

# **Russian Federation**

## **COUNTRY PROCUREMENT ASSESSMENT REPORT (A Limited Update)**



**Operational Policy and Services  
Europe and Central Asia Region  
The World Bank**

**December 2006**

## Currency Equivalents

Currency unit =

US\$1.00 = 26.69Rub (on Nov 10, 2006)

Government Fiscal Year

## Abbreviations and Acronyms

B2B	Business to Business
B2C	Business to Consumer
B2G	Business to Government
CIS	Commonwealth of Independent States
CPV	Cost per Visitor
CAS	Country Assistance Strategy
CBR	Central Bank of Russian
CEFIR	Center for Economic and Financial Research
CPAR	Country Procurement Assessment Report
CPS	Cost per Sale
DPP	Department of Public Procurement
EBRD	European Bank for Reconstruction and Development
ECA	Europe and Central Asia
e-RfQ	Electronic Request for Quotations
e-GP	Electronic Government Procurement
FAS	Federal Antimonopoly Service
FCPF	Federal Center for Project Finance
FL	Federal Law
FSDP	Federal Service for Defense Procurement
ICM	Initiating Concept Memorandum
ICT	Information and Communication Technology
INDEM	Information Science for Democracy
IFI	International Financial Institution
ISPR	Institute of State Procurement of RAGS
IT	Information Technology
MEDT	Ministry of Economic Development and Trade
NCB	National Competitive Bidding
OECD	Organization for Economic Co-operation and Dev
OPRC	Operations Procurement Review Committee
PIU	Project Implementation Unit
PPD	The Public Procurement Department
PPL	Public Procurement Law
Rub	Russian Ruble
SSL	Secure Sockets Level
RAO UES	Unified Energy System of Russia
UNICTRAL	United Nations Commission on International Trade Law
UNSPSC	United Nations Standard Products and Services Code
USD	United States Dollars
XML	Extensible Markup Language

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## INTRODUCTION and EXECUTIVE SUMMARY

### Introduction

#### *Background and Objective*

1. In accordance with the Country Assistance Strategy (CAS) for the Russian Federation, dated May 14, 2002, the World Bank will support structural reforms in three main areas: improving the business environment and enhancing competition; strengthening public sector management; and mitigating social and environmental risks.
  2. Since the current CAS was approved, the economy of the Russian Federation has exhibited rapid growth in output and investment, declines in poverty, unprecedented macroeconomic stability, and strong fiscal and current account surpluses. A combination of internal and external factors has driven this performance. Responsible macroeconomic policy and pursuit of key structural reforms have improved fiscal discipline and the business environment. Simultaneously, the Russian economy benefited from sustained high prices for its commodity exports.
  3. Available figures show the scale and direction of public expenditure and public procurement in recent years. The consolidated budget of the Russian Federation, based on data provided by the State Committee of Statistics, totaled Rub3,422.3 billion (about US\$137 billion) in 2002, Rub3,965 billion (about US\$159 billion) in 2003, and Rub4,670 billion (about US\$187 billion) in 2004.
  4. Based on the same source, the scale of public procurement (all procurement methods included) totaled Rub305.75 billion (about US\$12 billion) in 2002, Rub450.78 billion (about US\$18 billion) in 2003, and Rub548.69 billion (about US\$22 billion) in 2004. In the first half of 2005 public procurement reached Rub575 billion (about US\$23 billion), and in the comparable period of the year 2006 the same indicator reached Rub878 (about US\$35 billion) billion, an increase resulting from enforcement of the new PPL and increased economic activity.
  5. The economic and political context for World Bank cooperation with the Russian government has changed considerably in recent years, making it necessary to replace the CAS with a new Country Strategic Partnership (CSP) for 2006–09, currently being finalized. The new CPS envisions a partnership with the Russian government for the realization of four primary objectives: (a) sustaining rapid growth, (b) improving public sector management and performance, (c) improving the delivery of social services, and (d) enhancing Russia's global role. The first three pillars correspond closely to the pillars of the previous CAS, and channel support directly toward the development challenges and policies elaborated in the government's Medium-Term Economic Program, with a particular focus on the regions. The fourth pillar concerns Russia's integration in the world economy and in the donor community (the latter forms the basis for a new area of assistance to Russia).
  6. These developments make it opportune to also update the public procurement environment assessment included in the Russian Federation February 2001 Country Procurement Assessment Report (CPAR) in order to assess the current procurement
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risk of Bank's operations in Russia and provide the borrower with useful feedback about the strengths and weaknesses of its public procurement system.

7. This report is a limited CPAR Update, focused on the priority issues confronting the national public procurement system. The two main objectives are to (a) assess the progress of the Russian public procurement system after the February 2001 CPAR and (b) to foster dialog and possible collaboration between the World Bank and its Russian counterpart on instituting procurement reform.

### *Basis of the Report*

8. A World Bank scoping mission to prepare the Initiating Concept Memorandum (ICM) for the Russia CPAR Update occurred in September 2005. Based on that ICM, a field mission—comprising Jesus Renzoli, Moscow-based Senior Procurement Specialist and Task Team Leader for the CPAR; Francoise C. Bentchikou, World Bank Chief Legal Counsel; Devesh Chandra Mishra, Senior Procurement Specialist; Knut J. Leipold, Senior Procurement Specialist; and Galina S. Kuznetsova, Moscow-based Senior Financial Management Specialist—worked in Moscow during September 6–17, 2005. Also participating in the mission's work were Andrei Darusenkov, Moscow-based Senior Operations Officer; Samir Suleymanov, Operations Officer; John Litwak, Lead Economist; Alexander Balakov, Procurement Specialist; Alexander Roukavishnikov, Procurement Specialist; and Olga Gubareva, Procurement Assistant.

9. John Oliver (Shaun) Moss, Regional Procurement Manager for the East Asia Region, and Pamela Bigart, OPRC Lead Procurement Specialist, provided valuable comments. During its work the project team received guidance from Kristalina Georgieva, Country Director for Russia, as well as from Sunil Bhattacharya, ECA Regional Procurement Manager.

10. From the Russian side the mission met consecutively with representatives from the following institutions. From the Federal Center for Project Finance (FCPF), it met with Alexander Shamrin, Director General, and Dmitry Shakhbazyan, Director, Business Outreach Bureau. From the Accounting Chamber of the Russian Federation it met with Pavel Budagov, Head of the Inspection Department responsible for control of federal budget international activity expenses, and Yuri Gabria, Leading Specialist on Credits. From the Russian Chamber of Commerce and Industry it met with Nikolai Alexandrov, Deputy Director of the External Relations Department and Chief of the Department of Multilateral Cooperation; Igor Dorofeev, Chief Expert, Department of External Relations; and A. Davydov, Chief Expert on relations with the Associations of Entrepreneurs. From the Moscow Chamber of Commerce and Industry it met with Alexander I. Borisov, General Director, Advisor of the Mayor. From the Soloviev Institute of Procurement, Higher School of Economics it met with Irina Kuznetsova, Director of the Institute. From the Ministry of Economic Development and Trade of the Russian Federation it met three times with Larisa Nekrasova, Head of the Department of Public Procurement and the Russian counterpart representative in the CPAR Update (Ms. Nekrasova attended the first meeting with the Country Director and the mission in place of Andrei Sharonov, Deputy Minister of MEDT), and with Pavel Volkov, Chief, of Legal Department for Drafting Legislation. From the Association for Development of Competitive Procurement it met with Executive Director Vadim Lazutin. From the Unified Energy System of Russia (RAO UES), it met with Mr. Alexei Romanov, Director of the Department of Organization and Methodology for Competitive Bidding. It met with Andrei Khramkin, Director of the Institute of State Procurement of RAGS. It met with Paul Vandoren, Antonio Parenti,

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John Hesketh Richards, Stefanie Harter, Natalia Samikova, and Natalia Potapenko from the EU Delegation in Moscow. It met with Mr. Vladimir Smirnov, Deputy Director, and Alexander Gladkov and Nikolai Nesterovich from the MEDT's Institute of Macroeconomic Analysis. From the Interregional Social Organization "Moscow Association of Entrepreneurs," it met with Andrei Podenok, President; Kren Avanesyan, Chairman of the Committee on State Procurement; Konstantine Trumpel, Head of "Trumpel & Partners," a consulting company specializing in state procurement; and Elkhan Gurbanov, Procurement Specialist with "Trumpel & Partners." From the Foundation for Enterprise Restructuring and Financial Institutions Development (acting as a PIU for five Bank-financed projects in Russia), it met with Dmitri Petrin, Deputy Director, and Valery Bondarenko, Procurement Department Chief. Finally, from the Federal Antimonopoly Service it met with Deputy Director Vladimir V. Efimov.

11. The project team expresses its gratitude to all the above-mentioned persons from the World Bank and the Russian side for their invaluable inputs that, together with the desk review of numerous documents, served as the basis for preparing this Report Update.
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## Executive Summary

12. The principal CPAR mission findings can be summarized in six parts: the legal framework, the institutional framework, prevailing practices, introduction of electronic purchasing, the World Bank portfolio, and recommendations.

### *Legal Framework*

13. Enacted on July 21, 2005, and taking force on January 1, 2006, the “Law on Placement of Orders for Supplying Goods, Executing Works, and Providing Services for State and Municipal Needs” No. 94-F, hereafter referred to in this Report as the Public Procurement Law (PPL), is the key event shaping public procurement in the Russian Federation since completion of the February 2001 CPAR.

14. Russia has made substantial progress in key areas of the development of its public procurement system since the first CPAR was written. However the course of this development is not uniformly encouraging, and much remains to be done. It is encouraging that currently procurement issues and their discussion are attracting the attention of the Russian Government, Parliament, business community and society as never before.

15. **Among the main positive aspects of the new PPL are the following:**

- Ø Regulation of public procurement at all levels—federal, regional, and municipal—provides the basis for a single economic space.
- Ø Elimination of restrictions for access of products of foreign origin and foreign suppliers to bidding on the territory of the Russian Federation, although it is provided based on the mutuality principle.
- Ø Unified legislation replaces the previously dispersed and sometimes contradictory set of diverse procurement regulations.
- Ø Advertisement and full disclosure of all procurement processes is provided electronically on an official Web site (or sites).
- Ø A foundation is established for introduction of future electronic procurement.
- Ø An enforcement control mechanism is established.
- Ø An administrative mechanism for review of complaints is established.

16. **There are, however, peculiar features in the new PPL:**

- Ø Traditional (reverse) auctions are to be used as one of the preferred selection method.
  - Ø Provisions for prior qualification and postqualification are absent (prequalification only for request of quotations in emergency situations, and use of qualification criteria only when procuring defense contracts.).
  - Ø Provisions are not made for procurement of consulting services or contracts involving development of complex systems and intellectual services.
  - Ø An “initial price” or ceiling is introduced to determine the contract price rather than relying on the market.
  - Ø Rigid procedures codified by law are relied on, contrary to current international best practice trends in public procurement of establishing in the law the main principles of the procurement activity, and leaving details to secondary legislation written in strict compliance with the law.
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17. **A rushed effort to pass legislation to fight corruption and eliminate bad procurement practices has led to emphasis on control and to a trend to excessive simplification of procurement methods, sometimes in detriment of the quality factor.** Some good practices from previous legislation have been mistakenly regarded as deficient because they were improperly enforced, and the new law establishes an overly prescriptive, detailed framework that will be almost impossible to amend through secondary regulations. The new PPL is regarded as a “direct action” instrument that leaves little space for interpretation. At the date of completion of this Report the proposed Federal Law “On Introduction of Changes to the Federal Law “On Placement of Orders to Procure Goods, Works and Services for Public and Municipal Needs” and some other legislative acts of the Russian Federation” has been prepared and has been reviewed in the State Duma of the RF Federal Assembly in the first reading. It is not in the scope of the Report to analyze the proposed modifications, but the fact itself of this proposal indicates the dynamic process taking place in the field of public procurement in Russia.

18. The current emphasis on control is predicated upon the evident need to enforce good procurement practices. But being procurement first of all an economic activity it is essential that precisely economically sound principles of economy, efficiency, quality, competition and transparency be strictly enforced in procurement practice.

