficiency benefits – i.e. 1-2% of GDP

MODERN PROCUREMENT TOOLS AND TECHNIQUES TO BE IMPLEMENTED

eProcurement for the public sector

Electronic procurement (eProcurement) in the public procurement sector is the business-to-government tendering and sale of goods, services and works through online platforms as well as other networking systems, such as electronic data interchange and procurement planning facilities. In a complete eProcurement system business-to-government transactions can be initiated, advertised, and completed online, with real time monitoring and audit, while bureaucracy and formalities are limited to absolute fundamentals.

In short, eProcurement replaces paper-based public procurement procedures with ICT-based interactive online processes - online e-tendering procedures. With online e-tendering procedures in place, new electronic procurement tools can be employed: e-auctions, e-purchasing based on framework agreements or e-catalogues.

What can be achieved by a public procurement reform including eProcurement solutions?

• Greater transparency at lower cost

• Better accountability by improving procurement process and decision-making

• Standardization and uniformity of local procurement practice

• Better monitoring with easy direct access to procurement records and data on public contracts performance

Framework agreements and e-catalogues for public sector purchasing

Framework agreement is a modern procurement technique enabling the awarding of recurring public contracts for the delivery of goods or services online, on the basis of a legally binding agreement, concluded in a public procurement tender, in order to increase transparency and efficiency of procuring small value contracts.

Suitable for centralised purchasing, in particular, best practice for regulation of framework agreements in the public procurement advocates:

• Efficient purchasing technique

• Suitable for standardised goods and services

• “Closed” and “open” framework agreements to select from

• Pre-qualified suppliers’ lists in order to speed up procurement process

EBRD INVOLVEMENT

Technical cooperation

The EBRD offers technical assistance for public procurement reform and public procurement capacity development. The EBRD, as a major regional investor, is particularly interested in promoting procurement best practice in the utilities sector and at the municipal level.
Reform of this area of the public procurement is geared towards opening the naturally monopolistic utilities market, addressing the operational needs of enterprises providing public services and at the same time fostering integrity and transparency of the procurement process.

The main objective of the EBRD Legal Transition Programme in the field of public procurement is to support legal and institutional reform in the EBRD countries of operation by providing assistance to governments to ensure that national public procurement regulations are in line with international standards and best practice.

To pursue this objective and inspire development of the public procurement legal frameworks, the Legal Transition Programme conducts assessments and legal reviews of public procurement legislation in the region.

THE WAY AHEAD

EBRD UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS Countries and Mongolia

In the last decade, the EBRD has successfully provided technical assistance for commercial law reform to the countries of Central and Eastern Europe and the CIS and Mongolia. The EBRD is convinced that legal reform work should go far beyond the drafting of the new legislation. It should also include institutional and capacity building and other measures necessary to implement reform from a practical perspective. Further, by combining country-specific reform projects with broader regional initiatives, the EBRD has been able to increase the impact of its legal transition work.

Since 1992 the EBRD has recognized the transition impact of sound procurement policies. From the outset the EBRD has been developing procurement policies and setting standards for procurement in transition countries. Despite continuous efforts, public procurement laws in several countries in the EBRD region remain unresponsive to the market economy. Much remains to be done.

As governments are increasingly aware of the economic costs of inadequate public procurement framework regulation, the EBRD is keen to support their reform efforts by drawing on the insight gained through the commercial law reform work carried out in the CIS countries, and its experience in conducting successful procurements for its investments in the region.

Efficient regulation of the public procurement sector can be based on several international standards. Apart from the EU Public Procurement Directives, the most comprehensive standards are those provided by the 2011 UNCITRAL Public Procurement Model Law. The EBRD has collaborated with UNCITRAL on development of the new 2011 standards, based on the premise that a collaborative effort between the EBRD and UNCITRAL would better benefit the region.

Several CIS countries originally based their public procurement legislation on the 1994 UNCITRAL Model Law. The objective therefore of the EBRD UNCITRAL Initiative is to assist these countries in upgrading their public procurement regulation in accord with this revised 2011 UNCITRAL Model Law standard.

An EBRD UNCITRAL Initiative on Enhancing Public Procurement Regulation in CIS Countries and Mongolia promotes upgrading public procurement legislation in the CIS countries and Mongolia to the new UNCITRAL standard.

The EBRD UNCITRAL Initiative aims to develop a series of public procurement reform initiatives, selected based on their potential transition impact and their relevance to the specific problems these countries face. The scope of individual country-specific technical cooperation...
projects depends on the governments’ public procurement reform agenda and their determination to invest the necessary resources to undertake reforms with the EBRD and UNCITRAL encouragement and tailor-made technical support that is designed to address each country individually.

The EBRD UNCITRAL Initiative is delivered by a joint EBRD UNCITRAL team, supported by international and local public procurement experts.

The EBRD UNCITRAL Initiative was officially launched at the EBRD Annual Meeting and Business Forum during a roundtable on public procurement policy-making in Astana, Kazakhstan on 19 May 2011. Presently, the Initiative activities cover Armenia, Azerbaijan, Moldova, Mongolia, Kyrgyz Republic, and Tajikistan. More information about the Initiative can be accessed at: http://www.ppi-ebrd-uncitral.com/

WORKING TOGETHER WITH THE WTO SECRETARIAT FOR AGREEMENT ON GOVERNMENT PROCUREMENT (GPA)

For countries in the process of reform of the public procurement sector, the accession to the Agreement on government procurement of the World Trade Organisation is a milestone in progressing competition and transparency principles in their public procurement regulation. The EBRD promotes accession to the newly revised, 2012 text of the GPA and cooperates with the WTO GPA Secretariat in supporting interested countries in their GPA negotiation process as well as addressing most pressing public procurement regulatory issues related to the GPA accession.

The Bank provides training and capacity building necessary for the GPA accession process and supports national authorities in preparing the GPA negotiation strategy and initial negotiations with the GPA Secretariat and parties to the agreement.

SEMED

As part of the international community’s response to the historical developments underway in the southern and eastern Mediterranean region (“SEMED”), the EBRD is currently extending its financial and technical cooperation operations to the region, including Egypt, Jordan, Morocco and Tunisia.

For 2012, the EBRD will update its public procurement sector assessment and, in preparation for possible technical cooperation projects will review public procurement laws and practice in Egypt, Jordan, Morocco, and Tunisia.

The information provided by the SEMED Public Procurement Sector Assessment will help the EBRD to measure the legal and regulatory risks in these countries and in considering specific investment activities as well as will provide a basis for developing technical assistance to the governments in the region once public procurement reform is on their agenda. At the request of governments in the region, EBRD is prepared to develop suitable public procurement reform initiatives, in cooperation with the World Bank, the African Development Bank and the UNCITRAL and OECD/SIGMA in particular.

More information about the SEMED Public Procurement Sector Assessment can be accessed at: http://semed.ppl.ebrd.com/.
ON THE WAY TO THE WTO GPA ACCESSION: GEORGIA
On the way to the WTO GPA accession:

1. PUBLIC PROCUREMENT LEGISLATION REVIEW SUMMARY

1.1. Legislative framework


Chart 1 presents the scores for the quality of the public procurement legal framework. On average Georgia’s regulation of public procurement scored high compliance: the Core Principles benchmark indicators scored high compliance to very high compliance, with transparency, competition and enforcement indicators achieving scores close to maximum. Consequently only two indicators still report regulatory gaps above 20 percent in the Georgian regulation, namely: accountability (22.5%), and integrity (22.5%) indicators. Firstly, the public procurement regulation does not promote accountability across all stages of the public procurement process and as such the balancing of the required public and business dimensions of the process is not achieved. Secondly, the public procurement legal framework does not employ enough initiatives to promote integrity between the procurement function at the contracting entities.

1.2. Institutional framework

The Competition and State Procurement Agency (CSPA) constitutes national public procurement regulatory authority in Georgia, and also manages eProcurement system for public sector as well as prepares and manages central purchasing initiatives for the Government of Georgia. The chairman of the CSPA is appointed by the Prime Minister of Georgia.

The Dispute Resolution Board (DRB) acts as the review and remedies body for public procurement procedures.

Chart 1: Georgia - Quality of public procurement legal framework

Notes: The chart presents the scores for the quality of the public procurement legal framework for each Core Principles benchmark indicator. The scores have been calculated on the basis of a legislation questionnaire based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisors. The scores are presented as a percentage with 100 per cent representing the optimal score for each Core Principles benchmark indicator.

Source: 2012 EBRD Regional Self-Assessment of Public Procurement Legislation
which also exercises state control over Agency activities.

