

REPUBLIC OF KAZAKHSTAN

**ASSESSMENT OF EFFICIENCY OF PUBLIC PROCUREMENT
SYSTEM FOR PUBLIC EXPENDITURE**

FINDINGS AND RECOMMENDATIONS

Almaty, January 2005

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I. Introduction

The Government of Kazakhstan (GOK) and the World Bank are conducting a joint Public Expenditure and Institutional Review (PEIR) under their Joint Economic Research Program. The PEIR includes, among other topics, a review of the efficiency of the public procurement system for public expenditure. The objective of this review is to systematically evaluate the efficiency of the public procurement system, and to point to the key directions in which the system should move forward, including e-procurement.

Kazakhstan has the most advanced public procurement system in Central Asia. The public procurement reform in Kazakhstan began in 1996. The Law on State Procurement was first enacted in June 1997, becoming effective on January 01, 1998. It was amended in December 1998. A new Law on Public Procurement of Goods, Works, and Services was introduced on May 16, 2002, and amended recently. The amended law became effective on July 5, 2004. This law provides for five procurement methods: open tender, closed tender, sole source procurement, shopping and open commodity exchange. Although there is room for improvement, the law provides for a reasonably transparent, economic and efficient procurement. Further amendments are apparently being discussed by the GOK at this time.

Recently, the GOK reorganized its public procurement to make it more effective. The State Procurement Agency (SPA), which was an independent public procurement oversight body, was abolished and its functions transferred to the newly created Committee on Financial Controls and State Procurement (CFCSP) in the Ministry of Finance (MOF). The GOK has been consistently adjusting the public procurement system to align it with the improvements and changes in the overall market economy system.

The World Bank has been supporting the Government efforts in this area since 1996 through financial and technical assistance, including a country procurement assessment in 2000. As part of this review, the Bank team also worked closely with the SPA team in reviewing the current status of the introduction of e-procurement. A separate report with Bank team's findings and recommendations on e-procurement has already been prepared and submitted to the GOK. The World Bank will continue supporting the GOK efforts to further improve its public procurement system with a view to spending public funds economically and efficiently.

In order to determine whether the public procurement system in Kazakhstan helps expend public money economically and efficiently, the Bank team worked closely with the SPA (now CFCSP) counterpart team appointed by its chairman. The Bank team conducted an in-depth review of the procurement legislation and procurement-related laws and regulations. It interviewed several procuring entities (ministries, committees, municipalities, etc.) and manufacturers, suppliers, contractors and the civil society. It also held a seminar in Astana attended by a large number of procuring entities and two seminars for the private sector firms in Almaty and Astana. These interviews and seminars yielded valuable information on the functioning of the system from its users. The findings and recommendations of this report are

based on the above-mentioned activities. For a summary of recommendations, See Section III of this Report.

The recommendations in Section III were jointly formulated by the CFCSP and Bank teams. It is expected that implementation of these recommendations would remove the perceived deficiencies in the procurement legislation (See Section II.1), which have the potential for abuse that adversely impacts both the economy and efficiency aspects of public expenditure. If implemented, these recommendations would also eradicate several undesirable public procurement practices (See Section II.3, Box 1). These practices are the result of inadequate oversight by the then SPA and insufficient support to procuring entities and training of public procurement officials in conducting public procurement in compliance with the procurement law and regulations (Section II.2). Pending amendments to the law which may take some time, it is recommended that as many of these recommendations as possible should be implemented through regulations.

The Bank team wishes to acknowledge the extensive cooperation and assistance received from the staff of the SPA, procuring entities, and private sector companies, who kindly agreed to be interviewed and participated in the seminars. The team is particularly grateful to the Chairman of the SPA for his continuous guidance and excellent cooperation.

II. Discussion and Analysis of Findings

1. Legal Framework

1.1. The two major legal instruments that regulate public procurement in Kazakhstan are (i) “The Law of the Republic of Kazakhstan on Public Procurement No. 321-II of May 16, 2002” (with amendments introduced by the Law of July 5, 2004, No. 569-II) (hereinafter called “the Law”), and (ii) the “Rules for Organizing and Implementing State Procurement of Goods, Works and Services”, as approved by Government Decree No. 1158, of October 31, 2002, and as amended by Decrees No. 825, of 19.08.2003, No 110 of 29.1.2004, No. 371, of 27.03.2004, and No. 508, of 06.05.2004 (hereinafter called “the Rules”).

1.2. As the above data show, both the Law and the Rules have been subject to frequent amendments, and the Bank team has learned that further amendments for both of these instruments may be planned. This fact makes the two instruments a bit of a moving target, in the sense that any recommendations made in this Report may, in fact, already be under consideration by the authorities (as an example, the Chairman of the SPA did indicate to the Bank team that he agreed with many of the mission’s recommendations about desirable improvements in the Law, and that relevant draft amendments of the Law were going to be discussed).

1.3 Among other legal instruments reviewed by the Bank team that indirectly deal with public procurement are: (i) the Law No. 107-II of November 27, 2000 of the Republic of Kazakhstan Concerning Administrative Procedures”, (ii) the “Code on Administrative Offences” of January 30, 2001, No. 155-II (particularly its Art. 167 on “Violation of the public procurement legislation of the Republic of Kazakhstan”), and (iii) the “Decree of the Government of the Republic of Kazakhstan No. 1134, of October 29, 2004, on ‘Some Questions on Committee on Financial Control and State Procurement of the Ministry of Finance of the Republic of Kazakhstan’ ”.

1.4 If one wanted to strive for a near perfect solution, a large number of improvements could be introduced into the Law, but it is felt that this approach would be unrealistic. For this reason, in this section of the report, only the most important cases of provisions in the Law (or lack thereof) are being listed (roughly in their order of importance, starting with the most important) which, in the public interest, should be amended.

1.4.1. **Time of bid opening**: A serious problem is presented by Art. 12(1)(17) of the Law which provides that the procuring entity (called by the Law “client” or “tendering organizer”) may open bids “not later than two hours after the moment of bids submission deadline expiration”. As an example, if the deadline for bid submission is 10 o’clock in the morning, the procuring entity could wait until 12 noon to open the bids. This provision is in contradiction of the generally accepted principle of public procurement which states that, in the interest of transparency, bids must be opened *immediately* upon the deadline for bid submission. (see, e.g., Art. 33 (1) of the UNCITRAL Model Law on Procurement of Goods, Construction and Services of 1995).

1.4.2. A provision like Art. 12(1)17 will either permit the Tender Committee (if it were so inclined) to open the bids in secret in order to introduce changes assuring the success of the “favored” bidder, or it will at the very least create the perception that such undesirable maneuvers occurred (which may lessen bidders’ willingness to bid next time, and therefore reduce competition). Not surprisingly, none of the procuring entities interviewed could provide a convincing explanation as to why this two hour delay was needed.

Recommendation: Art. 12 (1)(17) of the Law should be amended to read as follows: “The place where bids will be opened, and the date and time for bid opening which shall be the same as the deadline for bid submission referred to in subparagraph 14) above;”

1.4.3. **Introducing price reduction into a contract after contract award**: This issue is equally serious as the previous one. Art. 23(4) allows a procuring entity, after contract award, and before or after contract signing, to negotiate with the winning bidder a reduction of the contract price (which the bidder can refuse to accept – but then bidders, worried about the next bidding opportunity, will realistically not be able to do so). This provision violates another of the internationally accepted principles of best practice of public procurement that there shall be *no negotiations* between the procuring entity and any bidder with respect to a bid submitted by the bidder (other than under special circumstances like two-stage bidding or the procurement of consulting services where this is specifically permitted by the Law).