### *Institutional Framework*

19. **Institutionally, the new PPL establishes an authority responsible for procurement methodology** (the Ministry of Economic Development and Trade) **and one responsible for procurement control** (the Federal Antimonopoly Service for all procurements and the Federal Service for Defense Procurement (FSDP) specifically for supervision of procurement for the state defense needs).

20. While the new PPL addresses many recommendations of the February 2001 CPAR for procurement institutions building, **creation of an independent Public Procurement Office and an independent Procurement Review body have not been addressed.**

### *Procurement Practices*

21. **Introduction of the new PPL has completely changed procurement practices in the Russian Federation compared to the situation described in the last CPAR.** This analysis is based on consolidated procurement practice data for 2002–05 (2005 only for the first nine months); data from the report “On the Measures to Improve Efficiency in the Procurement of Goods, Works, and Services for Public Needs,” submitted to the government by the Ministry of Economic Development and Trade on June 21, 2005; and other public purchasing information. It also takes into account the report on the results of the first six months (year 2006) of application of the new PPL presented to the Government of the Russian Federation on September 28, 2006 by the Ministry of Economic Development and Trade.

22. **Prior to the new PPL violations by contracting authorities and contractors not only reduced public procurement efficiency but often discredited the procurement practices stipulated in the Law that were not enforced due to the absence of necessary mechanism of enforcement of the Law norms.** In various

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Russian regions control functions were performed by various departments. At the federal level such functions were assigned to the MOEDT. Implementing supervisory functions, the Ministry had all rights with the exception of the sole right (in contrast to entities authorized by the new law to carry out supervision) to issue directives on elimination of breaches and suspension of the process of order placement. Therefore, the supervisory entity did not have an effective mechanism to impose penalties upon those who breached the law. Statistics show that the average number of participants in contract procurement at the federal level decreased from 4.2 in 2003 to 3.1 in 2004, a very poor participation showing lack of confidence from bidders regarding fairness and transparency of bidding processes.

**23. The main irregularities or violations under the former procurement legislation were the following:** limited information access about bidding processes; insufficient time for bid preparation; unfair preferences for certain bidders; no or unclear evaluation criteria; a proliferation of cases in which the same contractors were selected through restricted bidding and whose qualification was determined discriminatorily based on the availability of licenses for certain works.

**24. Although introduction of the new PPL has changed the ground rules dramatically, not enough time has elapsed and a system for procurement monitoring has yet to be established to generate meaningful data for analysis of how the law works in practice.** Given the high attention to procurement questions by the government and society, enforcement of the new legislation is expected to be much stricter than before. It is reported that in the first six months of 2006 the proportion of contracts procured through bidding increased almost by 8 %, and the proportion of contracts signed on the sole-source basis decreased by 9 %.

25. The major violations noted in the initial period of introduction of the new PPL are related to: failure to publish procurement notices on the official site; introduction of bid evaluation criteria not stipulated by the PPL; violation of the deadlines defined by the PPL (bid opening, bid evaluation, protocol signing and publication of information on procurement process outcomes), and demanding from bidders documents not established by the PPL.

**26. Substantial work would be required to improve and implement the current legislation and resolve the bottlenecks created by some dysfunctional procedures established by the existing law.** Among the urgent tasks is the **creation of a proper procurement monitoring and analysis systems providing the data for making informed decisions and introducing needed corrective measures.**

27. An intensive process of drafting secondary administrative regulations is under way by the MEDT. These activities are reflected in the “Plan of Activities for Implementation of the Provisions of the Federal Law ‘On placement of Orders for the Provision of Goods, Works, and Services for Federal, Regional, and Municipal Needs’ and for increasing effectiveness of Implementation of Procurement of Production for State Needs” of December 8, 2005

### *Electronic Procurement*

**28. The general climate for introduction of electronic government procurement (e-GP) in Russia appears promising.** Considerable evidence shows government leadership and support for adopting e-GP is present. A primary legislative framework has been developed and several electronic procurement systems were implemented in

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the public and private sector. Adoption of e-GP standards coupled with increased efforts to promote e-GP awareness and capacity building among buyers and suppliers and an improved IT and telecommunications infrastructure should enable Russia to make substantial progress in this area during the foreseeable future.

**29. The Public Procurement Department (PPD) of the Ministry of Economic Development and Trade has the mandate to lead the process of introducing e-GP in Russia.** While the PPD fully supports e-GP implementation, its current staffing needs to be substantially strengthened to acquire the capacity and skills for successfully managing the process. A comprehensive strategic implementation plan also must be developed.

**30. The Public Procurement Law provides for electronic disclosure of procurement information and for electronic procurement transactions (including e-bidding, e-auctions, and e-requests for quotations).** The law follows good practice by mandating free access to online public procurement information, including bidding documents. Supporting e-GP legislation includes the Electronic Signature Law, which underpins the legal validity of electronic documents. The challenge is to implement the existing legislation by adopting regulations that specify appropriate procedures for electronic disclosure of public procurement information and electronic transactions.

**31. To the date** 86 regions of the Russian Federation have developed official sites for posting procurement information; 59 regions have identified official printed publications for provision of procurement information); about half of the regions have set up bodies authorized to conduct procurement operations and authorized supervision bodies. Together with the federal level the cities of Moscow and St. Petersburg, Yaroslavl and Ulyanovsk oblasts are regarded as having the most developed procurement systems among the regions of the Russian Federation.

**32. Given the acceleration in Internet connectivity, several e-procurement systems have been developed with different functional capacities, such as information disclosure, e-tendering, e-reverse auctions, and private sector e-catalogues.** Other systems include those in the power generating sector ([www.b2b-energo.ru](http://www.b2b-energo.ru)), in civil aviation ([www.b2b-avia.ru](http://www.b2b-avia.ru)), and in oil and gas ([www.b2b-npk.ru](http://www.b2b-npk.ru)). Some e-GP portals are available, including the official e-GP Web site of Russia ([www.fgz.economy.gov.ru](http://www.fgz.economy.gov.ru)) with links to regional and municipal portals, the portal of the public procurement bulletin ([www.bob.ru](http://www.bob.ru)), and the public procurement portal [www.b2g-goszakupki.ru](http://www.b2g-goszakupki.ru). While Russia's official e-GP Web site is in its infancy and only supports the disclosure of public procurement information at present, other official regional e-GP Web sites (for example, [www.goskaznso.ru](http://www.goskaznso.ru) or [www.gostrade.ru](http://www.gostrade.ru)) or unofficial e-GP portals (for example, [www.bob.ru](http://www.bob.ru) and [www.b2g-goszakupki.ru](http://www.b2g-goszakupki.ru)) support public purchasing transactions such as e-tendering or e-auctions. The government can play an important role going forward, by ensuring that suppliers are not confused by an uncoordinated proliferation of e-GP portals.

**33. The amount of procurement process information to be disclosed under the new law could be revised** to provide the public with essential data without overloading the systems with feedback noise. Currently the requirement to publish protocols in official printed publications has been eliminated because these are posted in the official sites. But still more data, including the protocols, drawings, bidders'

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proposals, etc, could be stored and secured under recordkeeping regulations, and made publicly available only on request.

### *The World Bank's Portfolio*

**34. The procurement environment for implementation of the World Bank portfolio in the Russian Federation continues to be complex and fraught with risks.** There is a wide difference of approach between the new PPL and the World Bank Procurement Guidelines; the new legal and institutional framework is still working out its kinks; and reports of corruption in the country are widespread. Because the Russian Federation remains a high-procurement-risk country, intensive supervision is required for procurement related to the World Bank–financed portfolio. The financial thresholds levels for procurement methods and the prior review levels, as well as the list on acceptability of national competitive bidding for Bank–financed operations in the Russian Federation are recommended in the relevant section of this report.

**35. A further complication is that World Bank engagement in Russia tends increasingly toward incorporation of projects into governmental programs primarily financed by the government, and toward work with new clients such as regions of the federation.** This poses a real challenge to enforcement of World Bank fiduciary safeguards, including those for procurement.

**36. Currently use of a country procurement system is not an option for World Bank-financed operations in Russia,** and exhaustive case-by-case analysis will be required to determine the procurement arrangements for each specific operation. In doing this, the Bank should keep satisfactory fiduciary safeguards while carefully considering any possibility for using acceptable features of current or amended national procurement legislation.

**37. Slow procurement and low disbursement, resulting in repeated extension of loan closing dates, characterized implementation of the World Bank portfolio in Russia during the period covered for this report.** According to the latest information, the disbursement ratio has improved to reach 15.4 percent. Clearly, the measures implemented by the World Bank to improve portfolio performance are just one side of the equation, and a higher level of achievement will require the Russian counterpart fulfill its potential for improvement by streamlining regulations for the preparation and implementation of World Bank–financed projects in Russia. This includes governmental Resolution No. 43 of December 28, 2005, “On the Order of Work with Projects Carried Out by the Russian Federation with Participation by International Financial Organizations.”

### *Recommendations*

- 38. In summary the main recommendations of this report are the following:**
- Ø Now is an opportune moment to analyze in detail what happened during the first period of implementing the PPL, and introduce corrective measures to align its procedures with internationally recognized good practices.
  - Ø Positive trends of increased information flow and transparency from use of information technology should be further developed, targeted toward full rollout of electronic procurement.
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- Ø A comprehensive strategy for development of a country procurement system—including legislative requirements, an institutional framework, and itemization of needed material and human resources—should be developed and adopted.
- Ø Creation of an independent procurement review body should be duly considered.
- Ø Continued dialog between the government of Russia and the World Bank on procurement issues would contribute to implementation of these recommendations.

**39. Detailed recommendations are offered at the end of each section of the text of this report.**

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## RUSSIAN FEDERATION COUNTRY PROCUREMENT ASSESSMENT REPORT

(Limited Update)

### I. Legal Framework

40. **Since procurement reform began in the early 1990s, many laws and regulations have been enacted in the Russian Federation at all levels of government**—federal, regional, and municipal—that impact public purchasing either directly or indirectly. From general centralized control over allocation of all state orders, the Federation has moved toward competitive public procurement in principle and practice. While the government is to be commended for its achievements, much remains undone.

41. **Starting from that overall assessment, the February 2001 CPAR made some key recommendations:**

- Ø Given the complexity of the law then in force, any new procurement legislation should be preceded by a detailed, comprehensive study involving Russian legal practitioners to define how a clear and sustainable legal framework for governing public purchasing might best be achieved.
  - Ø To address the conflicts and gaps in existing legislation, the confusing welter of applicable laws should be consolidated into one new federal procurement law, complemented by fewer implementing regulations.
  - Ø To clarify uncertainties about hierarchy and application, harmonization was urgently needed of key legislative provisions applicable to federal, regional, and municipal administration, particularly concerning available procurement methods, financial thresholds, and standardized procedures and practices.
  - Ø To increase consistency and encourage the spread of good procurement practices, regional and municipal procurement regulations should conform to the basic principles and procedures of federal legislation.
  - Ø To promote quality and consistency in applying the procurement legislation, standard procurement documents should be introduced and widely used at all administrative levels.
  - Ø The relationship of national public procurement law to Russia's international obligations, such as loan agreements with the World Bank, should be defined more clearly in legislation to facilitate implementation of externally funded projects.
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42. The general situation that was described in detail in the February 2001 Russia CPAR prevailed in the years after, while the draft of a new public procurement law was under discussion. The new PPL was finally passed in July 2005, taking force on January 1, 2006.

43. **In essence, the recommendations of the February 2001 CPAR regarding coverage and unification of the procurement legislation are addressed by the new Public Procurement Law.** The new PPL—referred to as the Federal Law of July 21, 2005, No. 94-FL “On placement of Orders for the Provision of Goods, Works, and Services for Federal, Regional, and Municipal Needs”—is a step toward unifying dispersed legislation, creating a common economic space, and covering procurement at all levels of public administration. It opens access to bidding processes, fosters transparency through the use of information technologies, and attempts to provide mechanisms of control and for review of complaints.