The main functions of the CsPa include:

• to elaborate and issue normative acts and standard tender documentation - regulatory function
• to study and systematically analyze the situation of the public procurement system based on the reports received from procuring entities and to present suggestions to the GoG for adopting the corresponding decisions - monitoring function
• to prepare educational programmes, educational-methodological material and standard forms of documentation, to conduct seminars and training for the central and local self-governance bodies of the government and other interested parties - training function
• to supervise the uniform information base of implemented procurements - monitoring function
• to provide advisory and consulting services for the procurement organizations - advisory function
• to maintain the register of potential suppliers - informational function
• to support the implementation of modern information and communication technologies (ICT) into the procurement system – operational procurement function
• to ensure access to the relevant normative acts and special guideline bulletins for the publicity of the procurements - informational function
• to provide dispute settlement related to procurement under administrative procedure - review and remedies function

- to oversee the lawfulness of the procurement procedures - monitoring function
- to maintain the register of non-diligent persons - operational procurement function
- to maintain the register of qualified suppliers - operational procurement function

Dispute Resolution Board

The DRB was created on the 6th of December 2010 to provide review and remedies for public procurement procedures. The DRB consists of six members; representatives of the CsPa and the NGO 1 sector. The DRB is chaired by the CsPa chairman who appoints two members of the DRB from the CsPa. The NGO sector selects three members to serve as members of the DRB. Any entity or person interested in participating in a public procurement procedure may appeal the actions of a procurement entity or a tender committee to the DRB, if the PPl was violated and/or their rights infringed by the contracting entities. Unfortunately, due to structure and appointment system for the DRB members it cannot be classified as an independent public procurement review and remedies body.

Chart 2 presents the results for quality of the public procurement legislation and institutional framework benchmarked against the EBRD Core Principles for institutional and enforcement measures. On average regulation in Georgia scored high compliance (90%) for the quality of the public procurement institutional and enforcement framework. All four indicators scored well with only minor regulatory gaps identified. However, as the uniformity, stability, and flexibility indicators scored slightly lower compliance, some regulatory gaps were reported at 12.5 percent, 17.5 percent and 10 percent respectively. These regulatory gaps

1 Non Government Organisations
are because the institutional and enforcement framework needs further development to comply with international standards. In addition, the on-going reform has resulted in process inefficiencies as private stakeholders must learn their roles, rights and obligations under the new eProcurement structure and there are still low participation levels in tenders. Moreover, the efficiency instruments like two-stage tendering and central purchasing based on framework agreements are only now incorporated in the Georgian procurement system.

### 1.3. Scope of regulation

The 2010 PPL is based on principles of competition, non-discrimination and transparency and covers central and local government: application to the utilities sector is partial. In 2012 procurement plans were implemented as mandatory for contracting entities and since then the PPL covers most of the public procurement cycle, including contract management. Georgian PPL provides an exemption\(^2\) from national rules for contracting with an international financial institution (IFI), or for procurement related to IFI financed projects.

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\(^2\) Exemptions from national rules which may be applied when conducting state procurement include procurement procedures established by the: World Bank, United Nations, European Bank for Reconstruction and Development, Asian Development Bank, German Reconstruction Credit Bank, and the European Investment Bank. The use of procurement procedures of other IFIs is subject to Decree by the GoG.

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\(^3\) This requirement is the equivalent to an EU acquis buyer's profile.
1. Public Procurement Legislation Review Summary

**Tendering**: The Georgian PPL provides for several tendering procedures, the eProcurement system in Georgia enables only reverse auctions as a basic selection procedure, with other procurement procedures currently under development. The PPL regulates appointment and composition of the tender evaluation committee, with all tenders submitted and evaluated via eProcurement platform. The PPL requires that all procurement related decisions are published online in real time and contract award notice is published for every contract finalized by a contracting entity.

**Post-tendering**: Georgian PPL regulates to a certain extent the post-tendering, with specific emphasis on the management of amendments and extensions to public contracts. Beneficially, the PPL requests that contracting entities provide and make allowances for the management of public contracts and requires all procurement monitoring and administration be undertaken electronically. In addition, the PPL requires mandatory scrutiny of all contract variations by an official body, with all change of contract reports automatically generated by the business intelligence module of the Ge-GP purchasing system and shared with the Chief Auditors Office.

1.4. Eligibility rules

Georgian PPL does not distinctly establish primary public procurement eligibility rules; however, the PPL provides general principles which the eligibility criteria set by the contracting authority must meet and requires the contracting authority to set requirements and suitable award criteria for tenderers as appropriate to the scope and value of the contract. The PPL also requires the technical specification, requirements for tenderers, and award criteria to be consistently and accurately described in the tendering documents available online for each tender and free of charge. In addition, the CPSA manages two online registers, providing a list of registered suppliers (suppliers and contractors registered to participate in public procurement procedures), and ‘a black list’ (suppliers and contractors temporarily banned from participation in public procurement procedures).

1.5. Procurement methods and procedures as prescribed by law

The methods and procedures available to contracting entities for procuring public sector contracts include:

- open tender based on the reverse auction
- direct contracting

The PPL requires the public procurement process to be conducted on an eProcurement platform. Open tender is the default procurement method and this method in the form of reverse auction is used for the purchasing of goods, services and works with a value exceeding GEL 5,000. For purchases below GEL 5,000 a simplified method of direct purchasing is used. The PPL incorporates a clear test as to the choice between open tender and negotiated procedures. The PPL only sanctions contracting authorities to use negotiated procedures for framework agreements. Moreover, the PPL forbids the preferential treatment of domestic bids, and prohibits a change of procedure once the procurement process has been launched.

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4 Since December 1st 2010 all contracts have been monitored and managed through the Ge-GP purchasing system.

5 From December 1, 2010 all tenders have been conducted on-line through the Ge-GP purchasing system.

6 Georgian Lari

7 EUR 2353.40. Calculated from the median currency rate for the GEL to the EUR between 13th April 2012 to the 12th April 2013.
1.6. Public procurement process regulation

In addition to stipulating clear deadlines for the submission of tenders, the PPL also require a standstill period after the decision is made to eliminate tenderers from further participation in the public procurement process. The PPL does not regulate it, but the eProcurement procedures impose strict submission deadlines in order to accomplish procedure in a reasonable time. The PPL does not fully allow for standard terms and conditions of contract, or standard terms of reference / tender documents for all types of procurement. Yet, the current state Georgian PPL provides only minimum requirements for tender documentation and conditions of contract. The PPL provides for formalities to be kept simple and includes clear requirements on the use of languages in tender and contract documents. The PPL includes standard forms of contract notices with minimum requirements for tendering documents and provides for publishing the tender documents well in advance of the submission deadline. In addition, the eProcurement system uses standard forms of procurement reports, which also ensures that procurement records are not manipulated and easily accessible. The PPL does not establish a separate Central Purchasing Body, but the CSPA is authorized to undertake central purchasing functions.

The PPL requires mandatory eProcurement procedures, with relevant information published at every stage of the procurement procedure. The PPL does require the contracting entity to specify a reason for cancelling the procurement procedure which will be published in the tender committee meeting minutes on the eProcurement system. Unhelpfully, the PPL does not forbid the cancellation of the process and the rejection of all offers if at least one valid tender has been received; however, contracting entities are required to inform the participants upon cancelling the public procurement, with notification undertaken automatically through the system, which also maintains ‘real-time’ records of the public procurement process.

In Georgia procurement officers should avoid any conflict of interest while conducting public procurement procedures, with the PPL containing provisions aimed to curb or control corruption in the public procurement process. These provisions are combined with criminal legislation containing provision for whistle blowers. Although the PPL

Note: The chart presents the scores for the quality of public procurement review and remedies legislation as compared to other countries in the EBRD region. The laws have been benchmarked against key requirements of the EBRD Core Principles for enforceability of public procurement laws. The scores have been calculated on the basis of a checklist on remedies procedures and answered by local legal advisors. Total scores are presented as a percentage with 100 per cent representing the highest performance in the Legal Efficiency Concept benchmark indicators.

Source: 2012 EBRD Regional Self-Assessment of Public Procurement Legislation
1. Public Procurement Legislation Review Summary

Public Procurement Legislation Review Summary does not require procurement processes be conducted by specific procurement officers, with duties clearly separated from the decision making process and supply management, Presidential Decree requires that every procuring entity must appoint a procurement specialist or create a unit dealing with state procurement. In addition, although the PPl does not contain specific requirements on public contract information, the Administrative Code of Georgia contains specific provisions regarding confidentiality. Even though no mention is made in the PPl to stipulate that pay levels for procurement staff should be comparable to similar public or private sector technical specialists, the PPl does require the PPa to ensure that adequate formal training programs exist for entry and higher-level procurement staff. However, the PPa does not have an obligation to accredit training resources to complement government or donor-administered training and development programmes.