1.4.4. It is sometimes claimed that such negotiations are in the public interest because they allegedly allow the procuring entity to save more scarce public funds; in fact the opposite is true. If bidders know that they will be asked to reduce their price after they have been awarded the contract, they will simply introduce a cushion in their bid price, so nothing is won by the procuring entity, quite apart from the fact that such negotiations are clearly an invitation to corruption. Such negotiations are therefore specifically prohibited by, e.g., Art. 10 of the UNCITRAL Model Law.

Recommendation: In Art. 23(4), the words “(except for the price reduction provision)” should be deleted from the first sentence, and all the remaining provisions of Art. 23(4) should be deleted as well.

1.4.5. **Bid rejection because of “dumping price”**: Art. 16 (3-1) states that a “tender commission shall be entitled to reject the tender of a potential supplier if its tender price is

dumping”. A related clause in Art. 1 (3-1) defines a “dumping bid price” as a “bid price of a potential bidder which offers goods, works and services at prices which are significantly lower than the prices established at certain commodity markets”. Rejecting a bid because of a “dumping price” was not in the public interest because (i) it is impossible to define “dumping price” in a satisfactory manner for purposes of public procurement (for which Art. 1(3-1) is a perfect example: there are no “commodity markets” for works and services and for most goods); and (ii) the public purchaser should be interested in getting the lowest evaluated bid price from a qualified and responsive bidder and should not worry about how the bidder arrived at that bid price. According to the SPA, this provision was directed at bidders who won a contract because of an unreasonably low bid price and then performed shoddy work, or took the advance payment and walked off the job.

1.4.6. The Bank team, while acknowledging the problem, believes that the correct solution of this problem is not to use vague terms like “dumping” but to use a number of other steps to exclude such bidders, for example (i) strictly enforcing clearly described pre-qualification and/or qualification criteria; (ii) not providing high advance payments (the Bank team was told about advance payments of 30% to 40% when an amount of, say, 10% to 20% should be sufficient (iii) not disbursing any advance payment unless the contractor had first submitted a Bank guarantee from a reputable bank in the full amount of the advance payment (so, e.g., if the advance payment is 20% then the bank guarantee should be 20% also and not just, e.g. 5%), the idea being that unreliable contractors would be unable to obtain such a bank guarantee since reputable banks would never issue a guarantee of such an amount unless the contractor had a first class reputation; and (iv) blacklisting any contractor behaving in the manner described from future work in the country for a predefined period.

Recommendation: Articles 1(3-1) and 16(1)(3-1) about dumping prices should be deleted from the Law. In addition, require procuring entities to systematically enforce qualifications and experience requirements which should be clearly described in bidding documents.

1.4.7. **Lack of a detailed, complete and free-standing complaint mechanism for bidders claiming that a procuring entity had violated the Law:** A public procurement system can operate successfully only if the applicable rules are transparent and fair; the bidders are aware of these rules; and there is a fair and well-functioning mechanism through which bidders can complain in case they feel that the procuring entity is not proceeding in accordance with the Law. Practically every modern procurement law, for this purpose, has introduced a complete and free-standing chapter of rules providing for the right of the bidder to seek a review of decisions of the procuring entity, which chapter is mostly based on the detailed rules (five pages) of “Chapter VI. Review” of the UNCITRAL Model Law above mentioned.

1.4.8. Under these rules, the bidder may first ask the head of the procuring entity to review the decision/action in question, and may then ask a higher administrative body (mostly a public procurement agency, such as the CFCSP) to review the decision of the head of the procuring entity. There are very clearly stated short deadlines for the actions of the complaining bidder and the reviewing authority, coupled with brief suspensions of the procurement proceedings designed to make sure that the complaining bidder does not suffer irreparable damage as a result of the decision/action he is complaining about. Finally, the bidder may take his complaint to a specified court (for more details, please see Articles 52 through 57 of the UNCITRAL Model Law).

1.4.9. While the Law has a few scattered provisions about complaints by bidders (see, e.g., Articles 5 (the last paragraph), 17 (the last paragraph) and 29), there is no complete complaint mechanism, and the rules are largely unclear. According to the SPA, this subject is dealt with by “Law No. 107 of 27th November 2000 concerning Administrative Procedures”. This Law, however, seems to generally deal with the possibility of citizens to submit petitions challenging decisions of state bodies. Its provisions appear to be unclear (see, e.g., Art. 16(1) according to which the procedure for submission and consideration of such petitions etc. “shall be determined by the legislation of the Republic of Kazakhstan...”). According to the bidders interviewed, the current mechanism does not seem to work, in the sense that it is unclear where the complaint should be raised, and if there is any decision at all, it comes in most cases too late.

1.4.10. To follow the example of most other countries of having a separate chapter of reviews of bidders’ complaints in the Public Procurement Law itself would therefore seem to be advisable for Kazakhstan. It should be added in this context that both under the European Union’s Remedies Directive and the WTO Government Procurement Agreement (GPA), a lot of emphasis is placed on having detailed provisions about the review of complaints by bidders, coupled with the right to appeal review decisions either to a court or to an independent body operating under rules similar to those applying to courts. It would therefore seem to be in the best interest of saving public expenditures in Kazakhstan to introduce into the Law a chapter of review provisions meeting the WTO and the EU requirements, which could be based on Articles 52 through 57 of the UNCITRAL Model Law.

Recommendation: The various provisions about the review of decisions of procuring entities should be deleted from the Law and should be replaced by a set of detailed rules drafted on the basis, e.g., of Chapter VI of the UNCITRAL Model Law.

1.4.11. **Bidding documents for certain works contracts may indicate the maximum amount allocated to the contract:** Art. 12(3) provides that bidding documents for works contracts with a construction period of more than six months may indicate the maximum amount allocated to that particular contract. Such a provision is not in the public interest because, by the nature of things, all bid prices will cluster very closely around that maximum amount, with the result that there is less competition. The argument that the procuring entities could not accept bids in excess of the budgeted amount is not well founded. Budgeted amounts are necessarily based on cost estimates which are often not correct, and only the market can, in the end, determine at what price the works in question could really be procured. The better solution, therefore, is not to disclose the estimate, and to let the market set the prices. If the lowest evaluated bid turns out to be higher than the estimate, all bids could be rejected, and new bids could be asked for based on different specifications (e.g., reduced quantity, lower quality, etc.).

Recommendation: Art. 12(3) of the Law, which permits in certain cases that bidding documents indicate the maximum amount allocated for the contract, should be deleted.

1.4.12. **The Criteria for bid evaluation are unclear:** Art. 16(6) states that the winning bidder shall be determined “on the basis of the lowest price, taking into account the following criteria....” and there follows then a list of items like operational cost, maintenance cost, delivery time, functional characteristics, etc. This is entirely unclear since, in practice, there will be cases (say, if the subject of procurement is two trucks of gravel) where the price alone will be the evaluation criterion, and there will be other cases (e.g., complex equipments or works) where other evaluation criteria will be needed as well, but only if these criteria, and the manner in which they are to be evaluated, are specifically listed in the bidding documents.