44. **The new PPL does not cover the following areas:** procurement contracts below the threshold set by the Central Bank of the Russian Federation for cash transactions (currently Rub60,000), and defense contracts and contracts for the state reserve, for which procurement regulations may be established in other federal statutes. Contracts may be awarded directly if related to the activity of “natural monopolies” defined in the Federal Law “On Natural Monopolies” No. 147-FL of August 17, 1995. Selection of concessionaires is regulated by provisions of the “Russian Federation Federal Law on Concession Agreements No. 115-FL,” which contains an elaborate procurement section and was passed on July 21, 2005, with the new PPL.

45. **Foreign bidders, previously banned by law from bidding on public procurement contracts, are now allowed to bid,** though the new PPL establishes a “national regime” for seeking reciprocity of access conditions to foreign and Russian markets. Procurement rules agreed to by Russia in international treaties are given clearly spelled out precedence over possibly conflicting regulations in the PPL.

46. **The process of debating and passing the new PPL has been long and complex.** Although the first draft was prepared several years ago, approval was ultimately somewhat rushed, exemplifying how procurement reform in Russia has tended to be reactive and without a comprehensive strategy. This may explain, in part, many of the shortcomings of the procurement regulatory framework described below.

47. **The new PPL has many shortcomings, some of them substantial.** The initial draft of the Law was meant to build on national and international experience of good procurement practices. However, it is apparent that after three readings in the Parliament the final bill included substantial modifications that did not reflect the professional views of procurement experts, both academics and practitioners.

48. **A rushed effort to fight corruption and eliminate bad procurement practices has led to emphasis on control and to an excessive simplification of methods, sometimes in detriment of quality.** While procurement performance in Russia deteriorated in recent years, and urgent and drastic corrective measures were required to counteract a trend that was undermining credibility of the whole purchasing system, the problem was not due to inherently flawed legal provisions. Procurement regulations in Russia had progressively improved during the previous decade. However, the institutional regime of public procurement was inadequate, and good legislative provisions went unenforced. Monitoring and controls were weak or absent.

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49. **As a result, some features of the previous legislation, because they were not properly enforced, became discredited as faulty when they were, in fact, potentially good.** The new PPL has excluded some of those positive features and is seen as an anticorruption and control instrument rather than as a means of promoting economic aspects of procurement such as efficiency, quality and fair competition. As reported by government officials, the new legislation is a “law of direct action” and a “revolutionary law” intended to fight corruption. As a result, the perception that there is no inherent tension between good procurement practices and strict control may sometimes be lost.

50. **The law does not define precisely any default procurement method, but emphasizes reverse auctions, making them the de facto one of the preferred method of procurement.** This runs counter to the trend of international best practices that promote open competitive bidding using well-defined qualification and evaluation criteria as the default. A traditional reverse auction is to be used for large contracts (starting at 60,000 rubles and without upper limit) when no other bid evaluation criterion is specified other than price. This, coupled with an absence of prequalification, provides for a very traditional method of awarding contracts (public auctions), but without the normal safeguards or circumstantial justifications of traditional auction (that is, a local auction conducted for municipal works) commonly found in procurement regulations. Preference for open competitive bidding does not preclude that auctions, carried out electronically, for certain goods, and with certain regulations of size, quality and participation parameters may be a desirable procurement method.

51. **The law does not provide qualification requirements.** This is a very substantial shortcoming. The prerequisites for eligibility and access to participation in bidding processes set forth in Articles 11 and 12 of the new PPL are not related to the experience or financial and technical capacity of the participants. Prequalification is provided only in the case of request for quotations (a method valid only within limits approximately equivalent to between US\$3,000 and US\$9,000) in emergency situations. From the text of the Law it is unclear whether such prequalification refers to a preliminary generic prequalification or is limited to specific contracts. A very specific provision mandates that criteria for participation other than those set forth in the Law are unacceptable. Noteworthy that the proposed changes to the current legislation under discussion in the State Duma include modifications in the area of qualification criteria. And even though these modifications do not allow for introduction of qualification criteria based on the characteristics of contracts, they propose expanding application of a qualification criterion to a quite large group of products.

52. **The system is based on the assumption that the prerequisites of Articles 11 and 12 and the possession of a license by the bidder are sufficient to ascertain qualified bidders.** The lack of qualification criteria opens the possibility that contracts will be awarded to unqualified bidders. At the same time the Law places the burden on the client rather than the bidder to demonstrate compliance. For bidders registered abroad, enforcement of this prerequisite would seem to be very difficult. Combined with the lack of clarity in applicable standards as old requirements become outdated and new technical regulations for security and quality have yet to be introduced, this creates serious concern about the quality of the procured goods, works, and services.

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53. **Finally, the process of obtaining licenses is slow and cumbersome,** reducing the pool of potential bidders at any given time and making it harder to expand the pool.
54. **The choice of procurement methods in the new PPL remains limited.** It provides only for (a) auction (traditional reverse), open or closed, with open auctions to be carried out in the physical presence of participants or, for certain contracts, electronically or in combination with physical attendance while closed auctions may be carried out only with participants physically present; (b) electronic auction (c) competitive bidding, open or closed; (d) request for quotations; (e) single-source (or direct) contracting; and (f) procurement of commodities. Currently the MEDT is proposing the introduction of new methods of procurement, including competitions in the sector of art and literature (methods and criteria currently stipulated for bid evaluation do not recognize specificity of services in the field of literature and art, for example, in selection of film scenarios);
55. **The new PPL does not provide specific methods for selection of consultants or service providers to meet needs involving complex technical solutions.** There is no provision for two-stage procurement. Given current trends in the economic development of the country, intellectual services requiring complex contracts are expected to make up an increasing share in public procurement. The inability to meet this demand flexibly constitutes a significant impediment to effective selection of key participants in government contracts. There is a mention in Article 20 para 5 to some element of two-stage bidding, but as an option, out of the bidding process, for bidders to submit information on offered goods, works and services.
56. **Introduction of the “initial price” is a return to prices prescribed by the state.** This works against the common principle of the market economy whereby prices are determined by competition and market conditions. This effect is further aggravated by the provision of sanctions beyond forfeiture of the bid security by a winning bidder that does not sign the contract (including first- or second-lowest bidders for competitive bidding or a sole bidder under request of quotations), creating disincentives to participate in bidding in the first place.
57. **This Report does not pretend to provide an exhaustive analysis of the new PPL.** More detailed comments on the new Law are in Annex A, “Comments on Russia’s New Public Procurement Law No. 94-FL dated July 21, 2005.”
58. **At the time of drafting this Report, the Ministry of Economic Development of the Russian Federation was involved in the huge task of preparing secondary legislation, administrative instructions, and modifications to other laws to make implementation of the new PPL possible.** These activities are reflected in the “Plan of Activities for Implementation of the Provisions of the Federal Law ‘On placement of Orders for the Provision of Goods, Works, and Services for Federal, Regional, and Municipal Needs’ and for increasing effectiveness of Implementation of Procurement of Production for State Needs” of December 8, 2005.
59. **Nonetheless, investing the effort would help prevent the common practice of contracting authorities and bidders of using procedural shortcomings or overly prescriptive regulations as loopholes to avoid compliance.** The introduction of information technology (IT) in procurement currently under way in the Russian Federation will make it substantially easier to create a system for monitoring and analyzing government purchasing operations. Evidently the effort required increases
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when going to the regional and municipal levels, where the presence of qualified specialists and material resources is less than at federal level.

**60. It is estimated that passing of additional 21 legislative acts or administrative regulations is required to fully introduce and harmonize the new PPL.** To the date the status of this task is as follows: 1) acts securing implementation of the PPL in part pertaining to organizational and technical support of procurement (four acts, all approved); 2) acts establishing requirements to information systems and their operation procedures (six acts, two already under approval); 3) Acts supporting implementation of the PPL by a detailed description of procurement methods and establishing preferences/restrictions regarding separate categories of bidders (nine acts, two already approved and four under approval); 4) acts amending or canceling some regulatory legal acts of the RF President and RF Government because of adoption of the PPL (two acts, one already approved).

**61. Procurement issues are currently attracting the attention of the government, media, and society as never before.** The report “On the Measures to Improve Efficiency in the Procurement of Goods, Works, and Services for Public Needs,” submitted to the government by the Ministry of Economic Development and Trade on June 21, 2005, is the first official attempt to elaborate a comprehensive strategic approach to procurement reform in Russia. The concepts formulated in that report need further elaboration to address important areas such as improvement of the business environment and promotion of competition, simplification and streamlining of business processes, legislative harmonization, development of public procurement institutions, development of human resources, introduction of advanced technologies, and monitoring and analysis.

**62. While a few shortcomings of the new PPL could be corrected through secondary legislation, the conceptual problems pointed out above would likely require further consideration and action by the relevant Russian authorities,** including substantial revisions of the Law and detailed monitoring and analysis of the implementation of the new PPL. In this context assistance from the European Union in support of Institutional, Legal, and Administrative Reform in Russia, including a grant for €3 million to monitor public procurement reform, improve legislation, and train Russian procurement authorities, is a valuable contribution. This consultancy started in June 2006, and the inception report is at the stage of completion.

**63. Recommendations:**

- Ø **A thorough revision of the current procurement legislation** is needed to eliminate the above mentioned shortcomings in the new PPL and to align it with internationally accepted best practices to improve procedural efficiency in purchasing.
  - Ø In a country with such diversity as Russia the PPL should establish the fundamental principles governing the procurement system, and should not pretend to address every situation in every type of procurement. Details have to be left to secondary legislation but one of the principles to adhere to is that clear criteria ensuring the qualification based on the size and complexity of procured contracts, should be introduced.
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- Ø **Open competitive bidding should become** the preferred procurement method, supported by introduction and enforcement of objective and clearly disclosed and differentiated qualification and evaluation criteria. Contracts should be awarded to the qualified bidder who submits the responsive and lowest-evaluated bid.
- Ø Provision for adequate methods for selection of consultants is an urgent need and should be addressed as soon as possible.
- Ø **While emphasizing the use of control mechanisms**, it is essential to balance with this the need to promote competition and to assure quality, particularly when procuring consulting services and contracts for complex assignments. Fair treatment of bidder rights is essential.
- Ø **In order to fully achieve the savings and benefits from an advanced procurement system**, a clear and well-defined strategy is needed. Procurement reform should contribute to a wider governance improvement and anticorruption program.
- Ø **Effective data collection, as well as monitoring and analysis mechanisms to evaluate the impact of the new procurement policy and practices, should be urgently put in place.** While fully taking into account Russia's conditions and experience, consideration of some experiences by European Union countries and of the features developed by the OECD for monitoring procurement systems may be of help.

## II. Institutional Framework

### *The Need to Build Strong Institutions*

#### 64. **The February 2001 CPAR noted the following:**

The proposed new federal procurement law, whilst much needed, will have the necessary impact only if clear enforcement mechanisms are in place. At the federal level, the crucial functions of monitoring, overseeing and enforcing the procurement legislation have, since November 2000, been performed by the Pricing and State Procurement Department of the Ministry of Economic Development and Trade (MEDT), which the government nominated as the "federal executive body" under law 97-FZ, following the abolition of the Ministry of Economy. This report makes a number of recommendations for strengthening the institutional arrangements for public procurement.

#### 65. **The February 2001 Russia CPAR contained several key recommendations** regarding institutional development:

The Ministry of Economic Development and Trade has the authority, within the Russian government, to ensure enforcement of the public procurement legislation, at least at the federal level. Therefore, its appointment as the federal executive body is an appropriate step at this early stage in the development of the regulatory system for public procurement. However, over the medium to long term, it would be preferable to ensure the independence of the body which exercises these crucial monitoring and oversight functions, even if the government chooses to retain the policy-making function for public procurement within one of its line ministries. Over the longer term, therefore, this will require the creation of a new, autonomous federal procurement body, reporting directly to government and free of influence from line ministries.

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A further justification for the creation of a new federal body is that the crucial task of performing administrative review of protests, registered by bidders against the decisions of procuring entities, is best performed by a body which enjoys autonomy from government. Complemented by a stronger challenge mechanism in the legislation, this represents an essential means of improving enforcement, by holding procuring entities accountable for their actions and by involving the private sector in monitoring the application of the laws.

**66. Institutionally, based on the new PPL the responsibility for policy implementation aspects of procurement is assigned to the Ministry of Economic Development and Trade and the responsibility for control of procurement rests with the Federal Antimonopoly Service.** These agencies face large hurdles in carrying out their responsibilities.