1.7. National review and remedies mechanisms for complaints related to public procurement

Georgia's PPl provides for a dedicated public procurement enforcement mechanism, simple and straightforward and free of charge to participants. The administrative review and remedies are applied by the DRB and judicial review is available to tenderers as an alternative: the tenderer may seek remedial action and compensation at the court. Georgian Civil Legislation enables tenderers to seek compensation (including lost profit) in the event that a successful complaint has been brought against the contracting entity.

Chart 3 presents the data for the quality of Georgian public procurement review and remedies legislation compared to other countries in the EBRD region. Georgia scored high compliance (79 per cent) for the quality of its review and remedies legislation.

Assessment overview

Chart 4 presents the assessment results for the quality of Georgian national legal framework as compared to other countries in the EBRD region. Georgia scored high compliance (89 percent) for the quality of its national legal framework. In recently completed self-assessment by national regulatory authorities this places Georgia in 3rd place in the EBRD region, 2 percentage points above Turkey, level with Albania, 3 percentage points behind Montenegro, and just 8 percentage points behind the top places country Hungary.

Results of the 2012 self-assessment reveal the following strengths, weaknesses, opportunities and regulatory risks regarding the Georgian public procurement legislative framework.

Strengths

- the PPl is compliant with general principles of competition, transparency and non-discrimination for public procurement;
On the way to the WTO GPA accession:

- the Georgian eProcurement system supports planning, procurement, monitoring, and contract management of public contract and provides reliable market data for all sector stakeholders and audit function;
- the basic principles and general framework of the public procurement process are contained in the PPl and secondary legislation and the accessible online information on public procurement informs all stakeholders of their roles, rights and obligations in the public procurement process;
- the PPl regulates most of public procurement process, and requires mandatory scrutiny of all contract variations;

Weaknesses

- the PPl framework is not stable as it has been changed several times within the last 5 years and private sector stakeholders have to be better informed about their rights and obligations to trust that the eProcurement processes are conducted in a transparent and objective way;
- the PPl does not require contract terms to be fair and balanced and reflect best available business practice and does not fully allow for standard terms and conditions for all types of procurement
- institutional framework needs further development, since at the moment all procurement related functions, including operational procurements are handled by the CSPa which may bring accusations of conflict of interest between different institutional functions; the DBR should be reorganized into an independent review and remedies body, in particular;
- reverse auction-based eProcurement procedures are not suitable for all types of procurement, specifically complex projects;

Opportunities

- the Georgian public procurement reform is close to achieving compliance with the 2012 WTO GPA standards for public procurement;
- the further upgrading of the PPl should ensure that all phases of the procurement process are robustly regulated;
- the reform project should promote economic development through higher supplier and contractor engagement;

Regulatory risks

- the PPl does not provide for an independent review and remedies for public procurement; existing structure is simple and efficient but does not guarantee independence from the regulatory authority as recommended by international best practice for reviewing complaints on public procurement;
- the accountability and integrity safeguards should be further promoted, and direct contracting decreased in numbers and value;
- the PPl does not regulate public procurement function in sufficient detail and does not require procurement official to follow a published code of ethics for their function
Chart 5 presents the results of the assessment for the public procurement policies on the books in three fundamental evaluation categories (transparency safeguards, efficiency instruments, and institutional and enforcement measures). The scores have been calculated on the basis of a legislation questionnaire, based on EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisors. Total scores are presented as a percentage with 100 per cent (one third of the pie chart) representing the optimal score for each evaluation category. A regulatory gap, the difference between the assessment results and the benchmark, is marked in light orange, light blue and light green respectively.

**Source:** 2012 EBRD Regional Self-Assessment of Public Procurement Legislation

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1. Public Procurement Legislation Review Summary

- The PPL does not provide comprehensive guidelines on how contracting entities should draft tender documents and use standard contract terms and conditions for different types of procurement.

Conclusions and recommendations

The 2012 EBRD Regional Self-Assessment results confirm that public procurement reform in Georgia is successful and continues improvement of public procurement regulatory framework can be observed since reform initiation in 2009. The Georgian public procurement regulatory and institutional framework has not yet reached a maximum score on the EBRD Core Principles benchmark, but is constantly progressing. As the 2012 assessment results reflect, the national legal and institutional framework for public procurement has improved with respect to every indicator in the EBRD Core Principles benchmark, as compared to the results in the 2010 assessment.

This is clearly an achievement of the Georgian government and a positive result of the political will to improve the public sector purchasing and combine a public procurement reform with wider fiscal reform of the public sector. In Georgia, modern purchasing techniques, such as eProcurement, have been systematically implemented into the general e-Government structure and provide an example of what can be achieved in terms of adopting modern efficiency instruments in public procurement sector.
The Georgian institutional framework is not yet sufficiently robust, according to international standards and practices adopted for procurement procedures are not yet clearly to standards of the 2012 WTO GPA in terms of submission deadlines, length of the standstill period and some regulatory gaps in the institutional framework. However, the overall development of the public procurement system in Georgia is impressive and if reform is continued may easily bring the Georgian PPL in full compliance with the international best practice and guarantee Georgia successful negotiation of the WTO GPA accession.

The results of 2012 assessment suggest that Georgian reform is the most successful in the region at the moment and if continued with a similar impetus as between 2009 and 2012 will ensure the country the leader’s position in the region.
1. PUBLIC PROCUREMENT LEGISLATION REVIEW SUMMARY

1.1. Legislative framework

The first post-Soviet Law on State Procurement (PPL) was adopted in Kazakhstan in 1997 and based on the 1994 UNCITRAL Model Law. The PPL went through a number of revisions, with the current Public Procurement Law (the “PPL”) developed and enacted in 2007, and entered into effect on 1 January 2008. In the 2010 EBRD public procurement assessment, Kazakhstan’s public procurement regulation scored low to medium compliance, with several policy areas in a need for update and accountability, efficiency, and enforceability indicators scoring low. Since then the government of Kazakhstan made several reforms: one of the major undertakings was introduction of mandatory eProcurement procedures from 1 July 2012.

Public procurement system in Kazakhstan is regulated by a separate body of law; the PPL is the centrepiece of the country’s public procurement legislation, setting forth the basic principles and the general procedures for public procurement processes. The PPL covers both local and government procurement, but no utilities sector at the moment. Public finance laws, including the Budget Code, complement the PPL when it comes to regulating public sector spending. The respective triennial budget and the annual budget, each implementing the general framework of the Budget Code, are the basis for public procurement plans and budgets. The civil legislation forms an integral part of the procurement framework in Kazakhstan, with the Civil Code regulating key contractual aspects of the procurement process. Furthermore, the Civil Code also contains provisions on guarantees, which applies to all bid bonds, performance bonds and advance payment bonds used by contracting entities in public procurement procedures. There are a number of implementing regulations, which all have to be disclosed publicly, as all acts containing sources of legal rules in the country. Kazakhstan’s public procurement legal framework overall is well-coordinated and can be considered stable.

Chart 1 presents the scores for the quality of the public procurement legal framework. Following recent reforms and legislative changes the Kazakhstan scored medium to high compliance (81 per cent) on average for the quality of public procurement legal framework. Eight out of eleven indicators scored high to very high compliance, with transparency and

![Chart 1: Kazakhstan - Quality of public procurement legal framework](image)

**Notes:** The chart presents the scores for the quality of the public procurement legal framework for each Core Principles benchmark indicator. The scores have been calculated on the basis of a legislation questionnaire based on the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local procurement authorities (self-assessment). The scores are presented as a percentage with 100 per cent representing the optimal score for each Core Principles benchmark indicator.

**Source:** 2012 EBRD Regional Self-Assessment of Public Procurement Legislation
1. Public Procurement Legislation Review Summary

flexibility indicators scoring very high marks. Three indicators report medium compliance and, consequently, a regulatory gap of 25 per cent or above, namely: proportionality (40 per cent), uniformity (30 per cent), and efficiency (25 per cent). Firstly, Kazakhstan’s current public procurement legal framework does not commit itself to the proper balance between attracting local and international participants to public tenders as appropriate. Secondly, Kazakhstan’s public procurement legal framework allows heavy centralisation and does not promote the required level of uniform coverage all public contracts, with excessive coverage exceptions and no clear differentiation between state and utilities procurement. Thirdly, the public procurement legal framework does not sufficient incentives for achieving best value for money from procurements or provide for proper contract management of public contracts.

1.2. Institutional framework

On institutional level, there is no dedicated specialised public procurement regulatory authority in Kazakhstan. Key government functions in the public procurement sector are spread among the Government, the Department for Methodology of State Procurement at the Ministry of Finance (the authorised body), as well as the entities exercising controlling functions (the Committee for Financial Control at the Ministry of Finance and the Accounting Committee for Control over Execution of the Republican Budget).