This provision has, therefore, led to the practice of, in most cases, selecting a bidder on the basis of the lowest price rather than lowest evaluated bid.

1.4.13. This problem could be resolved by amending Art. 16(6) to read, in part, as follows: "...on the basis of the lowest price, or, if so specified in the bidding documents, on the basis of the lowest price and other criteria listed in the bidding documents which criteria must be quantified in monetary terms. These criteria could, among others, include one or more of the following...." (and then some of the items listed in Art. 16(6) could be added). Alternatively, Art. 34(4)(b) of the UNCITRAL Model Law has detailed language that could be used for this purpose.

Recommendation: Art. 16(6) of the Law should be amended on the basis of Art. 34(4)(b) of the UNCITRAL Model Law or as suggested above.

1.4.14. **Various problems at bid opening:** Several bidders who were interviewed expressed concern about a number of problems occurring at bid opening. Among them were the following: (i) When bid prices are read out, the bid of the "favored" bidder (i.e., a bidder who has exercised undue influence on the tender committee) is opened last, and a false price is then read out so that the bidder in question wins; and (ii) the minutes of the bid opening are not finalized before the end of the bid opening ceremony and then distributed to the bidders present at the bid opening and, instead, are only sent to them days or weeks later (which makes it difficult if not impossible to successfully complain about any errors in the minutes

Recommendation: The Law should be amended so as to provide (i) that each page of each bid must be initialed during the bid opening ceremony by each member of the tender committee ; (ii) that the minutes of the bid opening must be signed not only by the members of the tender committee and its secretary (as provided by Art. 15(2)) but also by all bidders present at the bid opening; and (iii) that the minutes of the bid opening must be completed before the end of the bid opening ceremony and distributed to *all* bidders who are present at the bid opening.

1.4.15. **Lack of specific provisions for the procurement of consulting services:** The Law deals with the procurement of goods, works and services but – unlike the UNCITRAL Model Law - has no special provisions for the procurement of consulting services. This is a problem since none of the "ways of conducting public procurement" listed in Art. 9 is really appropriate for the procurement of consulting services where, essentially, the subject of procurement are intellectual services and not goods or works. Paragraph 6 of the Rules about "Peculiarities of State Procurement of Services in Basic and Applied Research and Developments, Pharmaceutical and Medical Products" does not help since it deals only with a limited number of consulting services, and since the applicable method - which is essentially two-stage tendering – is not appropriate for the procurement of consulting services.

Recommendation: The Law should be amended by the introduction of special provisions for the procurement of consulting services which could be based on the provisions of Articles 37 through 45 of the UNCITRAL Procurement Law (with deletion of Art. 43 which describes a procedure not recommended by the Bank).

1.4.16. **Strong but unclear preferences for the protection of local bidders:** Art. 26 of the Law includes various provisions establishing rather strict but quite unclear preferences for local suppliers and contractors without providing any details about the procedures and conditions for these preferences (this is supposed to be defined by the Government elsewhere). It is also unclear whether the granting of such preferences is optional or mandatory for the procuring

entity. This is not a good way of dealing with preferences: Preferences are uneconomical, but many governments, for their own reasons, want to have them anyway. If they do, they should in detail describe in the Law (and not in some obscure set of rules which can be changed any time) how the application of these preferences works. Not doing so, and leaving this to the procuring entity to decide, is tantamount to an invitation for corruption

Recommendation: Art. 26 about the Protection of Domestic Commodity Producers should be deleted or, alternatively, detailed provisions setting forth the terms and conditions of granting such preferences should be set forth in the Law itself.

1.4.17. **Lack of an Arbitration Law:** If a commercial contract includes no dispute settlement clause, then any dispute between the parties will have to be submitted to whichever court has jurisdiction over that dispute. However, parties often prefer submitting their disputes not to a regular court but rather to one or more arbitrators because, (i) while they cannot select the judges, they are free to appoint the arbitrators, (ii) the proceedings may be faster and cheaper, and (iii) the proceedings may be kept confidential (court proceedings are normally public).

1.4.18. Parties not wishing to submit disputes under their contract to the regular courts of the land will normally include a clause into their contract in which they agree that disputes shall be settled by arbitration. They will normally also agree on a number of related issues, such as how arbitrators will be appointed and who will appoint them if the parties cannot agree, the place and language of arbitration, and most importantly, they will want to specify what rules will govern the arbitration proceedings. Where parties are of different nationalities, they will often agree to submit their disputes to arbitration under the rules of one of the many institutions (e.g., UNCITRAL, the International Chamber of Commerce in Paris, the Stockholm Chamber of Commerce) which provide special rules for that purpose (this kind of international commercial arbitration is indeed what the World Bank recommends for contracts it finances).

1.4.19. In addition, most countries (including many in the developing world) have introduced domestic arbitration laws that could also be used in situations where the parties are of different nationalities, and it is submitted that the enactment of such a law by the Republic of Kazakhstan may well enhance investors' confidence for investment in the country (as was already suggested by the Bank's CPAR of June 2000).

Recommendation: An Arbitration Law of the Republic of Kazakhstan should be enacted which – following the example of many other countries – could be based on the UNCITRAL Model Law on International Commercial Arbitration (1994).

2. Institutional Framework and Management Capacity

2.1. **Public Procurement Oversight and Support Function:** The country has a decentralized system of procurement. Budget entities, e.g., ministries, oblast administrations, municipalities, state entities 50% or more state-owned, are responsible for procurement operations. There are approximately 23,000 such entities. Until recently, the State Procurement Agency (SPA) regulated and oversaw the process of public procurement. Effective October 29 the SPA has been abolished and its policy making function transferred to the MOF. Its control and oversight functions along with its 61 staff members have been transferred to the newly created Committee on Financial Control and State Procurement (CFCSP) in the MOF. The chairman of the defunct SPA has been appointed as the CFCSP chairman. Implementation and control and supervisory functions in the area of state financial control and state procurement are carried out by the CFCSP.

2.2. This reorganization offers advantages and disadvantages for the public procurement function. Since the CFCSP is the outcome of the merger of functions and staffing of two abolished agencies, the SPA and the MOF Committee on Financial Control, this would certainly strengthen the public procurement capacity both in Astana and at the Oblast and Rayon levels. The CFCSP inherits an existing country-wide internal control organization which will now also serve the public procurement function. On the other hand, the public procurement oversight function will lose the independence as the chairman of the CFCSP would no longer report directly to the Deputy Prime Minister.

2.3. A more serious concern for the CFCSP is that since most of its staff specialize in internal controls, its public procurement part may become just a public procurement control apparatus losing sight of its more important role of oversight and support. The main purpose of the oversight function is to ensure that public funds are spent economically and efficiently in accordance with the public procurement law (the Law). Support functions involve a regular dialogue with procuring entities and the private sector, guidance to procuring entities on provisions of the Law, training of their staff, etc. For a more detailed explanation of the roles and responsibilities of a public procurement oversight body, See **Annex A**.