**67. The MEDT team, comprising a total of 16 persons at the time of drafting this report, seems significantly understaffed,** given the volume of work in the huge task of introducing the new procurement legislation, and then subsequently providing sustained methodological guidance to the entire country. A very substantial strengthening of the team, including the hiring of consultants, would be needed to carry out these tasks in full. This need becomes more acute taking into account the developing practice of some prior review of procurement packages at the federal level by the MEDT team.

**68. The Federal Antimonopoly Service (FAS) seems in better shape.** It has 75 offices all over the country that have been handling enforcement of antimonopoly legislation and, occasionally, procurement issues. Although these resources give the FAS a leg up in carrying out procurement control functions, FAS's primary expertise is not related to procurement. Hence extensive training of staff is urgently needed to develop the knowledge and skills to carry out new duties.

**69. According to the PPL, procurement is carried out by the state organs at the federal or regional levels and by organs of self-government at the municipal level.** These state or municipal organs may further delegate procurement functions to authorized procurement bodies. A specialized organization to assist in procurement implementation may be hired on a competitive basis by the state or authorized organ.

**70. While most recommendations for procurement institutional building have been addressed in the new PPL, creating an independent Public Procurement Office or an independent Procurement Review Body were not included.** The agency charged with responsibility for the former, the Department of Government Procurement, remains a unit subordinated to the Ministry of Economic Development and Trade. The function of providing an independent review of procurement complaints (bid complains), as contemplated in the 2001 CPAR, has been delegated to the Federal Antimonopoly Service on top of its state procurement control functions, an arrangement that may lead to conflicts of interest.

**71. Recommendations:**

**Ø Now that the federal organs entrusted with the procurement, methodological, and control functions have been clearly defined, it is imperative to immediately provide them with the resources and expertise to carry out their functions.** Clearly both the MEDT and FAS are substantially understaffed or undertrained to carry out their new functions.

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Reaping savings from good procurement system requires adequate investment in human resources.

- Ø **A potential conflict of interest exists between FAS's state procurement control functions and its responsibility for reviewing bidder complaints. Even the appearance of a potential conflict of interest affects the perception of impartiality that is critical for this review function to be discharged successfully. At a minimum, these aspects should be closely monitored** to resolve any ambiguous situations that may arise. Moreover, legislative creation of an independent complaint review body should be considered.

### III. Procurement Practices

72. **The benefits of a competitive national public procurement system, based on fair, transparent, and open competition among national and foreign firms, cannot be overemphasized and have been recognized already by numerous countries.** Such rules and practices, if encouraged, will improve economy and efficiency in public purchasing and increase participation by both local and foreign bidders in public tenders for the good of the Russian economy. Conversely, protectionist procurement policies generally have been found to be detrimental to national economic interests. The loss from higher monetary costs and reduced return on investment, diversion of national resources to less-efficient industries, and the disincentive to efficiency in the national economy outweigh the benefits of discrimination.

73. **Before passage of the new PPL, public procurement in Russia had been characterized by a high level of protection from foreign bidders,** which severely restricted competition. Interregional trade within the Federation was also hindered by widespread discriminatory regulations and practices against bidders from outside the purchaser's own region. These restrictive measures, together with excessive use of uncompetitive procurement methods and widespread corruption, deprived the country of the full economic benefits of public funds and reduced the impact of public expenditure.

74. **The main recommendations about procurement practices in the February 2001 Russia CPAR included the following:**

- Ø Public procurement in the Russian Federation should be made more competitive by abolishing discriminatory provisions between regions and municipalities, relaxing limitations on the participation of foreign bidders and increasing the amount of procurement that is done by the most competitive methods.
  - Ø The government should step up its efforts to combat corruption in procurement by increasing transparency at all levels of the administration, improving access to information and strengthening legislative measures to identify and debar those who engage in fraudulent or corrupt practices related to procurement.
  - Ø Public scrutiny over procurement expenditures should be tightened by imposing stricter auditing requirements and by publishing audit results.
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75. Consolidated data on procurement practices for 2002–05 (with 2005 including only the first nine months) was obtained from the Ministry of Economic Development and Trade. MEDT’s report “On the Measures to Improve Efficiency in the Procurement of Goods, Works, and Services for Public Needs,” of June 21, 2005, and other public information on procurement practices were used as sources to analyze Russia’s procurement practices. Data from the report on the results of the first six months (year 2006) of application of the new PPL presented to the Government of the Russian Federation on September 28, 2006 by the Ministry of Economic Development and Trade also have been taken into account.

76. **Currently public procurement in Russia represents well above 30 percent of the expenditures of the federal, regional, and municipal budgets.** Compared to the year preceding the February 2001 CPAR, when about 22,000 public tenders were carried out, the number of tenders in 2004 exceeded 111,000. Meanwhile, savings from applying competitive tenders decreased between 2003 and 2004 from 8.6 percent to 5.32 percent, and the average number of participants per tenders fell from four to three. This was mainly due to violations of public procurement legislation on the books at the time, including deviations from such basic principles of competitive bidding as openness, transparency, and equal conditions for all participants. These principles were acknowledged in the law but the means for achieving them were insufficient.

77. **Prior to enactment of the new PPL, illegalities in procurement by contracting authorities and contractors were dually harmful.** They not only reduced the efficiency of public procurement, but often discredited good procurement regulations that were going unenforced.

78. **The effect was felt on confidence in the bidding process.** The average number of bid participants per contract procured at the federal level according to official statistics decreased from 4.2 in 2003 to 3.1 in 2004, a very unhealthy trend.

79. **Among the main violations of the former procurement legislation were the following:** limited access to information on bidding processes; limited time for preparation of bids; unfair preferences to certain bidders; no or unclear evaluation criteria; increased cases of restricted biddings awarded to the same contractor, whose qualification was determined discriminatorily based on the availability of licenses for certain works.

80. **Assessment of procurement practices under the new Public Procurement Law is still unclear.** At the time this report was being prepared, no systemic procurement monitoring or accumulation of meaningful data was available for analysis. Procurement practices in the Russian Federation also are expected to be substantially different from those described in the last CPAR or even from the situation envisioned in the draft legislation when that Report was completed.

81. **Although introduction of the new PPL has changed the ground rules dramatically, not enough time has elapsed and a system for procurement monitoring has yet to be established to generate meaningful data for analysis of how the law works in practice.** Given the high attention to procurement questions by the government and society, enforcement of the new legislation is expected to be much stricter than before. It is reported that in the first six months of 2006 the

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proportion of contracts procured through bidding increased almost by 8 %, and the proportion of contracts signed on the sole-source basis decreased by 9 %.

82. The major violations noted in the initial period of introduction of the new PPL are related to: failure to publish procurement notices on the official site; introduction of bid evaluation criteria not stipulated by the PPL; violation of the deadlines defined by the PPL (bid opening, bid evaluation, protocol signing and publication of information on procurement process outcomes), and demanding from bidders documents not established by the PPL.

83. **Foreign bidders, banned from bidding on public procurement in Russia under the previous legislation, are now allowed to compete for such contracts,** although the new PPL establishes a “national regime” that seeks reciprocity in conditions of access to foreign and Russian markets.

84. **The new PPL creates the conditions for elimination of discrimination and for the enforcement of transparent procurement practices** by covering all levels of state procurement, reconciling dispersed and contradictory legislation, introducing a system of control, promoting full transparency of the bidding process, and providing comprehensive auditing requirements.

85. **Nonetheless, further steps are needed.** More needs to be done to create proper procurement monitoring and develop the comprehensive analytical tools to resolve the procedural bottlenecks arising from some of the rigid procedural provisions in the Law. More also needs to be done to counteract efforts by contracting authorities and bidders to circumvent the law, a trend often exacerbated when procurement procedures become too prescriptive.

86. *Recommendations:*

- Ø **A thorough revision of the current procurement legislation is recommended** to eliminate the above and other shortcomings of the new Law and to align it with the internationally accepted good practices.
- Ø **Once the legislation has been revised, it should be strictly enforced** to create the necessary discipline among contracting authorities and bidders and to avoid loss of confidence in the procurement system, undermining its legitimacy. Although this Report insists on the need to revise the current legislation, existing provisions should be strictly enforced in the meantime as a better option to relaxing or eliminating controls.
- Ø **Effective data collection, monitoring, and analysis mechanisms to evaluate procurement policy and practice outcomes should be urgently put in place.** Regulations and procedures that do not bring the expected results in efficiency, economy, and transparency should be revised, and corrections should be introduced following the established legislative norms.

### *Procurement Planning*

87. **Deficient procurement planning has been a chronic problem of the public purchasing process in Russia.** Disconnects between procurement schedules

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established during planning and final approval of the state budget commonly cause implementation delays. Many state purchasers never prepare proper procurement plans, and if the plans are prepared they are not publicly advertised or even followed. The situation was aggravated by budgetary regulations that only allowed signing contracts with duration of one year or less.

88. **The new PPL is silent about procurement planning, or how procurement plans are to be published and implemented.** Nonetheless, proper regulation of purchase planning could create the legal basis for better enforcement of budgetary and procurement discipline at the macro and operative levels and provide potential bidders with better information to participate and maximize their business opportunities. Passage of the new PPL and revision of the Budget Code has introduced the possibility of signing construction contracts of up to three years, which is a very positive development. But this solution is still to be extended to contracts, other than for construction, requiring more than one year for implementation.

89. **Concerns about the need for determining annual estimates of the volumes of products to be procured for the state and municipal needs have been expressed by the MEDT.** While this is an important aspect having impact on the procurement planning it seems that this is an issue related not only to the procurement system, but rather requiring previous and timely processing and approval of the state and municipal budget at the different levels.

90. The plan by the Ministry of Economic Development and Trade for implementation of the new PPL establishes that the matrix sample form (procurement plan) for procurement of products for state needs shall be approved. Federal executive authorities and other chief administrators of budgeted federal funds are required to prepare annual matrixes for purchasing products for state needs in accordance with the approved sample form and must publish quarterly updated versions on the Internet. This practice has been in force since 2005.

91. **Recommendations:**

- Ø **Secondary legislative regulations mandating early procurement planning,** minimum information requirements for procurement plans, and coordination between the budgeting and procurement planning processes should be introduced without delay.
- Ø **Current work on harmonizing budgetary and procurement legislation and planning processes should be continued** in order to timely establish the amounts and types of procurement to be planned, to ensure proper allocation of funds, and to allow for early starting of implementation of procurement plans during the fiscal year.

### ***Procurement Methods***

92. As cited in the February 2001 CPAR, passage of the 1999 Federal Procurement Law, at least at the federal government level, constricted the legal leeway available to procuring entities. This was especially noticeable when compared to the provisions in Presidential Decree 305 of April 8, 1997, which authorized a much wider range of procurement methods, including tendering, open tendering, restricted tendering, two-stage tendering, requests for quotations, and single-source

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procurement. The 1999 Federal Procurement Law, on the other hand, provided only for open tendering, two-stage tendering, and limited tendering.

93. **The procurement methods available in the new Public Procurement Law are limited.** It provides only for (a) auction (traditional reverse), open or closed, with open auctions to be carried out in the physical presence of participants or, for certain contracts, electronically or in combination with physical attendance while closed auctions may be carried out only with participants physically present; (b) electronic auction (c) competitive bidding, open or closed; (d) request for quotations; (e) single-source (or direct) contracting; and (f) procurement of commodities. Currently the MEDT is proposing the introduction of new methods of procurement, including competitions in the sector of art and literature (methods and criteria currently stipulated for bid evaluation do not recognize specificity of services in the field of literature and art, for example, in selection of film scenarios);

94. **The new legislation does not address the selection of consultants,** except for a passing reference in Article 28; and selection of consulting services are expected to conform to the same prescriptions set out for procurement of goods or works. None of the above methods includes two-stage procedures for procurement of complex contracts. The new PPL does not provide for qualification of bidders. Prequalification is envisioned only in the case of a request for quotations in an emergency situation; from the text of the Law it is unclear whether this prequalification is generic; applies to a list of goods, works, or services; or applies only to specific contracts. Noteworthy that this substantial shortcoming of the new PPL received no mention in the report for the first six months of implementation of the new PPL.