The Department for Methodology of State Procurement at the Ministry of Finance (“DMSP”) is the authorised body in the public procurement sector. It is consists of two divisions – a division for methodology of state procurement, and a division for coordination of state procurement.

DMSP’s key functions include:

- developing strategic policy documents in the public procurement sector, including in the area of international cooperation – policy-making function;
- effecting intra-governmental coordination – operational procurement function;
- issuing methodological guidance in the public procurement sector – regulatory function;
- developing and enacting regulations implementing the PPL – regulatory function;
- maintains various registers (including the black list of suppliers / contractors) introduced by the PPL – operational procurement function;
- conducts analytical work in the public procurement sector – operational procurement function;
- effects certain control powers – monitoring and control function.

The Committee for Financial Control at the Ministry of Finance and the Accounting Committee for Control over Execution of the Republican Budget exercise financial control powers in the public procurement sector.

Chart 2 presents the results for quality of the public procurement legislation and institutional framework benchmarked against the EBRD Core Principles for institutional and enforcement measures. On average, regulation in Kazakhstan scored high compliance (85%) for the quality of the public procurement institutional and
On the way to the WTO GPA accession:

Chart 2: Kazakhstan - Quality of public procurement institutional and enforcement framework

Notes: The chart presents the scores for the quality of the public procurement institutional and enforcement framework. The scores have been calculated on the basis of a legislation questionnaire based on the EBRD Core Principles benchmark for an Efficient Public Procurement Framework and answered by local procurement authorities (self-assessment). The scores are presented as a percentage with 100 per cent (one quarter of the pie chart) representing the optimal performance (benchmark) and 0 per cent representing the worst performance. A regulatory gap, the difference between the assessment results and the benchmark, is marked in light blue, light orange and light green, respectively.

Source: 2012 EBRD Regional Self-Assessment of Public Procurement Legislation

1.3. Scope of regulation

The 2007 PPl is based on the principles of efficient public spending, provision of equal possibilities to bidders, fair competition, and transparency, and covers both local and government procurement, but no utilities sector at the moment. Procurement cycle starts with mandatory planning and from 1 July 2012, eProcurement was introduced as a mandatory procurement method. Kazakhstan’s PPl provides exemption from national rules for procurement of investment projects financed by international organisations of which Kazakhstan is a member and out of grants by international organisations.

Pre-tendering: Kazakhstan’s PPl contains certain provisions regarding procurement procedures for the pre-tendering phase of the public procurement process. Specifically, the PPl provides for the mandatory planning of all public procurements, with procuring entities approving their annual procurement plans and publishing them on the state procurement web-portal. These procurement plans provide detailed information about planned future procurements. Furthermore, the public procurement regulation does require contracting entities to prepare a contract profile and procurement plan prior to the launching of each tender process. The appropriate budget/financing authorisation is generally required prior to publication of the contract notice. The PPl does not mention if additional budgetary authorisation is required for the contract payments that fall due beyond the current financial year; however, the general rule stipulated by the PPl is that the procurements should be done based on annual plans, with some limited exceptions. In addition, the PPl requires publication of advance tender notices and tender documentation, as well as generally publicising procurement opportunities in a timely fashion. The PPl does not mandate aggregation of lots. The PPl further does not provide for contract valuation methods that take into account the whole-life costs of the purchase or works. The PPl allows the use of international or otherwise foreign standard contract forms with non-resident contractors.

Tendering: Kazakhstan’s PPl provides for several tendering procedures, with eProcurement becoming mandatory from 1 July 2012. Kazakhstan’s PPl regulates appointment and composition of the tender evaluation committee, with all tenders submitted via the eProcurement platform. The PPl generally mandates maintaining real-time
records of the public procurement process and specifically provides that a contract award notice is published through the eProcurement portal for every public contract finalised by a contracting entity.

Post-tendering: Kazakhstan’s public procurement legislation contains certain provisions regarding the post-tendering phase of the public procurement process, with a specific emphasis on conclusion and amendments to the public contracts. However, the PPL does not request that contracting entities provide or make allowances for the management of public contracts, nor does it require the procurement staff to have adequate contract management capabilities. The PPL further does not require that all procurement monitoring and administration be undertaken electronically. At the same time, the PPL does not require mandatory scrutiny of all contract variations by an official body, with all grounds for changes into concluded contracts being exclusively set by the PPL.

1.4. Eligibility rules

Kazakhstan’s PPL establishes primary public procurement eligibility rules, distinguishing between general public procurement eligibility criteria and the qualification and technical requirements to be met by tenderers. With respect to the latter, the PPL provides that tenderers must possess materials as well as financial and labour resources sufficient for performance of a public contract. In addition, the public procurement legislation requires the contracting authority to set requirements and suitable award criteria for tenderers generally to be appropriate to the scope and value of the contract. The PPL also requires the technical specification, requirements for tenderers, and award criteria to be consistently and accurately described in the tendering documents, which are available online and free of charge. In addition, the eProcurement platform maintains a black list of suppliers and contractors temporarily banned from participation in public procurement procedures.

1.5. Procurement methods and procedures as prescribed by law

The methods and procedures available to contracting entities for procuring public sector contracts under the PPl include:
- open tender (one- or two-stage)
- request for quotations (“shopping”)
- direct contracting
- auctions
- purchases via commodity exchanges

The PPL mandates all procurements to be done through the eProcurement platform. The PPL does not set a default method of procurement, instead entitling the contracting authority to select the most appropriate method of procurement in accordance with the tests set by the PPL and without any approval or review by the authorised body. However, the public procurement legal framework allows the selection of tender type or method to be based on the specifics of the purchase and contract profile. Requests for quotations are allowed with respect to homogenous goods, works and services, if the value of such annual volumes of such goods, works and services does not exceed threshold of 4,000 times monthly rate calculated for the respective financial year as part of the state budget (from 1 January 2013, 1,731 Kazakhstani tenge) (the “Calculated Threshold”). Procurement from single source is allowed only in strictly defined cases, including when the tender has failed to result in a contract. Auction is mandated for goods, services or services, the value of the annual volume of supply of which is above the Calculated Threshold and as per list approved by the Government. Procurement through commodity exchanges is mandated with respect to commodity exchange
goods as per list approved by the Government. The PPl prohibits the change of procedure once the procurement process has been launched. Notably, the PPl provides for the preferential treatment of domestic bids.

1.6. Public procurement process regulation

The PPl clearly stipulates deadlines for the submission of tenders but does not provide for a standstill period after the decision is made to eliminate tenderers from further participation in the public procurement process. In addition, the PPl generally does allow for standard terms and conditions of contract, or standard terms of reference/tender documents for all types of procurement. The public procurement regulation provides for formalities to be kept simple and includes clear requirements on the use of languages in tender and contract documents. The public procurement regulation provides for standard forms of tender documents and tender notices. The PPl also provides for publishing the tender documents well in advance of the submission deadline. In addition, the eProcurement portal uses standard forms of procurement reports, which also ensures that procurement records are not manipulated and are easily accessible. The PPl provides for a decentralised function and allows (but does not require) for the establishment of a central purchasing body.

The PPl provides for mandatory eProcurement procedures and requires that relevant information be published at every stage of the procurement procedure. The PPl requires the contracting authority to specify a reason for cancelling the procurement process. Submission of less than two bids is the basis for declaring the procurement process void. The PPl requires the contracting entity to notify the participants upon cancelling the public procurement process.

The Kazakhstan’s PPl aims to prevent conflict of interest situations, establishing a prohibition for a prospective contractor to participate in the same tender (lot) with its affiliate, in a tender where close relatives of its CEO or representative are involved in the selection process, the contractor has provided to the contracting entity services relating organisation of the same procurement, as well as a prohibition for the contracting entity to participate in the procurement on the contractor’s side. With respect to requiring procurement processes to be conducted

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**Chart 3:** Kazakhstan - Quality of public procurement review and remedies legislation as compared to other countries in the EBRD region

**Notes:** The chart presents the scores for the quality of public procurement review and remedies legislation as compared to transition countries in the EBRD region. The laws have been benchmarked against key requirements of the EBRD Core Principles for enforceability of public procurement laws. The scores have been calculated on the basis of a checklist on remedies procedures and answered by local procurement authorities (self-assessment). Total scores are presented as a percentage with 100 per cent representing the highest performance in the Legal Efficiency Concept benchmark indicators.

**Source:** 2012 EBRD Regional Self-Assessment of Public Procurement Legislation
by specific procurement officers, the PPL provides for a possibility to organise public procurement through a specialised entity or department (“public procurement organiser”). In addition, although the PPL does not contain specific requirements on public contract information, under the existing laws and practices, a bidder signs an agreement to disclose tax and banking secret information, due to eProcurement procedures. All state secret related procurements are conducted in closed regime. The PPL does not regulate the level of pay for the procurement staff or provide for any training programmes for procurement specialists. At the same time, public procurement authority is under an obligation to accredit training resources in the country to complement government / donor-administered programs.