2.4. This risk can be mitigated by making a clear distinction between internal controls and the public procurement oversight and support functions of the CFCSP and by orienting its procurement staff country-wide towards these functions. More specifically, for the new organization to function efficiently the following actions appear to be necessary:

- (a) ***Prepare a clear job description for each staff of the CFCSP emphasizing their procurement oversight and support roles;***
- (b) ***Design and implement a training program to enable the CFCSP staff to effectively play their roles of ensuring compliance with the law by procuring entities; and***
- (c) ***Prepare and implement a comprehensive “train-the-trainer” program for a select number of CFCSP staff at central and local levels and require them to provide training to the staff of procuring entities in conducting public procurement in accordance with the Law.***

2.5. **Procuring Entities’ Organization and Capacity Issues**: The public procurement system being fully decentralized, procuring entities are responsible to conduct their procurement. The organization and capacity of procuring entities to manage and conduct procurement vary. While ministries make their administration, finance or legal department responsible for this function, some have full procurement departments, e.g., municipalities. Most entities have one or two staff, generally lawyers, dealing with their public procurement. Public procurement is not a profession nor are there any programs to develop it into one. Those conducting public procurement receive short training and mostly learn the profession on-the-job. In 2002, only 270, in 2003, 390 and in 2004, 79 public officials received short one-week training. This is inadequate and leads to inefficient procurement (See Section 3 on procurement operations and practices).

2.6. In order to improve the efficiency of the public procurement system, the following immediate actions on the part of the CFCSP would be necessary:

- (a) *Review procuring entities' capacity, including their training needs, especially covering Oblast and Rayon levels, to conduct public procurement in an efficient manner.*
- (b) *Design and implement a national public procurement training strategy that takes into account all the available training resources in the country, including CFCSP's newly acquired country-wide capacity, civil service academy, private sector, universities, institutes, etc. and that provides for training for public officials and private sector on a regular basis.*
- (c) *Design and implement short-term and long-term training programs with testing and certification.*
- (d) *Introduce an accreditation system to ensure that only authorized public officials conduct public procurement.*

2.7. *Annex B* shows some examples of how other countries deal with public procurement profession and capacity issues. See also the findings and recommendations in *the "Policy Note: Public Sector Wage Reform in Kazakhstan"* being prepared under the PEIR.

3. Procurement Operations and Practices

3.1. In addition to a review of several procurement pieces of legislation and procurement-related documents, a critical look was taken at the efficiency of the public procurement system through the eyes of its users. Interviews were held with several procuring entities, consultants, contractors and suppliers, associations and forums of contractors, entrepreneurs, pharmaceuticals, and manufacturers. Two seminars were held with private sector companies in Almaty and Astana and one seminar in Astana with representatives of several procuring entities. These interviews and seminars were conducted between July and November 2004. The following findings are based on these interviews and seminars.

- The SPA (now CPCSF) needs to strengthen its dialogue with procuring entities and with private sector of providing guidance in the overall public procurement process. There is also need of strengthening its oversight, supervision and capacity building roles. The SPA needs to improve its capacity to provide explanations and interpretation of procurement related legislation.
- Although the Law allows multi-year contracts for works, in practice, this does not work since the provision (para 91) of the Rules on Financial Procedures contradict the Law. According to this provision, a contract may be concluded by a procuring entity only within the allocated budgetary amount and the period which is only one year.
- Absence of public procurement profession and a national public procurement training strategy to prepare public officials as procurement professionals.

- Potential suppliers, consultants and contractors do not have access to information of procuring entities' annual procurement plans.
- The PPL technically allows to abuse of the sole source method of procurement. The Law stipulates that if for a tender less than two responsive bids are received, tender can be deemed not to have taken place. After it is determined that the tender has not taken place, the procuring entity may apply to the SPA for its approval to procure the required goods, works or services on a sole source basis. In 2003, 30,9 % of the public procurement was sole sourced.
- The PPL allows procuring entities to disclose in bidding documents the estimated cost of a construction contract when the contract performance period is more than six months.
- Providers of goods, works and services are not paid on time and standard contract has no remedies for late payments.
- Insufficient quality control of procured goods, works and services is conducted. Frequently quality of procured goods, works and services does not meet the quality stipulated in technical specifications.
- Announcements are published in different newspapers, some central, some regional and even local. As a result, interested bidders complain of difficult access to information on tenders. The Public Procurement Bulletin is not commonly used for publishing tender notices.
- Improper contract packaging, and use of lots with goods, which are not homogeneous, appeared to be a serious problem for suppliers. Frequently lots have several destinations in violation of the requirement of the Law to divide goods, works and services in the bidding documents into lots by the place of their delivery.
- Some bidders are required to submit international quality certificates together with bid application (for example ISO 9000) which is not required by the Law.
- Quality of bidding documentation, especially that of technical specifications, is poor. Obsolete Soviet standards are used in composing technical specifications. Brand names are frequently used to describe the required goods. Rudimentary designs are used for civil works procurement. Often tender documentation include unrealistic conditions, including delivery and completion times.
- Bidding documents are not made available to interested bidders from the date of publication of tender notices. Sometimes bidding documents are provided to bidders only four to ten days before bid submission deadline. This allows very short bid preparation time to bidders.
- Procedure for clarification of bidding documents is informal and burdensome for suppliers and contractors, and is generally carried out through telephone calls. The

period of time given to procuring entity to answer requests for clarifications stipulated by the Law (three days) is not complied with.

- The requirement of bid security (generally 3% of bid price) puts heavy burden on consultants/contractors/suppliers. Since a bidder usually participates in several tenders big sums are frozen in banks.
- Lack of transparency and potential for manipulation because procuring entities often do not submit minutes of bid opening to bidders. The minutes of bid opening are not required to be signed by the present bidders. Often bidders find out the results from the newspapers not from the minutes.
- Contrary to the requirements of the Law, some procuring entities establish permanent tender commissions which has the potential of giving rise to undesirable relationships between members of such committees and contractors and suppliers.
- It is a common practice to select the lowest priced, rather than lowest evaluated bidder, resulting in poor quality of goods, works and services.
- Insufficient time is given for delivery of complex goods and works under public procurement contracts.

3.2. Impact of Undesirable Practices on Efficiency of the System: Some of the undesirable practices listed above have resulted from the perceived deficiencies, in the PPL (See Part II, Section 1) and others are the outcome of inadequate training in public procurement, lack of explanations of the Law, and weak oversight and supervision of the system. They all affect the efficiency of the system and result in loss of economies in public expenditure. These practices make potential providers of goods, works and services lose interest in public contracts, resulting in inadequate competition, high prices and frequent sole sourcing. See Box 1 for the risks and the adverse impact that these practices have on the efficiency of public procurement system. The same Box includes recommendations for mitigating these risks. **Annex C** includes suggestions to improve the standard bidding documents necessary for a transparent, economic and efficient procurement.

4. Integrity of Public Procurement System

4.1. Internal and External Audits of Procurement: The country has internal and external audit mechanisms in place. External audit is the responsibility of the Accounting Committee (AC) directly responsible to the President. The external audit is much broader than the “control over the implementation of the budget”, and includes not only regulatory audit but also financial audit, attestation of financial accountability of the government administration as a whole, and audit of internal controls and performance audit. The AC conducts ex-post audit of procurement on an annual basis. It does not make its report public. In addition, line ministries have their own internal control departments, but it appears that these controls are ineffective and require strengthening.

4.2. The recently established CFCSP has been made responsible, among others, for coordinating the activities of internal control services of central state bodies, including organization of training and retraining of their personnel in the area of internal controls. The CFCSP is also responsible for overseeing, on an on-going basis, procuring entities' compliance with the public procurement laws and regulations. The CFCSP has inherited substantial capacity in terms of staff both at central and local levels of government for this purpose. However, it will be necessary for the CFCSP to clearly define the responsibilities of these officials relating, on the one hand, to internal controls and, on the other hand, to oversight of, and support to, procuring entities. For recommendations in this regard see para. 2.4 above.