95. As discussed in commentary on the legal framework, the Law does not appear to define any “default” procurement method, but the emphasis placed on reverse auctions suggests that auctions may be one of the preferred methods.

96. **Recommendations:**

Ø **As part of the revision of the legislation wider option of procurement methods should be introduced,** particularly to allow for proper procurement of complex contracts and selection of consultants. The later would require substantial additions to the current PPL.

Ø **Prequalification for large and complex contracts should be introduced.** For contracts of smaller size and complexity provisions for postqualification should be introduced.


### *Financial Thresholds per Procurement Method*


97. **Current Financial thresholds per procurement method in the new PPL are shown in the following table:**


**Figure 1. Threshold Values for Application of Contract Award Methods**

	Shopping	Shopping in the territory of foreign state, where the Awarding Authority is	Shopping for the purpose of humanitarian aid or emergency recovery	Single-source direct contracting	Tender	Auction	Electronic auction	At commodity exchanges
Under 60,000 rubles*	Federal Law of July 21, 2005, No 94-FZ “On Award of Contracts for the Supply of Goods, Performance of Works, Provision of Services for National and Municipal Needs” is not applicable.							
60,000*–250,000 rubles	<b>Part 2, Article 42</b>	<b>Part 5, Article 42</b>	<b>Part 1, Article 53</b>	<b>Article 55</b>	<b>Part 2, Article 10</b>	<b>Part 2, Article 10</b> <b>Part 4, Article 10</b>	<b>Part 2 Article 10</b> <b>Part 3 Article 32</b>	
250,000–500,000 rubles								
500,000–5,000,000 rubles								
5,000,000 roubles and up								<b>Part 1 Article 56</b>

\* As of December 28, 2005 (regulated by the Direction of the Central Bank of Russia No. 1050-U, November 14, 2001).

 When national or municipal contract amounts to the limit, this contract award method *may be* applied.

 When national or municipal contract amounts to the limit, this contract award method is *compulsory*.

 When national or municipal contract amounts to the limit and the production is in the List approved by the government of Russian Federation, this contract award method is *compulsory*.

©Andrei Khramkin “Awarding of Public Contracts in a New Fashion”

98. Below the threshold established by the Central Bank of Russia for cash transactions (currently Rub60,000) the PPL does not apply. Above that the financial thresholds per procurement method are as follows: (a) **auction**, open or closed (from Rub60,000 and without upper limit); (b) **Electronic auction** (from Rub60,000 to Rub500,000); (c) **Competitive bidding**, open or closed (from about Rub60,000 and without upper limit); (d) **Request for quotations** or shopping (from Rub60,000 to Rub250,000 as regular procedure, and from Rub60,000 and without upper limit in emergency situations as well as when the purchaser and its activity are on the territory of foreign state); (e) **Single-source** (or direct) contracting (from Rub 60,000 and without upper limit); and (f) **Procurement of commodities** (from Rub5 million and without upper limit).

99. **As can be inferred from the listed amounts, the established thresholds take into account uniform application of the PPL to the federal, regional, and municipal levels, where the size of the contracts may vary substantially.** While financial thresholds influence the selection of procurement method in the cases of quotations, electronic auction, and procurement of commodities, for traditional auction and competitive tendering there are practically no financial thresholds. However, auctions are applicable only for those goods, works, and services listed specifically by the government of the Russian Federation.

100. **Probably the threshold allowed for request of quotations may be appropriate for the size of procured contracts at the municipal level, however such a limited threshold seems doubtfully sufficient for the regional or federal level.** For emergency situations there is no limitation on the threshold for quotations. Emergency procurement is not envisioned under other procurement methods. On the other hand, advertising and disclosing requisites for request of quotations may be too costly and cumbersome given the low values procured. In the report for the first six months of implementation of the new PPL possibility of consideration of a new form of request for quotations up to Rub500,000 is mentioned.

101. **Currently there is no meaningful statistical data on practices of use of the methods allowed under the new PPL and how adequate these are to the needs of the procuring entities.** There is only anecdotal evidence about excessive use of small contracts, below Rub60,000 in order to avoid the law, or for example, complaints by the media such as the one by a state theatre protesting the need of carrying out a tender to hire the cast for a performance. The Plenary Session of the Supreme Court of Arbitration of the RF passed a Resolution (June 22, 2006, No. 24) that that budgetary institutions when procuring for their own needs, if the contract amounts does not exceed Rub200,000 may skip the procurement procedures established by the Law and apply the general rules set by the Civil Code of the Russian Federation. This ruling is currently disputed by the MEDT, which considers that budgetary institutions have neither its own funds, nor its own needs, other than the state needs.

102. **Recommendations:**

- Ø **Use of currently established financial thresholds per procurement method should be closely monitored to determine whether these fulfill the needs of the most common procurement processes at all levels.** In particular the limits for request of quotations should be monitored to determine whether it is
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necessary to increase them, with differentiation depending on the level (federal, regional, municipal).

- Ø **Practice of packaging procurement into several small lots below Rub 60,000 should be stopped.**
- Ø **Reasonable changes improving the PPL should be allowed, but only after careful consideration.** Care should be taken that the spirit and letter of the PPL do not be diluted by these changes.

### *Use of Standard Bidding Documents*

103. **Historically, legal texts in Russia have differed in the quality of their provisions for required minimum contents of bidding documents.** The most comprehensive statement was found in the Presidential Decree 305 Regulations. By contrast, the 1999 Federal Procurement Law omitted several requirements that would promote transparency (bid and performance securities, official to be contacted for clarification of the documents, bid protest procedures, conference of bidders, site visit), thus increasing the likelihood of deficient tendering proceedings.

104. **The absence of methodological guidance for the preparation of standard bidding documents leads to very different practices,** from a few procuring entities having standard bidding documents of acceptable quality to the complete absence of any documents in others. The lack of clarity in applicable criteria in comparison and evaluation of bids has been a chronic problem, as has the deliberate omission of contract terms from bidding documents, which allows for negotiation of contract terms after bid opening or award.

- Ø At some point under the previous legislation, the Ministry of Economic Development and Trade prepared a set of standard bidding documents, but were never used generally.
- Ø Due to lack of clear determination and enforcement of the qualification criteria to be included in bidding documents and the lack of regulations on how to prepare specifications, many cases of inappropriate practices occurred in which criteria and specifications were tailored to be met only by certain bidders.
- Ø In many instances, bidding documents for construction works included only the estimated volume of works with no detailed design documentation, which led to overpriced bids reflecting the risk of increased quantities during implementation or to amendments for price increases, which in turn led to corrupt practices in contract administration.

105. **The new PPL does not provide for introduction of standard bidding documents.** However, the law specifies the mandatory requisites of tender documentation contents for each procurement method. These provisions are very detailed and in substance create conditions for development of quality standard bidding documents at all levels covered by the Law. However, it is to be expected that bidding documents would also reflect the shortcomings of the law noted above.

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106. The plan prepared by the Ministry of Economic Development and Trade for implementation of the new PPL included an activity entitled “preparation of the MEDT order on approval of standard package of competitive bidding /auction documentation, including standard forms of state contracts for procurement of goods, works, and services for state needs” with a due date in December 2005. As of the date of this report, we are not aware that such documents exist.

107. **Recommendations:**

- Ø Standard bidding documents matching the procurement methods established by the new PPL should be developed.

**Evaluation of Bids**

108. **According to the February 2001 CPAR a number of features underlying bid evaluation needed to be addressed in subsequent development of the procurement system. These included the following:**

- Ø Vague and unclear formulation of technical evaluation criteria, with the 1999 Federal Procurement Law providing for award to the bid that offers the “best conditions”
- Ø Lack of clarity about the principle that only those evaluation criteria which have been predisclosed in the bidding documents, along with their relative weight, may be applied in the evaluation and comparison of bids
- Ø A narrow approach precluding the acceptance of bids that contain nonmaterial deviations but otherwise conform materially to the bidding documents
- Ø The practice of combining the technical evaluation of the bid with the evaluation of the bidder’s qualifications
- Ø The practice of truncated bid opening and evaluation procedures, in which bid evaluation and selection of the winning bid are done at the time of bid opening, thus precluding any thorough, consistent evaluation of the bids and compromising the confidentiality of the bid evaluation process.

109. **Those problems in bid evaluation persisted during the years that followed the 2001 Report.** No standard bidding documents were used, and evaluation criteria frequently were absent from procurement documentation, or if included, these criteria were unclear or not adhered to during evaluation.

110. In the absence of clear, monetarily quantifiable evaluation criteria, a point system was used for bid evaluation, even for simple goods contracts in which the price should be the main criterion. Technical evaluation of bids continued to be combined with evaluation of qualification criteria. Furthermore, the evaluation and qualification criteria in many cases were tailored to a specific bidder.

111. **The new PPL attempts to address these concerns by establishing a small number of formal requirements for participation in bidding.** When the contract is procured through competitive tender, bidders shall meet the following mandatory specifications:

- Ø Bidders shall meet terms formulated in the legislation of the Russian Federation for suppliers of goods, executors of tendered works, or providers of services.
- Ø A bidder, which is a legal entity, shall not be under liquidation; or a bidder, which is a legal entity or an individual entrepreneur, shall not be subject to bankruptcy proceedings.
- Ø A bidder's operation shall not be suspended pursuant to the Administrative Delinquency Code of the Russian Federation as of the date of bid/auction-bid review.
- Ø A bidder shall not be in arrears with payment of any accrued taxes, charges, and other mandatory contributions to any budget or state extra-budgetary fund for the last calendar year in excess of 25 percent of the balance sheet value of the bidder's assets as reflected in the financial statements for the last completed reporting period. A bidder shall be considered compliant with the above requirement if it has filed a complaint against such arrears pursuant to the legislation of the Russian Federation and no decision is made on the complaint as of the date of bid/auction-bid review.

112. **For tender-based procurement, the Client or the Designated Authority may also formulate the following requirements to bidders:**

- Ø Bidders shall have exclusive intellectual property rights if the Client obtains intellectual property rights in connection with execution of a federal, regional, or municipal contract.
- Ø Bidders shall not be included in the List of Mala Fide Suppliers referred to in the PPL.
- Ø The government of the Russian Federation may put forward the following additional requirements to bidders when procuring contracts for goods, works, or services for national defense or national security purposes: bidders shall have adequate production capacities, processing equipment, and financial and labor resources to produce goods, perform works, or provide services that are put up for bid.
- Ø The government of the Russian Federation, the Client, or the Designated Authority shall not put forward any requirements to bidders other than those described in the three bulleted items above.

113. **Noteworthy is the absence of specific qualification criteria about the size and complexity of a particular procured contract,** such as the bidder's experience and technical and financial capacity. Given Russia's current situation, in which abuse

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of qualification criteria has become common, mostly due to the absence of controls, this could look like a radical solution. However, this arrangement most likely will be counterproductive, opening the door for participation in bidding to unqualified bidders. The assumption that the licensing system could ensure qualified participants may not prove correct at times when some aspects related to the functioning of this system, including corruption and inefficiency, are becoming object of criticism.

114. It is not clear why the PPL recognizes the need for qualification criteria such as “adequate production capacities, processing equipment, and financial and labor resources to produce goods, perform works, or provide services” in contract procurement for national defense or national security but not for other contracts.

115. The following evaluation criteria are set forth in the new PPL:

- Ø Functional (consumer) characteristics or quality of the goods or quality of the works or services
- Ø Goods operating costs
- Ø Goods maintenance costs
- Ø Deadline (period) for the delivery of goods, performance of works, or provision of services
- Ø Quality guarantee period for the goods, works, or services
- Ø The scope of quality guarantees for the goods, works, or services
- Ø The contract price
- Ø Other criteria consistent with the procurement legislation of the Russian Federation.

116. The PPL establishes that the Bidding Committee may also use a bid evaluation criterion such as bidders’ qualifications to identify the best contract terms and conditions in proposals for research, design, or technological works based on the bidding documents, provided it is stipulated in the Open Bidding Notice, Invitation to Bid in closed bidding, and bidding documents. This provision, while acknowledging the need for qualification for complex contracts, still mixes qualification and evaluation criteria.