1.7. National review and remedies mechanisms for complaints related to public procurement

Kazakhstan's PPL sets us a dedicated public procurement enforcement mechanism and does require it to be simple, although does not mandate such system shall be inexpensive. The administrative review and remedies are applied by the authorised body as well as the financial control body, and judicial review is available to tenderers as an alternative: the tenderer may seek remedial action and compensation at the court. Kazakhstan's civil legislation enables tenderers to seek compensation in the event that a successful complaint has been brought against the contracting entity.

Chart 3 presents the data for the quality of Kazakhstan's public procurement review and remedies legislation compared to transition countries in the EBRD region. Kazakhstan scored high compliance (78 per cent) for the quality of its review and remedies legislation, thus securing the 7th place position, with 3 percentage points above Armenia, level with Belarus, 2 percentage points below Lithuania, and full 12 percentage points below the top placed country Slovenia.

Assessment overview

Chart 4: presents the assessment results for the quality of Kazakhstan's national legal framework as compared to other countries in the EBRD region. Kazakhstan scored high compliance (81 per cent) for the quality of its national legal framework. This places Kazakhstan in the 7th place in the region, 2 percentage points above Romania, level with Turkey and Armenia, 3 percentage points below Montenegro, and 10 percentage points behind the top placed country Poland.

In addition, the 2013 EBRD Assessment unearthed several strengths, weaknesses, opportunities and regulatory risks regarding the legislative framework. These include:

Strengths

• the PPL aims to promote efficient public spending, transparency and fair competition in public procurement;
On the way to the WTO GPA accession:

- the eProcurement portal supports key procurement processes;
- the basic principles and general framework of the public procurement process are contained in the PPl and implementing regulations, and the accessible online information on public procurement informs all stakeholders of their roles, rights and obligations in the public procurement process;
- the PPl regulates most of public procurement process.

Weaknesses

- the institutional framework needs development, as there is no specialised independent public procurement authority and no independent review body;
- there is no uniform treatment of all public procurements with extensive coverage exceptions to the PPl;
- domestic bidders receive preferential treatment;
- the PPl does not require contract terms to be fair and balanced and reflect best available business practice and does not require mandatory scrutiny of all contract variations by an official body;
- the PPl forbids conducting negotiations on, or making amendments to tenders and proposals after submission.

Opportunities

- Kazakhstan’s public procurement reform is making a good progress and should continue towards closer compliance with international standards, particularly as the country considers joining the 2012 WTO GPA;
- the further upgrading of the public procurement regulation need strong institutional framework, including an independent review body;
- the PPP reform project should promote uniform treatment of all public procurements and fair competition among domestic and international bidders.

Regulatory Risks

- fair competition and uniform coverage of all public procurements should be fostered
- public procurement framework should robustly regulate all three phases of the procurement process
- eProcurement platform needs further development in order to capture all public procurement processes
- the PPl reform project should build on current levels of transparency to combat corruption and mandate commitment of public officials to follow a published code of ethics.

Chart 5 presents the results of the assessment for the public procurement policies on the books in three fundamental evaluation categories (integrity safeguards, efficiency instruments, and institutional and enforcement capacity). The PPl scored high compliance for all three categories the integrity safeguards (88 per cent), efficiency instruments (76 per cent), and for the institutional and enforcement capacity (79 per cent). The scores achieved have resulted in certain regulatory gaps for the three evaluation categories. The regulatory gap in the integrity safeguards (12 per cent) could be attributed to the
issue of the non-payment of compensation to tenderers if the tender is cancelled or the lack of obligation for public procurement officials to follow a published code of ethics. The regulatory gap in the efficiency instruments (24 per cent) could be assigned to the fact that there should be general understanding of grounds for exclusion from the public procurement process and valuation methods ensuring best value for money, and robust regulation of the contract management. The regulatory gap in the institutional and enforcement framework (21 per cent) can be attributed to the lack of independent regulatory authority and an independent review body.

Conclusions and recommendations

The 2012 EBRD Regional Self-Assessment of Public Procurement Legislation confirms that public procurement reform in Kazakhstan is progressing, with visible improvement of public procurement regulatory framework. While not achieving a perfect score yet, the public procurement regulatory and institutional framework is constantly improving. As the results of the 2012 EBRD Regional Self-Assessment of Public Procurement Legislation reveal, the national legal and institutional framework for public procurement has improved with respect to eight out of eleven indicators in the EBRD Core Principles benchmark, as compared to the results in the 2010 assessment. This demonstrates a strong commitment by the Kazakhstan’s government to modernise its public procurement framework in line with best international practices and sets up a solid basis for further reform efforts, in particular in the areas which have been identified as requiring further attention.

Establishing an independent regulatory body as well as an independent review body should be a clear priority for the government in enhancing institutional framework. Providing robust regulation of all three phases of public procurement, including proper contract management within the post-tendering phase, and promoting uniformity of treatment of all public procurement by limiting coverage exceptions to those strongly needed, as well as ensuring fair competition among domestic and international bidders should be another priority in the sector policy making. Achieving best value for money in public contracting should be a pillar of the public procurement framework. Development of the eProcurement platform to ensure coordinated information support and comprehensive real-time framework for all procurement processes would be another area requiring efforts of the government.

Recent upgrade of the UNCITRAL Model Law with the adoption in 2011 of its new version reflecting best modern policies and
practices might serve as a guiding point for the government of Kazakhstan for modern international best practices. Not yet being a member or observer of the Agreement on Government Procurement of the World Trade Organisation (the “WTO GPA”), Kazakhstan plans to start the process. Compliance with the WTO GPA minimum standards to the public procurement framework is one of the prerequisites here and the WTO GPA standards would thus serve as another benchmark for Kazakhstan’s reform efforts.
ANNEX 1
EBRD CORE PRINCIPLES FOR AN EFFICIENT PUBLIC PROCUREMENT LEGAL FRAMEWORK

The core principles on an efficient public procurement framework (the ‘Core Principles’) are based on a review conducted by the EBRD in September 2009. The review looked at international public procurement standards and current best practice relating to the procurement cycle, and all international public procurement instruments presently under revision.

The Core Principles reflect the standards generally regarded as international best practice in the public procurement process. The principles also draw on the practical experience of the EBRD as a direct investor and financier in the region.

The Core Principles are based on the assumption that the primary role of a public procurement law is to accommodate the business process of negotiating a contract in a public governance context. As public procurement constitutes a major economic activity for all governments, regulation is a sensitive component of a country’s legal framework, and is an essential supplement to public finance legislation. Since power dynamics within the public procurement process are inherently unequal, regulatory and enforcement institutions are of immense importance. Consequently, the Core Principles focus, in particular, on the issues of objectivity, consistency and enforceability of public procurement regulation.

The principles apply not only to the tendering phase, but also to the pre- and posttendering phases. The contracting entity launching the public procurement needs to ensure that the fundamental principles of public procurement are maintained throughout the entire process.

Modelling the content of a national public procurement framework will depend on the contractual traditions of individual transition countries. At the same time, public procurement legislation needs to comply with international standards to ensure that key internationally recognised public governance values are respected. The Core Principles therefore may serve as an aide-mémoire and a checklist for the drafting process.

1. ACCOUNTABILITY

The framework should promote accountability across all stages of the procurement process, balancing public and business dimensions of the process.
In the procurement process, accountability begins with a requirement for a clear chain of responsibility between management, budget, technical, legal and procurement officials. Furthermore, a separation of duties and authorisation should be enforced to ensure a transparent and smooth decision-making process. Public procurements should be managed by a dedicated procurement specialist, responsible for coordinating the entire procurement process and acting as a contact point for all tenderers competing for a contract.

It is essential that the framework require a sound contract profile and procurement plan to be established before the tendering process is launched, to avoid economically unjustified and unnecessary purchases. For large value contracts a special approval process should be in place.

The framework should also require technical specifications of tenders to be based on relevant quality characteristics and/or performance requirements.

The scope for rejecting all valid tenders should be clearly and narrowly defined. In cases where all tenders are rejected, the framework should require the contracting entity to provide reasons, and compensation, if valid tenders are received in response to the terms of reference, whenever appropriate.

A public procurement remedies system should strike a balance between protection of public finance and the right of the tenderer to seek effective remedy or compensation. There should be an independent review body with the authority to impose sanctions upon parties who do not comply with the public procurement values. In resolving disputes, the review body must treat contracting entities and tenderers in a fair and impartial way.

2. INTEGRITY

The PP framework should promote integrity between the procurement function, transparency in delivering government policy and value for money.