4.3 ***Efficient Bid Complaint Resolution Mechanism.*** The current public procurement legislation does not provide for an efficient bid complaint resolution mechanism. For a detailed discussion of this topic and for a recommendation for improvement, See paras. 1.4.7 to 1.4.10 above.

4.4 ***Access to Information:*** According to the Constitution, all laws and international treaties to which the Republic is a party must be published. The official publication of regulatory legal acts dealing with the rights, freedoms and responsibilities of citizens is a necessary condition for their application. The Ministry of Justice registers all normative legal acts. There is an established disclosure policy of the government that all legislation and regulations are published in the media. According to the Law "On normative legal acts" (1998) all legal texts must be published in the Compilation of normative acts of the President and Government (Sobranie aktov) and in the State Paper of the Parliament. These are the publications that contain the new laws, decrees, administrative acts of the country. The normative legal acts are usually published in the Egemen Kazakhstan and Kazakhstanskaya Pravda. For publication of tenders and contract awards, see the recommendation in Box 1 below.

4.5. ***Ethics and Anti-corruption Measures:*** To help control corruption, the Parliament of Kazakhstan in 1998 enacted the Law on Fighting Corruption, and in April 2002 established the Commission on the Questions of Fighting Corruption and Observance of Ethics by State Servants. The law applies to all civil servants. The law is intended to combat both demand-side and supply-side corruption, including bribery and collusion. The objectives of the Commission, which is a consultative body under the President, are elaboration and adoption of coordinated measures against corruption and violations by public servants of the rules of ethics. However, it appears that the capacity to achieve these objectives is rather weak and needs strengthening. It appears that in the context of public procurement, the anti-corruption and ethics rules are neither referred to in the public procurement law or regulations, nor consistently applied.

Recommendation: *The public procurement law and/or regulations should include detailed references to the anti-corruption law as well as to the relevant provisions in other laws (e.g., criminal code, administrative laws, etc) , along with the sanctions for different violations of the law. The sanctions against violators should be consistently applied. Furthermore, the cases of violations, punishments for such violations, and, if feasible, names of the offenders should be published in the Public Procurement Bulletin (electronic and paper versions). This will deter violations.*

5. Public Procurement Performance

5.1 ***Performance Measured Against Efficiency Indicators:*** Annex D lists the performance indicators against which the efficiency of the public procurement system has been measured. These indicators cover important procurement cycle relating to the project cycle, use of procurement methods, direct contracting, bid protest resolution, late payments, price increases, and selection methods for consultants. A comparison between the satisfactory benchmark thresholds and the actual levels of achievements in Kazakhstan shows that there is room for further introducing improvements in the system. It is, however, necessary to point out that the actual levels of achievements are based on the analysis of the minimum data that the Bank team was able to obtain from different sources, including the CFCSP. With regard to the data on public procurement, ***it is recommended that the CFCSP should establish a data collection and maintenance system on the performance indicators in Annex D and should use it in measuring the performance of the public procurement system from time to time to take the necessary corrective measures.***

5.2 A satisfactory threshold for publication of tender notices and contract awards which ensures transparency and openness of the system is 95% or more of bids. Kazakhstan in 2003 published tenders and contract awards for 58% of bids. The time for bid preparation which ensures real opportunity for bidders to submit bids should be a minimum of 21 days between invitation to bid and bid opening. In Kazakhstan sometimes bid preparation time allowed is between 5 to 10 days which is violation of the law by procuring entities. The law provides for a minimum of 30 days of bid preparation time.

5.3. The number of complaints and cancelled tenders are growing. While the rise in the number of complaints would show improving confidence of suppliers of goods, works and services in the complaint resolution mechanism, the number of cancelled tenders points to inefficiencies in the system.

5.4. The analysis of the very little data made available to the Bank team shows that the use of the sole-source method of procurement is substantially high in Kazakhstan. In 1998, 40%, 1999, 38%, 2000, 36%, in 2001 36%, in 2002, 32% and in 2003, 30.5% of the total procurement volume (US\$3 billion in 2003) was procured through the sole-source method.

5.5. The analysis of the performance indicators in Annex D leads to the conclusion that the public procurement system in Kazakhstan needs to improve its procedures, practices and documentation to enhance the efficiency of the use of public funds. For this purpose specific recommendations are made in Part III of this report.

III. Recommendations for Improving the Efficiency of the System

This Part includes a summary of recommendations. It is expected that implementation of these recommendations would improve the economy, efficiency and transparency aspects of the public procurement system which in turn will improve the efficiency of public expenditure. It is recommended that the CFCSP prepare an action plan based on these recommendations. Some of these recommendations can be implemented through preparation and dissemination of one or two detailed regulations and others through amendments to the PPL in due course of time.

Legal Framework

- *The Law should be amended to make it clear that bids must be opened immediately after the deadline for bid submission (paras. 1.4.1. to 1.4.2.);*
- *The Law should be amended to remove the right of the procuring entity to ask the winning bidder for price reductions after the award (paras. 1.4.3. to 1.4.4.);*
- *The Law should be amended to remove any reference to dumping prices (s);*
- *A complete and free-standing chapter about the right of bidders to seek a review of decisions of the procuring entity should be introduced into the Law (paras. 1.4.5. to 1.4.6.);*
- *The Law should be amended to abolish the right of the procuring entity to indicate in the bidding documents the maximum amount allocated for the contract in question (para. 1.4.11.);*
- *The rules in the Law about the use of evaluation criteria other than price during bid evaluation should be clarified (paras. 1.4.12. to 1.4.13.);*
- *Some aspects of the rules in the Law about the bid opening ceremony and the minutes of the bid opening need to be improved (par. 1.4.14.);*
- *Separate and detailed provisions about the procurement of consulting services need to be introduced into the Law (para. 1.4.15.);*
- *The Law's existing provisions about the preference for domestic commodity producers should be deleted or, alternatively, detailed provisions setting forth the terms and conditions of granting such preferences should be set forth in the Law itself (and not in some unspecified separate rules (para. 1.4.16.); and*
- *an Arbitration Law of the Republic of Kazakhstan should be enacted, based on the UNCITRAL Model Law on International Commercial Arbitration (para. 1.4.17.).*

Institutional Framework and Management Capacity

Recommendations for Strengthening CFCSP (paras 2.1 to 2.4)

- *Prepare a clear job description for each staff of the CFCSP emphasizing their procurement oversight and support roles;*
- *Design and implement a training program to enable the CFCSP staff to effectively play their roles of ensuring compliance with the law by procuring entities; and*

- *Prepare and implement a comprehensive “train-the-trainer” program for a select number of CFCSP staff at central and local levels and require them to provide training to the staff of procuring entities in conducting public procurement in accordance with the Law.*

National Training Strategy to prepare Procurement Professionals (paras 2.5 to 2.6)

- *Review procuring entities’ capacity, including their training needs, especially covering Oblast and Rayon levels, to conduct public procurement in an efficient manner.*
- *Design and implement a national public procurement training strategy that takes into account all the available training resources in the country, including CFCSP’s newly acquired country-wide capacity, civil service academy, private sector, universities, institutes, etc. and that provides for training for public officials and private sector on a regular basis.*
- *Design and implement short-term and long-term training programs with testing and certification.*
- *Introduce an accreditation system to ensure that only authorized public officials conduct public procurement.*

Procurement Operations and Practices

See Box 1 for recommendations.