117. The PPL establishes that bid evaluation criteria other than those specified above shall not be used.

118. **Stipulating that evaluation is carried out “to identify the best terms and conditions of the Federal, Regional or Municipal Contract” still does not guarantee the contract will be awarded to the qualified bidder who submitted a responsive and lowest evaluated bid.**

119. Procedurally a 10-day period is established by the PPL for carrying out preliminary reviews of bids and a 10-day period for evaluation. However, for large and complex contracts these time standards may prove to be unachievable, as well as the 5-day period for handling any complains.

120. ***Recommendations:***

- Ø **Qualification and evaluation processes should be separated clearly.**
  - Ø **Qualification criteria should be established and expressed through objectively quantified requirements about the size and complexity of the specific contract to be procured.**
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- Ø **The current period allocated for evaluation and processing of complains is too short for all contingencies, and sufficient time should be allowed for evaluating bids and processing complains .**
- Ø **The award should be made to the qualified bidder who submitted a substantially responsive to the bidding documents bid, and who has offered the lowest evaluated cost.**

### *Securities*

121. Provisions on bid securities were found in some implementing regulations for the previous procurement law. Typically these provisions imposed a bid security requirement in tendering proceedings and indicated the acceptable forms of security, the permissible range in amount, and the circumstances in which the deposit must be returned to the bidder (see, for example, Presidential Decree 305 Regulations and its progeny at the regional level). Bid securities were not required under the 1999 Federal Procurement Law. A factor driving these provisions may be the post-August 1998 illiquidity of the Russian banking sector, which has made commercial credit scarce and expensive for bidders.

122. **The new PPL reestablishes the provision of bid security as an option, provided that it has been specified in the procurement notice and the bidding documents,** and does not exceed 5 percent of the initial contract price. Even though this percentage is established as a ceiling, procurement authorities may well try to apply it to all tenders, which would impose an extremely onerous burden on bidders.

123. *Recommendations.*

- Ø The amount of bid security should be revised in order to lower the burden on bidders.

### *Collection of Procurement Data*

124. **The highest previous standard for procurement recordkeeping was set by Presidential Decree 305, which defined a fairly comprehensive requirement to record and maintain all essential information about a procurement proceeding.** A somewhat lower standard was set later by the 1999 Federal Procurement Law. Neither the Presidential Decree 305 Regulations nor the 1999 Federal Procurement Law mentioned any archival requirements for procurement documents. Such requirements existed in other areas of law, with the minimum period for retention varying from 5 to 75 years.

125. **The new PPL promotes high standards of information disclosure and recordkeeping.** It establishes that protocols and minutes prepared during the bidding process, bids, bidding documents, amendments and clarifications to the bidding documents, and audio records of the bid/electronic-bid opening shall be kept by the Client or Designated Authority for at least three years. The same applies to protocols and minutes prepared during auctioning, including auction bids, auction documents,

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amendments and clarifications to auction documents, and audiotapes of the auction process. Currently the requirement to publish protocols in official printed publications has been eliminated because these are posted in the official sites.

126. **The current application of information technology to the advertisement and implementation of procurement processes and the move toward introduction of systematic electronic procurement in Russia create conditions for fully recording and processing procurement data in the near future.** However, some provisions, such as disclosure of participants' names in each evaluation and of evaluation commission protocols, seem excessive and could expose commission members to pressures and risk of retaliation from bidders, while others threaten disclosure of bidders' classified business information.

127. **During preparation of this report the Ministry of Economic Development and Trade was compiling a Federal Unified Register of Public Procurement and Contracts,** a tool intended not only for recordkeeping, but also for analyzing procurement system performance, including planning and efficiency, to make informed decisions about procedural reform.

128. *Recommendations:*

- Ø The volume of disclosed information should be revised leaving for publication only essential data on procurement process and its outcome. Care should be exercised in order not to disclose confidential business information given by the participants, as well as on the composition of the evaluation commissions in order to avoid possible attempts of influence on their members. More data could be stored and secured under recordkeeping regulations, and made publicly available only on request.

### *Capacity Building*

129. **The Russian Federation faces an enormous challenge in training thousands of public officials in procurement and in raising the standing of procurement operations within the public sector.**

130. The February 2001 CPAR made the following key recommendations for capacity building:

- Ø “Because it is essential that all current and future training initiatives should take place within a well planned, comprehensive framework, this report recommends the development of a national training strategy for procurement (see Section 3.3, page 18). Such a strategy should build on the achievements of the Public Procurement Institute to date and should take as its central objective the creation of a training system which is sustainable over the long term.
  - Ø “To promote the development of a cadre of procurement specialists in the public service and to attract high-caliber staff into the function, the government should mainstream the procurement function by adding procurement, as a profession in its own right, to the Federal Roster of Professions.
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- Ø “In order to ensure that critical procurements are handled by officials who are appropriately qualified and accredited to undertake them, an accreditation system for public procurement officers should also be developed.”

131. The training system for procurement specialists in Russia started in 1997. Currently it comprises 24 centers geared to different jurisdictional levels throughout the country. The most important federal components are the Institute of State Procurement of RAGS and the Institute of Procurement named after Soloviev, Higher School of Economics, which has trained some 12,000 specialists in public procurement over the last eight years. An important contribution to development of public procurement theory is made by the MEDT’s Institute of Macroeconomic Analysis.

132. **Although the various centers have trained thousands of government officials, including many who became procurement professionals, the country faces a dual challenge in staffing.** First, administrative reforms have moved many of these trained officials to nonprocurement positions. Second, the new PPL differs so substantially from previous legislation that procurement officials need retraining to carry out their functions. Even if the proposed MEDT program for improving preparation of procurement specialists is carried out promptly and diligently, it would probably take years to restore staffing expertise to the level that existed before the administrative reforms and the new PPL. Among the acts related to the new PPL recently passed there is one to cancel the RF Government resolution on mandatory training of procurement specialists. This seems to be caused by the need of implementing the PPL while there are not trained specialist.

133. **The Chamber of Commerce and Industry has 173 local centers in Russia, which have been offered to the government for use as training facilities for procurement staff.** Its existing learning facilities make the Chamber of Commerce & Industry a potential resource for raising awareness about e-GP and building capacity among small- and medium-size businesses on how to compete for procurement opportunities and prepare bids that meet the requirements of the new PPL.

134. *Recommendations:*

- Ø **A coherent and comprehensive strategy should be developed to supply the human resources needed for managing and implementing public procurement.** The leading procurement institutes should be entrusted with this task. Requisites for training and probably certification of procurement specialists should be introduced as soon as possible.
  - Ø **Procurement subject matter should not be confined to training courses,** but its basics should be included in the curricula of higher education for economic, business, and engineering. Introduction of procurement as an independent specialty in the register of professions and as a major in higher education should be duly considered.
  - Ø **Training for private businesses, particularly small- and medium-size ones, should be organized to help them identify procurement opportunities and**
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meet the standards under the new Law for participating in bidding for state contracts.

### *Procurement Economy and Efficiency*

135. **Although detailed statistical data and even a methodology for evaluating the performance of public purchasing is lacking, official reports show that the lack of enforcement of and disregard for good procurement practices adversely affected the economy and efficiency of public procurement operations, particularly in the three or four years preceding the new PPL.** It is noted that cost savings from competitive bidding decreased from 8.6 percent in 2003 to 5.32 percent in 2004.

136. **The Ministry of Economic Development and Trade has stressed the need to develop the methodology and administrative means for calculating public procurement performance,** but the absence of a workable mechanism for evaluating efficiency and economy in the system at present and the failure of the new PPL to include provisions for collecting such data makes it impossible to assess how the new procurement regulations are affecting the bottom line. The MEDT's plan for "Development of methodological recommendations for assessment of economic efficiency of procurement of products for state needs" will help fill this gap after it is completed at year's 2006 end.

137. **Recommendations:**

- Ø **Effective data collection, as well as monitoring and analysis mechanisms to evaluate the impact of the new procurement policy and practices, should be urgently put in place.**

### *Advertising Procurement Opportunities and Publishing Results*

138. **Advertising procurement opportunities was one of the weakest aspects in Russian procurement regulations and practices prior to the new PPL.** The new legislation mandates publication notices of all procurement processes on a Web site (federal, regional, or municipal) and in hard copy. For municipalities without their own Web site, notices are posted on the Web site of the region. The federal site contains links to all the regions, each of which in turn contains links to its municipalities. Placement of notices and access to them is free of charge.

## **IV. Procurement System Integrity**

### *Anticorruption Legislation and Other Initiatives Influencing the Procurement Environment*

139. **The World Bank Report 36157-RU "Administrative and Regulatory Reform in Russia: Addressing Potential Sources of Corruption,"** was released on

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**December 1, 2005. It gives a panoramic view of the current situation and of government anticorruption actions.**

140. **Even though the Russian government is seeking to improve governance, instituting administrative reform, judicial reform, and an anticorruption program this aspects still pose very significant challenges.** After declining during 1999-2002 perception of corruption in Russia has been rising. If the number of businesses in the World Bank/EBRD BEEPS survey citing corruption as an obstacle to their business declined notably between 1999 to 2002 (from 51percent to 29 percent), this number increased again to 39 percent in 2005. This stands in contrast to Eastern Europe and the former Soviet Union as a whole, where continued progress was documented

141. **The level of unofficial payments has risen significantly over time and in comparison with other countries.** The areas most affected include the following: government contracting, business licensing and contracts, and fire safety and building inspections. Unofficial payments when dealing with taxes and tax collection are reported frequently, almost as often as in other CIS countries. These areas thus appear to be key impediments to business in Russia.

142. **Paradoxically, the increase in corruption is taking place when legislative and regulatory anticorruption measures are also on the rise.** One explanation comes from the findings of the OECD Review of Regulatory Reform in Russia for 2005, which revealed that the complexity of the system undermines effective implementation of laws and regulations. The legal code is so prescriptive and detailed that users get confused about compliance in varied circumstances, making it possible for public officials to engage in corruption through discretionary enforcement of regulatory policy. However, it should also be recognized that increased transparency due to the government's anticorruption measures has resulted in more active disclosure of corrupt activities and disciplining of corrupt officials.

143. **It is encouraging that the government is showing greater awareness of corruption and its potential impact on economic growth and development.** The Concept for Administrative Reform in Russia and Action Plan (2006–08) acknowledges that the key rationale for design of the program is the country's poor performance on international indicators for governance and corruption. The Action Plan explicitly includes anticorruption as an element of administrative reform, and lays out steps to improve regulatory policy and to establish government service standards to prevent public malfeasance. Adoption of the Concept and Action Plan and the budgetary allocation to implement it are heartening signs of political support for tackling the issue and creating a foundation for further initiatives to uproot sources of corruption related to the business environment.

144. **Recommendations:**

- Ø Procurement reform, up to and including contract implementation, should become a centerpiece of the government anticorruption program.
  - Ø Fighting procurement corruption should not be the exclusive task of the government. Government should foster transparency in its own operations and
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also demand high ethical standards in conducting business operations from private and public sector actors.

- Ø Procurement reform per se cannot solve the problem of corruption. It has to be integrated into and synchronized with a wider and comprehensive governance improvement and anticorruption strategy.

### *Establishment of Sound Audit and Control Mechanisms*

145. **According to Article 17.1 of the new PPL, “Compliance by the Client, Designated Authority, Special-purpose Entity, or the Bidding, Auction, or Shopping Committee with the procurement legislation and other procurement-related regulatory legal acts of the Russian Federation shall be monitored by planned and ad hoc reviews.”**

- Ø Planned reviews of purchases of goods, works, or services for federal, regional, or municipal needs shall be conducted by the federal/regional executive authority or the local authority responsible for procurement monitoring in a given case. Ad hoc reviews of such procurements for federal, regional, or municipal needs shall be conducted by the federal/regional executive authority or the local authority responsible for procurement monitoring in a given case.
- Ø The trigger for an ad hoc review is a bidder’s complaint about action/inaction by the Client, Designated Authority, Special-Purpose Entity, or the Bidding, Auction, or Shopping Committee. Planned reviews of a Client, a Designated Authority, or a permanent Bidding, Auction, or Shopping Committee shall not be conducted more frequently than once every six months.
- Ø The above control actions are conducted mostly ex-post. Corrective measures to deal with violations of the procurement legislation span a range from recommendations to remedy the situation, cancellation of a procurement process, a courts decision, or referral of the case to the courts for consideration under the laws of the Russian Federation. So far no information is available on any completed review, and the FAS has had to handle only a handful of complaints from bidders.