The law should ensure that the behaviour of management and procurement officials is consistent with the public purpose of their organisation. It should contain measures to limit the scope for undue influence and to avoid conflict of interests at all stages of the procurement process.

Disclosure of a public investment and procurement information should be broad but regulated and information should be provided equally to all parties of the process.

In the public procurement process, communication between the contracting entity and tenderers should be made by best available means (preferably electronic) that provide a record of the content of the communication.

The law should limit the opportunities for negotiations or amendments to final tenders and proposals after submission.

3. TRANSPARENCY

For public procurement to be acceptable to all stakeholders it should be seen to be public, transparent and objective. Any suggestion of an un-disclosed resolution must be avoided. The law should promote the extensive use of e-procurement as one of the methods to prevent collusion with tenderers.

PP regulation should:

• require an effective, official and dependable publicising of the procurement
opportunities, through a single point of access;

- underline the importance of advance procurement and contract award notices;

- and require the public procurement process is real-time recorded, preferably through electronic means, accessible to the public free of charge.

A contracting entity should whenever possible publish tender documents free of charge on the contracting entity’s website, instead of supplying same by request only and for a fee.

As a rule, tenders should be opened in public opening session promptly after the deadline for the submission of tenders. A contract award notice should be published for all contracts finalised by the contracting entity.

4. COMPETITION

To begin with, the PP framework should promote fair competition and prevent discrimination in public procurement. Tenders and tenderers of equivalent status should be given equal treatment, without regard to nationality, residency or political affiliation. The law should not allow domestic preferences.

For regular understanding of grounds for exclusion, the PP framework should distinguish between the public procurement eligibility criteria, qualification and technical requirements to be met by tenderers.

The law should comprise minimum tender deadlines to ensure a level playing field and should demand consistency in its application throughout the procedure. In addition, where tenderers are eliminated, a sufficient standstill period or an alternative procedure should be in place to provide for immediate conservatory and protective measures.

Secondly, the law should encourage competitive contract through the tendering process. Sound PP law should permit both tendering and competitive negotiations, wherever appropriate, to ensure fit-for-purpose outcome. Selection of tender type or procedure should be based on the value of the tender, specifics of the purchase and the contract profile. The law should provide clear tests for the choice of procedure – it should be explicit to both the contracting entity and potential tenderers what circumstances may justify exceptions to open tender arrangements.

To ensure genuine competition takes place it is essential for the law to require tendering processes to stipulate reasonable technical specifications, requirements and suitable award criteria, adequate to the scope and value of the contract prior to embarking on the tendering process. The law should enable potential tenderers to decide quickly whether to tender. Confusions or complexities in the tender documents may result in too few or too many submitted tenders or a biased evaluation.

For the same reason, the contracting entity should be instructed on how best to deal with an abnormally low tender – it should be able to ask for clarifications and either reject the tender or increase the contract security to mitigate or limit perceived risks.

5. ECONOMY OF THE PROCESS

The law should enable public procurement to be accomplished professionally in a reasonable time. Formal requirements essential for transparency reasons should be kept simple and the costs low. All of the costs involved in the public procurement process are eventually paid for by taxpayers’ money. High costs of participation in the procurement procedure (including tender document fees, cost of certified statements and translations,
inappropriate cost of producing a tender excessive in size, disproportionate tender security and so on) will increase the cost of contract and diminish the efficacy of the process. Enforcement costs will reduce the profit margin on the contract and may negatively impact the quality of contract delivery.

The law should grant the tenderers an ability to submit an inquiry or tender in a confidential but simple and time and cost-effective manner.

The PP law should encourage aggregation of lots, and whenever possible, the use of a life cycle costing for the purchase of goods and works. It should instruct the contracting entity in the pre-tendering phase not to divide contracts into small lots unless it is absolutely unavoidable. Aggregation of lots also allows for a ‘double check’ of the accuracy of the needs assessment.

6. EFFICIENCY OF THE PUBLIC CONTRACT

Sound programming and planning of the procurement is crucial to agree a cost effective and accurate public contract. An efficient public contract starts with an accurate and unbiased assessment of the contracting authority’s needs. Once this has been achieved, the public procurement process should not normally be initiated until the appropriate budget has been allocated or a source of financing is defined.

The PP framework should ensure value for money is achieved, and promote methods of tender evaluation considering both the quality and cost of purchase.

Contract terms and conditions should be fair and balanced and reflect the best available business practice. The law should clearly identify when a contracting entity may obtain a tender deposit or contract security, and specify relevant limits.

The law should mandate proper contract management. The mismanagement of the contract or fraudulent payments may increase the costs of the contract. Variations to the signed contract should be permissible, once carefully scrutinised from an integrity perspective, and should be prohibited when amendments significantly alter the economic balance of the contract in favour of the tenderer in a manner which was not provided for in the tender and terms of the initial contract.

7. PROPORTIONALITY

Effective and efficient procurement regulation calls for a proportionality rule. Although these core principles apply to any public procurement, the formality and extent of the procedure should reflect the scope and size of the procurement. The contracting entity should align the value and scope of the contract with a choice of the contract type and formal tendering procedure.

The PP law should comprise cascaded (monetary and other) thresholds to instruct contracting entities how to produce an effective procurement strategy for a public contract.

The proportionality test should also be employed to decide on the use of languages; the contracting entity should allow proposals, offers or quotations to be formulated in a language customarily used in international trade except where, due to the low value of the goods, works or services to be procured, only domestic tenderers are likely to be interested.
8. UNIFORMITY

For public procurement to be feasible, the PP regulation should be unitary, comprehensive and cover all public contracts. Notwithstanding, state/municipal budget contracting authorities and the entities in a utilities sector may have very different requirements in terms of function and commitments and an effective PP framework should be clear in determining the requirements of contracting entities of a different status.

At the same time, the PP framework should limit the exemptions from regulation to contracts outside the public procurement domain for evident and justified reasons, specifically defence procurement, special housing arrangements or development projects. For example, in providing finance to development and transition projects, International organisations are bound by their charters to observe special arrangements in relation to procurement, and have as a result developed special procurement policies, quality assurance systems and methods for publishing information pertaining to procurement opportunities. For this reason, all international PP regulation instruments, including the WTO Government Procurement Agreement, EU Treaty and UNCITRAL Public Procurement Model Law recommend that national procurement laws should not apply to public contracts awarded pursuant to international rules.

9. STABILITY

To make the process efficient, stakeholders must learn their roles, rights and obligations, within a stable legislative framework. Any market with a public procurement sector cannot operate smoothly if there are frequent changes to the law.

10. FLEXIBILITY

At the same time, the framework should be capable of flexible so as to accommodate the changing market. This is often best done through secondary legislation. Rules of the procedure should be reasonably constant, with a primary legislation constituting the basic principles and general framework of the procurement process. Secondary legislation should model specific matters, giving sufficient instruction to produce satisfactory tender documents and procurement reports.

11. ENFORCEABILITY

Public procurement law should be easy to enforce. Regulatory mechanisms should be able to assess the compliance of the contracting entities and employ corrective measures when necessary.

The dedicated national PP regulatory agencies should be professional, independent and provide audit and monitoring of the PP sector to raise the profile of procurement and drive up PP sector capability.
## Annex 2
### The Public Procurement Process Benchmark