Integrity of the Public Procurement System

- *The public procurement law and/or regulations should include detailed references to the anti-corruption law as well as to the relevant provisions in other laws (e.g., criminal code, administrative laws, etc) , along with the sanctions for different violations of the law. The sanctions against violators should be consistently applied. Furthermore, the cases of violations, punishments for such violations, and, if feasible, names of the offenders should be published in the Public Procurement Bulletin (electronic and paper versions). This will deter violations (para 4.5).*

Public Procurement Performance

- *Create and maintain a database on the Performance Indicators in Annex D for use in measuring the efficiency of the public procurement system from time to time and to take the corrective measures as necessary (para 5.1)*

Box 1: Summary of Procurement Risks Factors and Recommended Actions

Risk	What can happen	What to do about it (Recommendations)
General		
Inadequate collaboration and absence of a regular dialogue between SPA (now SCFSP) and procuring entities and private sector, and weak oversight and supervision of public procurement process.	Non-compliance with the procurement law and regulations, resulting in loss of benefits to be gained through economic and efficient procurement.	<i>CFCSP to proactively increase collaboration with procuring entities, strengthen its oversight function and to interact with private sector more actively.</i>
Potential suppliers, consultants and contractors do not have access to information of procuring entities' annual procurement plans.	Potential consultants, contractors and suppliers are unable to better plan their participation in tenders resulting in poor quality bids.	<i>Require procuring entities to publish early in the budget cycle a general tender notice including a list of all its tenders during the budget year.</i>
Confusion in procuring entities created by the contradiction between the PPL that allows multi-year contracts for civil works and the Financial Rules that don't.	Lack of clear rules re multi-year contracts resulting in uneconomic and inefficient civil works contracts.	<i>Amend the Rules on Financial Procedures so that it will be allowed to conclude contracts for more than one year.</i>
Frequent sole source procurement resulting from the application of the provision of the Law that if less than two qualified potential suppliers submitted tenders or there were submitted less than two responsive bids, tender process can be cancelled and procuring entity may apply to the SPA (now CCFSP) for sole sourcing.	Use of sole source method eliminates competition resulting in uneconomic and inefficient use of public funds.	<i>Delete this provision from the Law and require procuring entities to reissue tenders after ascertaining the causes for lack of bidders' response and improving bidding documents, including technical specifications.</i>
Frequent long delays in payments to providers of goods, works and services.	Higher bid prices as bidders increase their prices in future tenders to mitigate this risk, and serves as a disincentive for bidders' participation in public tenders.	<i>Include provision in standard contract form that procuring entity would pay interest for the period of delay in payments.</i>
Poor contract administration, including reception/inspection of goods, works and services.	Poor quality goods, works and services supplied by suppliers, contractors and consultants and accepted by public officials.	<i>Prepare, introduce and enforce clear and detailed contract administration procedures.</i>

Risk	What can happen	What to do about it (Recommendations)
Bidding Process		
Tender notices published in different newspapers, sometimes in national press, sometimes in regional/local press. No single point of tender information.	Potential bidders have difficult access to information about bidding opportunities. This results in inadequate bidders' response.	<i>Make publication of all open tenders in the Public Procurement Bulletin (paper and electronic) mandatory, and optional in the national press of their choice.</i>
Improper contract packaging and division of contract packages into lots based on goods, works and services of different nature.	Limited participation of bidders because of their inability to offer goods of different nature, resulting in loss of savings.	<i>Train procuring entities' staff in correctly packaging goods works and services to optimize competition.</i>
Bidders are required to submit international quality certificates together with bid application (for example ISO 9000) which is not required by the Law.	Inadequate competition because of exclusion of bidders who may have the required qualifications and experience but not ISO 9000.	<i>Rather than require ISO9000 procuring entities should clearly describe the qualifications and experience requirements in bidding documents.</i>
Poor quality bidding documents, including ambiguous technical specifications; unclear and unrealistic requirements, such as delivery/completion time that bidders cannot meet, and frequently no qualifications and experience requirements.	This results in bids based on poor quality and cheap goods, works, and workmanship offered by unqualified and inexperienced bidders. This situation combined with the practice of selecting the lowest priced offer results in procurement of poor quality goods, works and services.	<i>Prepare and disseminate clear and simple standard bidding documents, including guidance on specifying qualification and experience requirements. Train staff in preparing unambiguous technical specifications. Create and maintain a database of sample specifications and prepare standard technical specifications for items procured frequently. (See Annex B)</i>

Risk	What can happen	What to do about it (Recommendations)
Frequently bidders have very short bid preparation time, sometimes only 4 days, before deadline for bid submission.	Limited participation of potential bidders leading to higher prices and loss of economies.	<i>Require procuring entities to issue bidding documents from the dates on which tenders are published. Strengthen CFCSP control to declare null and avoid tenders where bidders are not given at least 30 days for bid preparation, as stipulated in the Law.</i>
The procedure that bidders currently follow for clarifying the contents of bidding documents is informal, time consuming, unequal, and burdensome. Procuring entities do not comply with the three day period required by the PPL for this purpose.	Unequal or no clarifications provided resulting in unequal and incomplete bids.	<i>Make clarification a formal, written procedure. Require procuring entities to respond to clarification promptly and to copy such clarifications to all those bidders who purchased bidding documents.</i>
Heavy burden (frequently 3% of bid price) on potential bidders of the requirement of bid security.	Bidders do not participate in many tenders because of lack of funds for obtaining bid security.	<i>For small value contracts require higher bid security (up to 3% of bid price) for large value contracts lower bid security. Consider requiring bidders, in lieu of bid security, to submit an undertaking with their bids that if they withdraw their bids after bid opening or do not sign the contract if selected they can be disqualified from participation in tenders for a period of time.</i>
Lack of transparency and potential for manipulation because procuring entities often do not provide minutes of bid opening to bidders. The minutes of bid opening are not required to be signed by participants.	Because bidders do not have the minutes of bid opening, bids, bid prices, and bid evaluation reports may be tampered with.	<i>Require procuring entities to prepare minutes of bid opening in prescribed formats, to have these signed by all those present at public bid opening, to make these available to participating bidders, and to send these to those bidders who did not participate within the time stipulated by the Law.</i>

Risk	What can happen	What to do about it (Recommendations)
Some procuring entities use permanent tender committees.	Establishment of undesirable relationships between bidders and members of permanent committees with potential for abuse.	<i>Require procuring entities to establish ad hoc tender committees consisting of competent members with the needed skills.</i>
Use of price as the only factor of selection.	Selection of poor quality goods, works and services.	<i>Instruct procuring entities (and monitor compliance) that evaluation criteria, as listed in the tender documents, should not be price alone but should include other factors, including commercial, legal and technical ones.</i>
Insufficient and unrealistic time allowed to bidders for delivery of complex goods and works .	Bidders submit bids based on unrealistic delivery and completion times to be selected and if selected fail to perform or perform poorly.	<i>Allow adequate delivery/completion time in bidding documents</i>

Annex A. Roles and Responsibilities of a Public Procurement Body

The purpose of this Annex is to summarize the functions and responsibilities that are normally allocated to a Public Procurement Agency (PPA)