146. **The supreme audit institution in the nation is the Chamber of Accounts of the Russian Federation.** Entrusted with the functions of state financial control, the Chamber of Accounts was created by the Federal Assembly of the Russian Federation and reports to it.

147. According to the available information, the Chamber of Accounts carried out 478 reviews during 2004, covering 16,815 entities. That year detected losses for the state totaled 116 billion rubles, of which 20 billion were recovered as a result of the reviews. The Chamber of Accounts activity report for 2006 identifies instances of irregularities or inefficient performance in public procurement; however, there is not a dedicated chapter on procurement in this report.

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148. *Recommendations:*

- Ø In addition to financial audits the concept of procurement audits (performance audits) should be introduced to enforce and improve good procurement practices.

*Treatment of Complaints*

149. **Compared to previous legislation, the new PPL provides for and administrative mechanism for handling complaints in a more detailed and coherent way**, giving bidders real opportunities to criticize and seek relief from the actions/inactions of the Client, Designated Authority, or Special-Purpose Entity, or the Bidding, Auction, or Shopping Committee, and to appeal the case to court if the administrative response was unsatisfactory. At the same time, the mechanism for submission and consideration of complaints establishes some safeguards to avoid disruption of the procurement process by anonymous or irresponsible complainants.

150. **Bidders always have the option to complain to the federal organ controlling procurement for action/inaction at the federal level.** For regional or municipal procurement, bidders may complain to the control organ of the corresponding level or to the national control organ. Control organs have the right to suspend or void a procurement process within their jurisdiction to resolve a bidder's complaint.

151. Authorities entrusted with review are required to consider a complaint and any objection thereto within 5 calendar days after the grievance has been lodged. Objections may be submitted by other bidders who think their interests might be affected by the complaint, and both the original complainant and the other affected parties must be notified that the hearing has been scheduled so they can be present to participate in adjudication of the dispute. However, while the steps for consideration of the complains seem to be the right ones, the time allocated for handling complains is too short.

152. **The main challenge now is to make the complaint review process work that has been provided by the law.** To do so, the different levels of representation of FAS, the organ entrusted with procurement complaint reviews, need to be properly staffed and trained and funded. Otherwise the danger is very real that the existing resources will be stretched too thin by a workload made heavier by a flood of complaints stemming from the initial lack of experience in applying the new PPL by contracting authorities and bidders, paralyzing the system. From the beginning of implementation of the new PPL the Federal Antimonopoly Service of Russia has made over 340 inspections, reviewed over 800 bidders' complaints. In 500 cases the ruling of FAS was favorable to complainants. The Federal Service for Defense Procurement made 25 inspections.

153. *Recommendations:*

- Ø **Proper staffing and training of the FAS agencies entrusted with the review of procurement complaints is urgent to ensure professional and**
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**timely dispute resolution. Training is also required for the courts handling procurement cases.**

- Ø **Time standards for processing complains should be revised in order to allow sufficient time for proper consideration.**

## **V. Electronic Procurement to Promote Transparency and Control Mismanagement and Corruption**

154. **Typically, information and communications technology is used in public purchasing not only to improve procurement management, but also to help curtail corruption** by increasing access to public procurement information and making the process more transparent. The need for in-person contacts between purchasers and suppliers is reduced and compliance with procurement policy is increased by standardized software applications that do not permit deviation from predefined procurement procedures.

155. **Countries report price and cost savings of 10–20 percent when using e-GP systems for public procurement** (if Russia saved only 10 percent of the estimated 880 billion rubles in total public procurement in 2006,<sup>1</sup> the potential savings would be 88 billion rubles). Besides increased transparency and efficiency, e-GP systems automatically collect procurement information and data for better reporting, monitoring, and decision making to systematically upgrade the quality of public procurement.

156. **Yet to achieve these benefits e-GP needs to be implemented successfully, which goes far beyond the purchase, installation, and operation of hardware and software.** Success depends on government leadership, the policy and legal framework, activation of buyers and suppliers, infrastructure and standards, and systems and applications. Taking all these components into consideration, the overall prospect for introduction of e-GP in Russia appears promising. The following findings reflect a summary of a separate e-GP report:

### *Government Leadership*

157. **The Department of Public Procurement (DPP) at the Ministry of Economic Development and Trade of the Russian Federation is the federal executive authority responsible for procurement regulation, including responsibility for introduction of electronic government procurement.** It will be critical that the lead agency has the clear mandate, sufficient resources, and strong support from the Russian government to execute this task. In addition, it requires expertise not only in public procurement but also in electronic procurement. At the time of interviewing the DPP, resources (a total staff of 16) and expertise in e-GP appeared to be rather thin.

158. **Recommendations:**

- Ø The Russian government should provide the public procurement lead agency with the indisputable mandate of e-GP implementation. The e-GP lead agency

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<sup>1</sup> <http://www.izvestia.ru/economic/article3079862/>

should be staffed with experts in public procurement and electronic procurement. Strong political will and support from high government authorities should be demonstrated to strengthen the lead role of the agency.

### *Policy and Legal Framework*

159. **The Federal Program Electronic Russia 2002–10<sup>2</sup> (E-Russia) addresses the automation and improvement of citizen services (G2C), intra- and intergovernmental procedures and activities (G2G), and services for private businesses (G2B).** The automation of G2B in particular and the promotion of e-Commerce (including B2B) as part of the ICT legislation and infrastructure development agenda in general provide a solid basis for introduction of e-GP in Russia. While E-Russia offers the roadmap for developing a framework that supports the use of ICT by governments at different levels, by private businesses, and by the public at large, such a roadmap does not seem to exist for the implementation of e-GP.

160. **As far as the legal framework is concerned, the new PPL provides the legal basis for the application of e-GP in Russia.** The challenge is to implement this legal basis and develop appropriate secondary legislation, including the standardized procedures for electronically conducting public procurement.

161. **The PPL requires the mandatory and free-of-charge use of official Web sites at the federal, regional, and municipal levels to publish important public procurement information such as procurement notices, evaluation and review minutes, contract lists, and a supplier blacklist.** In addition to the mandatory use of official Web sites for publication of procurement information, the PPL offers the option of using electronic means to implement public procurement procedures and conduct transactions, including, for example, electronically disseminating bidding documents, amendments, and clarifications, and conducting electronic bid submission, electronic bid opening, or electronic (reverse)<sup>3</sup> auctions. All information posted on an official procurement Web site shall be accessible for free, including bidding documents. This approach provides a good incentive for bidders to use the Web site.

162. In addition the law provides for mandatory disclosure of procurement opportunities in a print publication, which is under the same management as the official Web site.

163. **With the concept of a network of hyperlinked official procurement Web sites on the federal, regional, and municipal levels, the PPL ensures a high degree of transparency and accessibility.** The procedures for using all these official procurement Web sites and all requirements for Web-site-related hardware, software, language, legal provisions, and logistics are to be developed by the government of Russia. This contributes to establishing an e-GP standards framework that is interoperable, easy to use, and requires a minimum of systems development effort and investment.

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<sup>2</sup> <http://e-rus.ru/>

<sup>3</sup> Although the translation of the PPL, Article 10 (1) refers to “auction,” the procedure of price reduction as described in the PPL, Chapter 3, Article 33 (3) implies the method of “reverse auctions.”

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164. **While electronic reverse auctions can contribute to price reductions in an anonymous environment** (online reverse auctions using the Internet became quite popular in many countries, including Brazil and Romania, and they are also part of the European public procurement directives), **it is questionable whether the procedure conducted in person can be deemed good practice for public procurement (particularly if used for large contracts above 500,000 rubles, even when such contracts do not call for the use of any other bid evaluation criterion besides price).**

165. **Moreover, the PPL indicates in Article 37 (2) that the same auction can allow some bidders to participate in person and others to participate online.** This approach requires extensive administrative coordination and arrangements (for example, to ensure that bidders physically present at the (reverse) auction learn about price reductions submitted by bidders who participate online, and vice versa). It also may result in more opportunities for collusive practices since the (reverse) auction process cannot take place in an anonymous environment.

166. **Besides the PPL, the enabling legal framework for e-GP includes the Russian Federation Civil Code,<sup>4</sup> the Federal Law on Information, Informatization, and Protection of Information No. 24-FZ (1995),<sup>5</sup> and the Federal Law on the Electronic Digital Signature No. 1-FZ (2002).<sup>6</sup>**

167. The Federal Law on the Electronic Digital Signature appears not fully to reflect the suggested approach in either the UNCITRAL model law on electronic signatures (2001)<sup>7</sup> or in the European directive on a community framework for electronic signatures (1999).<sup>8</sup> The Russian law includes two conflicting attributes in its title: while a digital signature is always an electronic signature, not all electronic signatures are digital. Neither UNCITRAL nor the European directive limits the legal recognition of an electronic signature to the digital signature. The Russian law, however, only recognizes electronic signatures as equal to handwritten signatures if they are based on public private key infrastructure and digital certificates to be issued on hard copy. Electronic signatures without certification are not acceptable according to the law.

168. **Recommendations:**

- Ø Introduction of e-GP should be defined as one priority area in the context of E-Russia, and the lead agency for electronic procurement should develop an implementation strategy that, based on the current status of e-GP in the country, includes clear objectives and provides a roadmap detailing phased action plans, roles, and responsibilities.
- Ø The e-GP implementation strategy should be a separate document as part of the public procurement reform strategy and take into consideration the lessons learned and experience of other governments as well as the e-GP implementation suggestions of the European Union<sup>9</sup> and the Multilateral

<sup>4</sup> <http://www.russian-civil-code.com/>

<sup>5</sup> [http://www.fas.org/irp/world/russia/docs/law\\_info.htm](http://www.fas.org/irp/world/russia/docs/law_info.htm)

<sup>6</sup> Overview: <http://www.bakernet.com/ecommerce/Russia-E-Signature-Alert.doc>

<sup>7</sup> <http://www.uncitral.org/pdf/english/texts/electcom/ml-elecsig-e.pdf>

<sup>8</sup> [http://europa.eu.int/ISPO/ecommerce/legal/documents/1999\\_93/1999\\_93\\_en.pdf](http://europa.eu.int/ISPO/ecommerce/legal/documents/1999_93/1999_93_en.pdf)

<sup>9</sup> [http://europa.eu.int/comm/internal\\_market/publicprocurement/e-procurement\\_en.htm#intro](http://europa.eu.int/comm/internal_market/publicprocurement/e-procurement_en.htm#intro)

Development Banks.<sup>10</sup> The organization of an e-GP workshop with international participation is recommended before finalizing and approving the e-GP implementation strategy.

- Ø The PPL should be reviewed to include the following modifications (additional modifications are suggested in a separate e-GP report):
  - a) Publish the most important information (procurement notice, contract award results) rather than lengthy evaluation protocols in the printed edition of the public procurement gazette and use the official Web site for more-detailed protocols, including the information published in the printed edition.
  - b) Allow only for the use of electronic reverse auctions (no in-person or mixed in-person/electronic) without limiting them to thresholds below 500,000 rubles; and let contracting agencies use electronic reverse auctions as a future option to competitive bidding only for the procurement of common-use goods, works, and services, and as long as price is the only selection factor and review of the awardee's qualification does not entail an insurmountable obstacle.
  
- Ø The electronic digital signature law should be reviewed with regard to acceptance of electronic signatures for e-GP.

### *Buyer and Supplier Activation*

169. **Moving public procurement information and transactions online requires buyers (contracting agencies) and suppliers (private industry) to change the way they consider doing business.** In line with the management of such change, it is critical to achieve common understanding among buyers, suppliers, and civil society about the benefits of e-GP for Russia and to develop collective commitment to achieve these benefits. In raising e-GP awareness among all stakeholders, Russia should aim at promoting collective support in implementing a jointly agreed upon e-GP program that contributes to developing a highly efficient and transparent public procurement system for the country. References to good e-GP practices and benefits achieved in other countries may be taken into consideration when distributing information through diverse communication channels.