<table>
<thead>
<tr>
<th>Phase of Procurement Cycle</th>
<th>Best Practice</th>
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<tbody>
<tr>
<td><strong>Pre-tendering Phase</strong></td>
<td>The pre-tendering phase includes the programming and planning of a public procurement requirement by the contracting entity. Sound planning is crucial. The decisions made during the pre-tendering phase influence all subsequent stages of the public procurement process. The programming of the procurement should be conducted in line with the fundamental principles of accountability, efficiency, economy and integrity to allow the tendering process to be fair and transparent.</td>
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<tr>
<td><strong>Assessment of Contracting Entity’s Needs</strong></td>
<td>Before the procurement starts the contracting entity needs to clarify its priorities and interests.</td>
</tr>
<tr>
<td>1. Public resources linked to public procurement should be used in accordance with intended purposes.</td>
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<td>2. Public sector investments should be economically justified.</td>
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<td>3. Procurement should be aligned with overall investment decision making.</td>
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<td>4. The assessment of the contracting entity’s needs should result in a match of good business case and realistic budget.</td>
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<tr>
<td><strong>Budget Allocation</strong></td>
<td>The public procurement process should not normally be initiated until the appropriate budget has been allocated or financing for the project is defined.</td>
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<tr>
<td><strong>Aggregation of Lots</strong></td>
<td>The contracting entity should not divide contracts into small lots, unless it is absolutely unavoidable.</td>
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<tr>
<td>1. Valuation of public procurement contract shall take into account all forms of remuneration, including any form of option and renewals of the contract, any premiums, fees, commissions and interest receivable and shall be valid from the time that the contract notice or invitation is sent.</td>
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<td>2. Tender prices shall be requested on the basis of Incoterms CIP, DDU or similar, for foreign goods and ex-factory for local goods.</td>
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<td>3. Tender prices for supply of goods must include import duties and taxes payable on imported goods and on directly imported components to be incorporated locally supplied goods and all costs associated with the supply, delivery, handling and insurance of the goods to the final destination.</td>
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<tr>
<td>4. Tender prices for works and services contracts to be substantially executed in the purchaser’s country may be requested inclusive of all duties, taxes and other levies.</td>
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<tr>
<td><strong>Establishing a Contract Profile</strong></td>
<td>It is prerequisite for a contracting entity to establish a sound contract profile to avoid economically unjustified purchase.</td>
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<tr>
<td>1. The contracting entity shall determine what goods, works and services are required to carry out the project, when they must be delivered, what standards are needed and which procurement and contracting procedure is most suitable for each contract.</td>
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<td>2. The contracting entity shall complete the overall procurement plan before any procurement begins.</td>
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<tr>
<td><strong>Setting Requirements</strong></td>
<td>The contracting entity decides what competences of tenderer are required to ensure proper delivery of a public contract.</td>
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<td>The candidate qualification criteria shall be based entirely upon the capability and resources of prospective tenderers to perform the particular contract satisfactorily, taking into account such factors as their (a) experience and past performance on similar contracts, (b) capabilities with the respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position.</td>
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### 6. Efficiency of the public contract

**PHASE OF PROCUREMENT CYCLE**

<table>
<thead>
<tr>
<th>PHASE</th>
<th>BEST PRACTICE</th>
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<tbody>
<tr>
<td>AWARD CRITERIA</td>
<td>Establishing the award criteria decides what technical features are required to satisfy the contracting entity procurement needs.</td>
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<tr>
<td></td>
<td>1. The tender evaluation aims at identifying the most economically advantageous tender.</td>
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<td>2. The contracting entity shall award the contract to the tenderer who meets the appropriate standards of capability and resources and whose tender has been determined (a) to be substantially responsive to the tender documents and (b) to offer the lowest evaluated cost.</td>
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<td>3. Factors which may be taken into consideration include, inter alia, the costs of inland transport to the project site, the payment schedule, the time of completion of construction or delivery, the operating and maintenance costs, the efficiency and compatibility of the equipment, performance and quality, environmental benefits, the availability of service and spare parts, and minor deviations, if any.</td>
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<td>4. The factors other than price to be used for determining the lowest evaluated tender shall be expressed in monetary terms or, where that is not possible for demonstrable reason, given a relative weight in the evaluation provisions of the tender documents.</td>
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<tr>
<td>SELECTION OF TENDER TYPE AND OR PROCEDURE</td>
<td>The contracting entity makes a decision what procurement procedure is to be employed to ensure the best terms of a public contract.</td>
</tr>
<tr>
<td></td>
<td>1. The contracting entity shall obtain goods, works and services through open or restricted tendering procedures, which may include qualification of tenders and two-stage tendering.</td>
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<td>2. Other procedure may be appropriate for special circumstances, depending on the nature and value of the goods, works or services to be obtained, the required completion time and other considerations.</td>
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<td></td>
<td>3. All procurement methods other than open tendering shall be clearly justified.</td>
</tr>
<tr>
<td>SAFEGUARDS</td>
<td>The contracting entity may decide that it is necessary for a tenderer to confirm the validity of the tender with a payment of refundable tender security – the amount of cash that is returned to the tenderer once the procedure is completed.</td>
</tr>
<tr>
<td></td>
<td>1. When the contracting entity requires tenderers to provide a tender security:</td>
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<tr>
<td></td>
<td>a. The requirement shall apply to all tenderers;</td>
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<tr>
<td></td>
<td>b. The tender documents may stipulate that the issuer of the tender security as well as the form of the tender security, must be acceptable to the contracting entity;</td>
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<td></td>
<td>2. The contracting entity shall specify in the tender documents any requirements with respect to the issuer and the nature, form amount and the other principal terms and conditions of the required tender security; any requirement that refers to directly or indirectly to conduct by the tenderer shall not relate to conduct other than:</td>
</tr>
<tr>
<td></td>
<td>a. Withdrawal or modification of the tender after the deadline for submission of tenders;</td>
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<td></td>
<td>b. Failure to sign the procurement contract if required by the contracting entity to do so;</td>
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<td></td>
<td>c. Failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents.</td>
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<td></td>
<td>3. The contracting entity shall make no claim to the amount of the tender security, and shall promptly return, or promptly procure the return of the tender security document, after whichever of the following that occurs earliest:</td>
</tr>
<tr>
<td></td>
<td>a. The expiry of the tender security;</td>
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<td></td>
<td>b. The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the tender documents;</td>
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<tr>
<td></td>
<td>c. The termination of the tendering proceedings without the entry into force of a procurement contract;</td>
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<tr>
<td></td>
<td>d. The withdrawal of the tender prior to the deadline for the submission of tenders.</td>
</tr>
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</table>
Annex 2 The Public Procurement Process Benchmark

<table>
<thead>
<tr>
<th>PHASE OF PROCUREMENT CYCLE</th>
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</thead>
<tbody>
<tr>
<td>TENDER DOCUMENTS</td>
<td>The tender documents prepared by the contracting entity consists of terms of reference for the public contract.</td>
</tr>
<tr>
<td></td>
<td>1. The tender documents must furnish all information necessary to permit tenderers to submit responsive tenders.</td>
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<tr>
<td></td>
<td>2. The tender documents shall clearly define the scope of works, goods, services to be supplied, the rights and obligations of the contracting entity and of the tenderers and the conditions to be met in order for a tender to be declared responsive, and they shall set out fair and non-discriminatory criteria for selecting the winning tender.</td>
</tr>
<tr>
<td></td>
<td>3. The tender documents should include an invitation to tender, instructions to tenderers, the form of tender, tender security requirements, the conditions of contract, advance payment guarantees, performance security requirements, technical specifications and drawings, a schedule or requirements for the goods, works and services, and the form of contract.</td>
</tr>
<tr>
<td></td>
<td>4. The tender documents should be published on the contracting entity website, whenever possible and appropriate.</td>
</tr>
<tr>
<td>TENDERING PHASE</td>
<td>The tendering phase of the public procurement process begins with the publication of contract notice or circulation of invitations to tender. It encompasses the publication of tender documents, collection of the tenders and evaluation of the tenders and finishes with the contract award. It is essential for the tendering phase to ensure fair competition, equal treatment of tenderers and full integrity and transparency of the process.</td>
</tr>
<tr>
<td>NOTICES AND INVITATIONS TO TENDER</td>
<td>1. General procurement notice. Contracting entities are encouraged to publish in the appropriate paper or electronic medium as early as possible in each fiscal year a notice regarding their future procurement plans. The general procurement notice should include the subject-matter of the procurement, the planned date of the publication of the contract notice and a statement that interested suppliers or contractors should express their interest in the procurement to the contracting entity. Whenever the suppliers or contractors expressed their interest, the contracting entity should invite them to tender once the intended procurement is started.</td>
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<tr>
<td></td>
<td>2. Contract notice. A contracting entity shall publish a contract notice of intended procurement in the appropriate paper or electronic medium and such notices shall remain readily accessible to the public by electronic means free of charge, through a single point of access, until expiration of the tender submission deadline indicated in the notice. The notice shall contain at least following information:</td>
</tr>
<tr>
<td></td>
<td>a. The subject-matter of the procurement;</td>
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<td></td>
<td>b. The final date for the submission of requests for participation in the procurement, proposal or tenders;</td>
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<tr>
<td></td>
<td>c. The website from which tendering documents relating to the intended procurement may be obtained.</td>
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<tr>
<td></td>
<td>3. Contract award notice. For any procurement a contracting entity shall publish a notice of contract award in the appropriate paper or electronic medium, accessible to the public by electronic means free of charge, through a single point of access.</td>
</tr>
<tr>
<td>COMMUNICATION</td>
<td>In the public procurement process communication between the contracting entity and tenderers should be made by a means that provide a record of the content of the communication.</td>
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<tr>
<td></td>
<td>1. All communication may be executed by post, by fax, by electronic means or by a combination of those means, according to the choice of the contracting authority.</td>
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<td></td>
<td>2. Providing for the law of the country the proposals and tenders may be submitted by any means generally available to ensure the validity of the offer.</td>
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<tr>
<td></td>
<td>3. Communication shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and proposals are preserved within stipulated deadlines.</td>
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</table>
### PHASE OF PROCUREMENT CYCLE

#### OPENING OF TENDERS

With the expiry of the deadline for the submission of the tenders, the contracting entity collects all received tenders and opens them to start the evaluation.