Functions to be allocated to the PPA

1. The PPA should have the following functions:
 - (a) Procurement Policy: Develop new procurement policies and submit them to the government for approval and introduction;
 - (b) Regulations: Develop procurement regulations as required by the Public Procurement Law (PPL) and submit them to the government for approval and introduction;
 - (c) Standard Bidding Documents: Develop standard bidding documents for all major types of public procurement, for the mandatory use by all procuring entities;
 - (d) Collection and Dissemination of procurement information: Require procurement entities to make available to the PPA all information about procurement opportunities (invitations to pre-qualify, to bid, to submit proposals, etc.) as soon as it has been decided to undertake a procurement proceeding, and about contract award, and publish such information in an Official Gazette or in a special Procurement Bulletin published by the PPA;
 - (e) Procurement training: Train procurement officials at all levels, and preferably without charge. The participation in such training courses should be made mandatory by procuring entities for all their procurement staff;
 - (f) Procurement audits: On a spot-check basis, do audits of procurement proceedings by procuring entities in a number of randomly selected cases per year, and publish the findings. Preferably, such audits should be carried out by specialized auditors of the PPA and not by the auditors belonging to a general auditing office of the government who regularly do financial audits of public entities but are mostly not qualified to do procurement audits;
 - (g) Procurement Oversight: Give instructions and approvals, etc. to procuring entities as provided by the PPL; and
 - (h) Decide on certain complaints by aggrieved bidders (see par. 1.3.4 above for details)
2. The PPA should not be allocated any authority to take or to approve contract award decisions. This is important because, first, to allocate such an authority to the PPA would needlessly add another layer of decision making to the procurement process, and second, since the PPA will among other things have to decide on complaints by bidders, if it were to approve contract awards, it might, in the end, have to decide on complaints against award decisions it had approved itself.

Financing of the PPA

3. A PPA should be a completely independent oversight entity, and it should not exercise any function that is not included in its oversight activities. Procuring entities should not be forced to pay for the PPA's assistance, or else they might well decide to do without that assistance in the first place. Thus, a PPA should be financed out of budgetary contributions and none other (and if a PPA should receive funds from other sources for whatever reason, it should be obliged to pass on such funds to the government).

To whom should a PPA report ?

4. In the Bank's view – confirmed by its experience in many countries – a PPA should not be part of, or report to, any line ministry but should report to the highest possible level of government, like the President, the Prime Minister, the Cabinet of Ministers, etc. Any other solution might well threaten the independence of the PPA, and facilitate undue influence on its decisions.

Annex B. Capacity Building and Training: Examples from Other Countries

The purpose of this Annex is to provide some examples of how other countries deal with such issues as capacity building and training of staff engaged in public procurement process.

Russia

Procurement is recognized by the Russian civil service as a profession with a career path. Most people who work in procurement and carry that name in their title have had training in procurement. A State Procurement Institute (SPI) under the Higher School of Economics (a state university working under the Ministry of the Economy) was established in 1998 as a leading organization in preparation of procurement staff. SPI is carrying out the following activities:

- Training and preparation of procurement staff
- Development of study programs and methodological materials
- Coordination of regional training centers
- Consultancies and scientific research on public procurement subjects

In addition to the State Procurement Institute there are some 20 entities engaged in delivering procurement training. As of today, some 18 000 people have been trained in procurement under programs which devote not less than 80 percent of the time to procurement procedures and organization of tenders.

Relevant websites: <http://procurement.e-management.ru>
<http://www.hse.ru/2high/ppi/default.html>
<http://www.bob.ru/index.php?view=19>

Poland

Procurement is still not a profession and public officials in most cases conduct procurement in addition to their main job responsibilities. Yet, the training opportunities are quite developed, especially on the private market. There are specialized consulting firms, law firms conducting trainings, workshops and seminars and also public and private universities which offer post-graduate studies in Polish Public Procurement. Some universities are trying to introduce Public Procurement as a faculty for BA or MA studies.

In 2002, representatives of the Public Procurement Office (PPO) took active part in training courses and seminars in public procurement, organized by the PPO in-house or by external entities. The Regional Audit Chambers were a particularly important partner in the delivery of training, with whom the PPO held 16 regional conferences on public procurement (addressed to procuring entities).

PPO together with the Ministry of the Economy and the Ministry of Infrastructure, organized a series of workshops at the end of 2002. The subjects of most meetings included training combined with the resolution of defined problems facing the participants of the public procurement market in practice, as well as the issue of legislative changes and market changes.

In 2002, work was continued on the publication of the Bulletin of the Public Procurement Office, which appears every month on the PPO website, including opinions of key significance to the PPO, studies on institutions of the Polish public procurement laws, court sentences connected with decisions of importance to the public procurement practice.

PPO took a series of measures aimed to support the participants of the public procurement market, both procuring entities and bidders. In 2002, the Office prepared and started the implementation of the Public Procurement Education/Information Program for 2003-2005 envisaged under the Anti-Corruption Strategy. It is an instrument that furthers public procurement awareness building, the introduction of good practice and professional support to procuring entities and bidders, and thereby minimizes opportunities for informal (corrupt) activities within the system. It is aimed to prepare bidders and procuring entities to function in the public procurement market to increase the participation of entrepreneurs in the market, popularize good practices and prevent unfair conduct.

PPO and the Ministry of Economy, Labor and Social Policy conduct Support Program for Small and Medium-sized Enterprises Participating in the Public Procurement Market for 2003-2005. Small and medium-sized enterprises are active participants of the public procurement market, but they still need support to be able to overcome difficulties in access to the market. The program provides for legislative, training/consulting, organizational/information measures as well as financial support.

Relevant websites: <http://www.uzp.gov.pl/>

Slovakia

In the last three years (the period of EU accession), public procurement law was changed, procurement profession was introduced, including certification system. All public entities are now required that a certified procurement specialist conducts procurement. Public Procurement Office runs on-going training courses mainly through outsourced private providers located throughout the country. Certification is maintained by attending training courses, especially if there are any changes/revisions in the law. The certification system is in place and is working. What is important is that it covers not only the central level, but the regional level as well (counties and municipalities).

Relevant websites: <http://www.uvo.gov.sk/english/index.html>

United Kingdom (U.K.)

The Office of the Deputy Prime Minister recently published a strategy on developing procurement in local government across England and Wales. As much of the procurement is done at the level of local government central government is trying to create a more “joined up” approach to procurement and the creation of regional centers of excellence.

Over the next three years National Procurement Strategy for Local Government proposes to make a significant investment in local government to build capacity for procurement in support of the National regional centers of excellence. Centers of excellence in procurement are created

throughout the regions. The centers of excellence will be a catalyst for collaboration in each region. The purpose of the centers of excellence is to:

- Develop centers of procurement expertise;
- Communicate the key messages in the National Procurement Strategy for Local Government;
- Disseminate good practice in procurement, project management and partnering;
- Provide high quality procurement advice to authorities in the region including, in particular, smaller authorities without procurement resources of their own;
- Promote collaborative procurement where this could lead to improved value for money in the acquisition of assets, services and supplies;
- Promote the development of e-Procurement in the region in collaboration with the National e-Procurement Project;
- Develop, manage and co-ordinate a pool of experienced procurement professionals and project managers to be shared between councils in the region;

Two training and development programs will be piloted. They will be delivered in association with a range of training providers and the regional bodies. The overall objectives are to:

- enhance members' and senior managers' leadership skills by equipping them to take a strategic role in procurement and partnering;
- train project team members in the key skills necessary for the successful delivery of major procurement projects and the management of strategic partnerships.

A review of local government procurement in England recommends that each local authority should identify all those engaged in procurement within the organization and identify the skills needed in each post across the authority. It should set out a strategy to meet these needs, including recruitment of suitable staff, training, and ways of retaining trained staff.

Relevant websites:

http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_029231-03.hcsp

http://www.bipsolutions.com/briefings/briefings2001/byatt_summary.pdf

France

Public Procurement is a well established practice in France. There are well trained procurement officers in all departments of government, including central, regional and local governments. Civil servants have a public procurement course as part of their curriculum. Although there is no such thing as a corps of public procurement officers, most civil servants who handle extensively public procurement actually spend all or a substantial part of their careers in public procurement. Training in public procurement is offered by the ministries as part of their professional training programs, and also by several private sector outfits which target local governments and private sector participants especially.

Relevant websites: <http://www.finances.gouv.fr/guide/index.phtml>

<http://www.localjuris.com.fr/>

Annex C. Form and Contents of Standard Bidding Documents

A bidding document consists of several parts and is a complete package of clear information to ensure clear, complete and responsive bids from bidders. The main purposes of the bidding documents are to (a) instruct bidders on procedures for submission of bids; (b) describe goods or works to be procured; (c) inform the bidders of criteria for evaluation; and (d) define conditions of contract.

The following standard documents would fulfill most public procurement needs, specialized bidding documents, e.g., for procurement of textbooks, health goods, commodities, information technology, may also be needed and should be developed in due course of time:

1. Standard Prequalification document for goods and works contracts
2. Standard Bidding Documents for Goods
3. Standard Bidding Documents for Works (Small Value and Large Value Contracts)
4. Standard Request for Proposals (for selection of consulting firms)
5. Standard Invitation Document for Procurement through Price Quotations
6. Standard Letter of Invitation for Selection of Individual Consultants

In order to facilitate procuring entities' task of preparing specific bidding documents and to create a better understanding among potential suppliers of goods, works and services, these documents should be organized in two separate parts as follows:

Part I (Fixed)

1. Invitation for Bids
2. Instructions to Bidders
3. General Conditions of Contract

4. Forms (bid form, contract form; bid security, performance security form, advance repayment form, any other form)

Part II (Variable)

5. Data Sheet
6. Special Conditions of Contract
7. Schedule of Requirements
8. Technical Specifications/Bill of Quantities/Drawings

Part I remains fixed. Any variable information, additions, deletions to Part I are made through Part II with reference to the specific clauses and sections in Part I.

Technical Specifications: Precise and clear specifications are prerequisite for bidders to respond realistically and competitively to the requirements of procuring entities without qualifying or conditioning their bids. In the context of open tendering, the specification must be drafted to permit the widest possible competition, and at the same time make a clear statement of the required standards of workmanship to be provided, standards of plant and other supplies and performance of the goods and services to be procured. Only if this is done

will the objectives of economy, efficiency and fairness in procurement be realized, responsiveness of bids be ensured and the subsequent task of bid evaluation be facilitated.

Specifications should require that all goods and materials to be incorporated in the goods/works be new, unused, and of the most recent or current models, and they incorporate all recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. Care must be taken in drafting specifications to ensure that they are not restrictive.

In the cases of goods, it may be advantageous to standardize the General Technical Specifications. There are considerable advantages in standardizing general specifications for repetitive works for highways, ports, railways, urban housing, irrigation and water supply.

In the case of procurement of goods or the supply and installation of plant and equipment, reference to brand names, catalogue numbers or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “substantially equivalent”.

Annex D. Public Procurement Efficiency Indicators

<i>Indicator name</i>	<i>Indicates</i>	<i>Measured by</i>	<i>Satisfactory threshold</i>
Advertisement of bids and publication of awards	Transparency and openness of system	Number of bids (in %) for which invitation to bid and contract award results are publicly advertised	95% or more <i>In 2003 - 58.5 %</i>
Time for preparation of bids	Real opportunity for bidders to submit bids	Number of days between invitation to bid and bid opening	21 days or more <i>Less than 21 days, sometimes even 10 or 5 days.</i>
Time for bid evaluation	Efficiency of bidding process	Number of days between bid opening and publication of award	90 days or less <i>17 days (10 calendar days for summarizing tendering results plus 7 working days for publication of award)</i>
Bidders participation	Level of confidence of private sector in the process	Number of bidders submitting bid in each bid process	5 bids or more <i>Private sector participation in tenders is uneven and depends on the industry sector of conducted tenders. For instance in light industry, food and IT sphere competition is fairly high and it is evidenced by number of submitted bids. However sector of consultant services is not well developed and often procuring entities receive less than 5 bids.</i>
Method of procurement used	Level of competition	Number of bidding processes using a method less competitive than the process recommended for the estimated contract amount.	Zero <i>There is quite a number of such bidding processes as a consequence of use of sole source procurement in case a tender did not take place.</i>
Direct contracting	Transparency and level of competition	Percent of contracts (by number and value) awarded	10% or less of number of contracts and 5% or less of total value of contracts <i>Volume of sole source public</i>

		on a sole-source basis	<i>procurement: 2002 - 32 %; 2003 – 30.5 %; 6 months of 2004 - 27.5 %.</i>
Processes cancelled	Quality of bidding process	Number (in %) of bid processes declared null before contract signature	5% or less <i>Judging from the volume of sole source procurement it is more than 5 %.</i>
Number of protests	Quality and fairness of process	Ratio (in %) between the number of protests posted and the number of bids submitted	Not less than 10% and not more than 50% <i>Less than 10% The SPA received 95 complaints in 2002 and 220 complaints in 2003.</i>
Time to answer protests	Efficiency and fairness of protest system	Number of days between submission and final response to protests	21 days or less <i>30 day period is established by the Law on Administrative Procedures. But this period is not followed by the SPA.</i>
Protest results	Effectiveness of protest system	Number (in %) of contracts with award recommendation modified because of a protest	5% or less <i>9 tenders in 2002 and 47 tenders in 2003 were cancelled due to violations of public procurement legislation. 15 officials in 2002 and 43 officials in 2003 were brought to responsibility.</i>
Late payments	Quality and consistency of payment process	Number (in %) of payments made more than 45 days late	10% or less <i>more than 10%</i>
Price increase	Quality of bidding and contract management	Percentage increase of final contract amount due to changes and amendments	15% or less <i>According to the PPL it is not allowed to introduce any modifications and/or new conditions into the public procurement contract. As exception price reduction is allowed (even after contract signing). Price increase is not allowed.</i>
Restricted competition for consultants	Quality of advice	Number (in %) of processes for the selection of	5% or less <i>more than 5%</i>

		consultants using open competition instead of a shortlist methodology	
Selection method for consultants	Weight of quality to price ratio used in selection	Number (in %) of processes for the selection of consultants having price weighted more than 20% of the total scoring points	15% or less <i>More than 15%. Application of undesirable practices, such as the use of price as the only factor of selection is practiced almost in every tender.</i>
Quality of tender specifications	Quality of goods, works and services.	Number of bids (in %) for which qualitative technical specifications were not developed.	10 % or less <i>More than 10 %</i>