1. The time for the tenders opening shall be the same as for the deadline receipt of tenders or promptly thereafter, and shall be announced, together with the place for tenders opening, in the invitation to tender.
2. The contracting entity shall open all tenders at the stipulated time and place.
3. Tenders shall be opened in public; tenderers or their representatives shall be allowed to be present (in person or online, when electronic tendering is used).
4. The name of the tenderer and total amount of each tender, and of any alternative tenders if they have been requested or permitted, shall be read aloud (and posted online when electronic tendering is used) and recorded when opened.
5. Tenders received after the stipulated deadline for the submission of tenders shall be returned unopened to the tenderer.

#### GROUNDS FOR EXCLUSION

The tenderers need to know in advance whether are eligible to be awarded a public contract.

1. Grounds for exclusion must be objectively justifiable and must not discriminate on grounds of nationality.
2. No affiliate of the contracting entity, or of a procurement agent engaged by the contracting entity shall be eligible to tender or participate in a tender in any capacity unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the contracting entity or the contracting entity’s agent and the affiliate.
3. Exclusion of tenderer is permitted only on the grounds of:
   a. non-eligibility: bankruptcy or similar, pursuant to administrative suspension or disbarment proceedings, conviction of a criminal offence by the firm or its directors concerning professional conduct, failure to fulfill certain tax and social security obligations;
   b. personal disqualification: lack of financial standing to perform the contract, lack of legal capacity to perform the contract, lack of technical standing to perform the contract, false statement or misrepresentation in providing information (exclusion in discretionary if the information is merely in accurate or incomplete);
   c. tenderer’s technical inadequacy

#### LANGUAGES

The tenderers need to know in advance what languages are to be used in the procedure.

1. The tender documents shall be formulated in the contracting entity’s official language and in a language customarily used in international trade except where:
   a. The procurement proceedings are limited solely to domestic suppliers or contractors;
   b. The contracting entity decides, in view of the low value of the goods, construction or services to be procured, that only domestic suppliers or contractors are likely to be interested.
2. Similar principles should apply to all communication, including proposals and tenders.

#### AMENDMENTS OF TENDERS, PROPOSALS AND CONTRACTS

In the procedure a contracting entity decides on completeness of the proposal and tenders.

1. A tender must, at the time of opening, conform to the essential requirements of the notices or tender documents and be from a supplier or contractor which complies with the conditions for participation in the tender.
2. Variation of the submitted proposal and tenders or signed contracts should be generally prohibited.
## Annex 2 The Public Procurement Process Benchmark

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<tr>
<td><strong>METHODS OF EVALUATION</strong></td>
<td>Tender documents specify the relevant factors to be considered in tender evaluation and the manner in which they will be applied for the purpose of determining the best tender.</td>
</tr>
<tr>
<td>1. The contracting entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which in terms of the specific criteria and essential requirements set forth in the notices or tender documentation is determined to be the most advantageous.</td>
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<tr>
<td>2. The tender with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be selected for award.</td>
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<tr>
<td><strong>ABNORMALLY LOW TENDERS</strong></td>
<td>The contracting entity needs to be instructed on how to deal with a tender that is significantly lower than all other tenders received.</td>
</tr>
<tr>
<td>1. The contracting entity should be able to ask for clarifications of the tender which is abnormally low.</td>
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<tr>
<td>2. If the clarifications are unsatisfactory the contracting entity should be able to reject the tender or increase the contract security to limit perceived risks.</td>
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<tr>
<td><strong>REJECTION OF ALL OFFERS</strong></td>
<td>The tenderers need to know in advance whether and why the contracting entity may terminate the procedure without the contract award.</td>
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<tr>
<td>1. The contracting entity may reject all offers only if:</td>
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<tr>
<td>a. All tenders remain substantially above the budget;</td>
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<td>b. One tender is received;</td>
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<td>c. Two tenders with the same price are submitted;</td>
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<tr>
<td>d. There is a lack of competition.</td>
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<td>2. Lack of competition shall not be determined solely on the basis of the number of tenderers.</td>
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<tr>
<td>3. Even when only one tender is submitted, the tendering process may be considered valid, if the tender was satisfactorily advertised and prices are reasonable in comparison to market values.</td>
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<tr>
<td><strong>RECORDS OF TENDER EVALUATION</strong></td>
<td>For the reason of accountability the public procurement process shall be recorded.</td>
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<tr>
<td>1. The contracting entity shall maintain a real time record of the procurement proceedings containing, at a minimum, the following information:</td>
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<tr>
<td>a. a brief description of the goods, construction or services to be procured, or of the procurement need for which the procuring entity requested proposals or offers;</td>
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<tr>
<td>b. the names and addresses of tenderers that submitted tenders, proposals, offers or quotations, and the name and address of the tenderer with whom the procurement contract is entered into and the contract price;</td>
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<tr>
<td>c. information relative to the qualification or lack thereof, of suppliers or contractors that submitted tenders, proposals, offers or quotations;</td>
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<tr>
<td>d. the total price and a summary of the other principal terms and conditions of tenders where these are known to the contracting entity;</td>
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<tr>
<td>e. a summary of the evaluation and comparison of tenders and proposals;</td>
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<td>f. if all tenders were rejected statement to that effect and the grounds therefore;</td>
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<tr>
<td>g. in procurement procedure involving methods of procurement other than open tendering grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used;</td>
<td></td>
</tr>
<tr>
<td>h. if, in procurement procedure involving methods of procurement other than open tendering, those proceeding did not result in a procurement contract, a statement to that effect and of the grounds therefore;</td>
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</tr>
<tr>
<td>i. a summary of any requests for clarification of the tender documents, the response thereto, as well as a summary of any modification of those documents.</td>
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</tr>
<tr>
<td>2. The record shall, on request, be made available to any person after a tender has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.</td>
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</table>
### PHASE OF PROCUREMENT CYCLE | BEST PRACTICE
--- | ---
3. However, except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring entity shall not disclose:
   a. information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would be inhibit fair competition;
   b. information relating to the examination, evaluation and comparison of tenders;
   c. proposals, offers or quotations, and tender, proposal, offer or quotation prices, other than the summary.

### STANDSTILL PERIOD
Suspension of the procedure to allow the verification of the compliance of the decision of the contracting entity. The timely submission of a compliant shall suspend the procurement proceedings for a period of then days, provided that the compliant is not frivolous and contains a declaration the contents of which, of proven, demonstrate that the supplier or contractor will suffer irreparable injury in the absence of a suspension, it is probable that the compliant will succeed and the granting of the suspension would not cause disproportionate harm to the procuring entity or to other suppliers or contractors.

### REMEDIES
For the reasons of accountability of the public procurement process the procedure to verify the compliance of the decisions of the contracting entity may be employed. The remedies shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers or contractors to challenge breaches arising in the context of procurement in which they have, or have had, an interest.
1. The remedies procedures shall be recorded and documentation relating to all aspects of the process shall be retained.
2. The interested tenderer may be required to initiate a remedies procedure and notify the contracting entity within specified time-limits from the time when the basis of the compliant is known or reasonably should have been known, but in no case within a period of less than 10 days.
3. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment.
4. A review body shall have procedures which provide that:
   a. participants can be heard before the opinion is given or a decision is reached;
   b. participants can be represented and accompanied;
   c. participants shall have access to all proceedings;
   d. proceedings can take in public;
   e. opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
   f. witnesses can be presented;
   g. documents are disclosed to the review body.
5. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment.
6. A review procedures shall provide for:
   a. rapid interim measures to correct breaches and to preserve commercial opportunities;
   b. an assessment and possibility for a decision on the justification of the challenge;
   c. correction of the breach or compensation for the loss or damages suffered, which may be limited to costs for tender or compliant preparation;
   d. completion in a timely fashion.
Annex 2 The Public Procurement Process Benchmark

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<td>POST-TENDERING PHASE</td>
<td>The post-tendering phase of the public procurement process starts with the formal signature of the public contract and finishes with the complete delivery of the contract. It is essential for the post-tendering phase to preserve the outcome of the tendering and ensure accountability, integrity and transparency of the public contract delivery.</td>
</tr>
</tbody>
</table>
| MANAGEMENT OF THE PUBLIC PROCUREMENT CONTRACT | If not provided for, outcome of the tendering can be annulled by mismanagement of the contract delivery or fraudulent payments.  
1. The contracting entity shall administer contracts with due diligence and shall monitor the performance of contracts.  
2. Any modification or waiver of the terms and conditions of a contract granting an extension of the stipulated time for performance (except in cases of extreme urgency brought about by unforeseeable events not attributable to the procuring entity) shall be subject to the review. |