170. **The introduction of e-GP requires training and skills development in three major areas: managing the design and implementation of e-GP, using the implemented e-GP applications, and providing e-GP systems operation and support services.** Existing public procurement training providers may be in position to design and deliver e-GP-related training. The Chamber of Commerce and Industry has 173 local centers in Russia and offered the government the use of their infrastructure. With its existing learning facilities in place, the Chamber of Commerce and Industry is a potential resource for e-GP awareness raising and capacity building activities.

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<sup>10</sup> <http://www.mdb-egp.org/ui/english/pages/toolkit.aspx>

171. **Another candidate for promoting e-GP and developing e-GP skills is the Procurement Management Institute of the Higher School of Economics, which not only has provided public procurement training to some 12,000 procurement specialists during the past eight years, but also seems to be up to date about ongoing e-GP initiatives.** Reportedly, there are 24 centers of diverse importance in Russia providing procurement training, which, with proper staffing and equipment, could be an important resource in training e-GP specialists.

172. **Recommendations:**

- Ø The e-GP lead agency should develop an e-GP awareness raising and capacity building program as part of the implementation strategy for rolling out electronic procurement. This program should address contracting agencies on the buy side, private businesses on the supply side, and the public at large. Multiple communication channels (for example, printed media, the Internet, radio, TV, conferences, exhibitions) as well as partnerships with potential training facilities (for example, the Chamber of Commerce and Industry, the Procurement Management Institute of the Higher School of Economics) and the use of online training methods (for example, distance learning, demo versions, a help desk) should be explored early on.

### *Infrastructure and Standards*

173. **As in many low- and middle-income countries, the use of information and communication technologies and Internet penetration in Russia is concentrated in populated and developed areas such as Moscow, St. Petersburg, and other big municipalities.** A recent statistics overview on Internet usage in Europe<sup>11</sup> found that the Internet is being used by almost 23.7 million people in Russia, which has a total population of about 144 million. Internet penetration in Russia thus equals 16.5 percent, which places the country at the low end of the European spectrum. Interestingly, the calculated Internet usage growth between 2000 and 2005 exploded in Russia, with a 664.5 percent increase. This figure clearly indicates expanding Internet penetration.

174. **The adoption of standards is very important for simplifying procedures, avoiding duplicated efforts, and ensuring interoperability.** To this end, a major challenge for the lead e-GP agency in Russia may be the development of an e-GP framework to ensure that the official procurement Web sites and e-GP applications follow a minimum of standard requirements. Such standards need to be in line with the PPL and may include more-detailed e-GP requirements in terms of procedures (for example, e–reverse auctions, e-bidding, e-catalogues), templates/formats (for example, the format of procurement notices), and product classification (for example, the CPV or UNSPSC). Where international standards are available (for example, product classification), these may be adopted rather than investing in development or review of Russia-specific standards.

175. **The PPL already provides a number of standards for required information to be published on the official procurement Web site (for example,**

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<sup>11</sup> [www.internetworldstats.com](http://www.internetworldstats.com)

**procurement notices, evaluation and review minutes, contract lists, a supplier blacklist**). The PPL also defines some basic standardized procedures for online public procurement (for example, electronic reverse auction). Other standards that were set by law (for example, public procurement law, electronic digital signature law) may need to be reviewed for potential alignment with good practice approaches like those defined in the UNCITRAL Model Law on Electronic Signatures or in the relevant European legislation on the use of electronic means.

176. **Information systems that are relevant for e-GP should meet the principle of open and free access and nondiscrimination.** Common technical standards may include open system architecture, generally available Web services, and security standards (for example, SSL). In particular, it may be important and efficient to apply technical standards (for example, XML) that ensure interoperability of several governmental IT systems. In addition, the official procurement Web sites on the federal, regional, and municipal levels would not only be hyperlinked as required in the PPL, but offer the potential of aggregating public procurement data and information into one monitoring and reporting system.

177. **Recommendations:**

- Ø The government of Russia should push for a central e-GP standards framework very soon and develop the e-GP procedures and requirements to ensure compatibility and interoperability among the official regional and municipal procurement Web sites. It is recommended that existing international standards be followed to ensure future interoperability not only between government systems within Russia but also with systems beyond the national border.

### *Systems and Applications*

178. **As a result of the increased use of ICT, including the Internet and the efforts in the context of E-Russia, electronic commerce has gained significant momentum in all three areas: business to business (B2B), business to consumer (B2C), and business to government (B2G).** To facilitate transactions, several e-procurement systems and applications have been developed to provide procurement information and conduct online business independent of time and location.

179. **The government of Russia has already developed the official federal public procurement Web site [www.fgz.economy.gov.ru](http://www.fgz.economy.gov.ru).** This Web site provides links to 89 regional and municipal public procurement portals as required by the PPL. In addition, information about the public procurement legislation is available, and a user-friendly search engine allows navigation for public federal procurement notices and contract award results by categories such as Region, Sector, Product, Contracting Agency or Supplier, Procurement Method, or Date. Transactions such as e-tendering or e-purchasing (including e-ordering and e-payment) are not yet supported by the official federal public procurement portal.

180. **Most existing regional and municipal public procurement portals can functionally display public procurement information.** Only a few B2G portals (for example, [www.gostrade.ru](http://www.gostrade.ru), [www.goszakaznso.ru](http://www.goszakaznso.ru), and [www.gz-spb.ru](http://www.gz-spb.ru), which are the

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official public procurement Web sites of the Belgorod, Novosibirsk, and St. Petersburg Regions respectively; or the unofficial public procurement portal [www.b2g-goszakupki.ru](http://www.b2g-goszakupki.ru)) have implemented e-GP transactions for tendering, auctioning, and purchasing.

181. The portal [www.bob.ru](http://www.bob.ru) is the Web site of the Federal Center for Project Finance (FCPF). Since it is not the official federal public procurement Web site required by the PPL to post procurement notices and contract lists, its use is not mandatory. However the FCPF is responsible for print publication of the official public procurement bulletin and, therefore, has developed this Web site to publish the same information electronically. In addition, the Web site offers the functional advantage of allowing one to analyze contract award results and identify government agencies that awarded a high percentage of their contracts to the same companies. The Web site includes some interactive functionality for e-tendering (for example, download/upload of bidding documents/bids).

182. The Web site was updated in line with the requirements of the PPL and offered to the MEDT as the official federal public procurement Web site. The MEDT did not accept this proposal and developed a new Web site. Seemingly, however, the MEDT supports the idea of assigning to one entity the responsibility of publishing the official public procurement bulletin on paper and maintaining the official federal public procurement Web site. Then procurement data would need to be submitted only once to the same entity, resulting in improved quality by ensuring that the data published offline in the official procurement bulletin and online on the official Web site are in accord.

183. Although the PPL requires procurement information to be published on an official procurement Web site at either the federal, regional, or municipal level, there does not seem to be any effort to develop a single one-stop portal that would allow interested national and international suppliers and consultants to search for business opportunities or review contract award results. The potential value of such a portal not only for private businesses but also for government management (monitoring, reporting, and statistics) may justify thinking about such a model, which would allow interested parties to pull required data from all the available federal, regional, and municipal databases. E-GP transactions could still be handled by separate e-GP applications to be hyperlinked from the respective procurement notice.

184. Examples of existing and successful B2B portals include [www.b2b-energo.ru](http://www.b2b-energo.ru) (power sector), [www.b2b-avia.ru](http://www.b2b-avia.ru) (aviation sector), [www.tradecable.ru](http://www.tradecable.ru) (electrical equipment), and [www.b2b-npk.ru](http://www.b2b-npk.ru) and [www.nge.ru](http://www.nge.ru) (oil and gas sector). While most of these portals are available in Russian and English, the B2C (for example, [www.003.ru](http://www.003.ru), [www.smartron.ru](http://www.smartron.ru)) and B2G portals are usually provided only in the Russian language.

185. The system [www.b2b-energo.ru](http://www.b2b-energo.ru) of the leading Russian company in the power sector, RAO UESR, has been operated quite successfully. To date, more than 5,000 suppliers from 24 countries are registered in the system, which is used for more than 50 percent of RAO UESR's total procurement volume and helps boost competition, efficiency, and transparency. The system is fully compliant with the legislation and covers all basic procurement features (for example, publication of notices and contract

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award results, and transactions such as e-tendering, e-auctions, and e-purchasing, including e-catalogues, e-ordering, and e-payment).

186. **Recommendations:**

- Ø The government should take the lead in coordinating the development and approval of the official public procurement Web sites at all levels, using a clearly defined regulatory framework to avoid confusion among contracting agencies and suppliers.
- Ø The responsibilities of publishing public procurement information (notices, awards, and minutes) in the print procurement bulletin and of disseminating the same information on the official public procurement Web site should be given to one entity.
- Ø In addition to the already planned hyperlinks between the federal, regional, and municipal Web sites, development of a single one-stop portal to aggregate all federal, regional, and municipal procurement notices and contract award results should be taken into consideration as a value-added service.

187. **Lessons from the Recently Completed “Study of Procurement of Information Technology in the Russian Federation”**

188. A World Bank–financed consultant was hired to study IT procurement in the Russian Federation, and whose Terms of Reference can be summarized as:

- Ø To review the general nature of the IT market in selected countries (how it has developed, who the major players and stakeholders are, what are the most likely directions of development)
- Ø To review binding legislation regulating the IT industry and gauge any impact that binding public procurement legislation and de facto practices and standards may have on the IT industry
- Ø To review the way IT Procurement is carried out within the countries being studied, analyze whether particular types of stakeholders are being favored, and recommend how any imbalance may be redressed
- Ø To review and analyze major hardware and software manufacturers and distributor’s policies in the region.

189. The report was completed in December 2005, and some changes may have taken place since then with passage of the new PPL and the modifications in other legislative acts dealing with procurement. However, given the importance and scale of IT procurement in Russia, textual summary findings and recommendations provided by the report are included below:

**Main findings:** During recent years, the Russian IT market for hardware, software and IT services has grown rapidly, reaching about US\$7.2 billion in 2004. While Russia imports information technology from the West, export of IT hardware has now grown to about US\$70 million, while export of “outsourced” software

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products and services is estimated at US\$600 million while export of other software is estimated at US\$150 million.

There is a high concentration of IT vendors in Moscow. Government, communications, oil & gas, and the financial sector are the most important IT users.

Among the many and sometimes conflicting laws and regulation that form the business environment for the IT industry, a new federal law, “On Placing Contracts for Supply of Goods, Works, and Services for State and Municipal Needs,” signifies a shift in the public procurement policy and may trigger a significant improvement in the legislative and regulatory basis for public purchasing. This law was passed on July 21, 2005, and entered into force January 1, 2006). It is not yet established whether this law can be implemented without contradicting certain provisions of Law 946.

For procurement, IT customers in the private sector clearly prefer to use closed tenders, while governmental agencies are obliged to conduct open tenders by law. Typically, the range in the number of bidders is from three up to fifteen; usually there are seven or eight proposals.

In the governmental sector, due to low remuneration and high turnover of personnel, the quality of tender documentation and of organization of the tender process is usually very low. This may lead to poor-quality tendering or to corruption.

### *Recommendations*

190. **Further actions are needed to develop legislation and regulation** for procurement in general and for the IT sector in particular. The government of the Russian Federation should ensure the alignment of laws and regulations currently in force at all levels—federal, regional, and municipal—with the realities of the new law “On Placing Contracts for Supply of Goods, Works, and Services for State and Municipal Needs” and also revise this law since it already shows some discrepancies. In addition, the government of the Russian Federation should define general principles for ordering and buying products for governmental and municipal needs.

191. The government of the Russian Federation should develop standards and strategy for IT solutions introduced in governmental bodies. A single classification of products or a “catalogue of IT equipment” for government and municipal needs should be approved. It should also invite market participants to comment on impending legislation and regulation.

192. **Actions to be taken in order to ensure that open competitiveness is maintained:** The government of the Russian Federation should simplify tender procedures and allow large-scale use of e-documentation to cut expenses and to attract new players to the state’s procurement tenders. The government of the Russian Federation should adjust the budget process to let customers engage in long-term, complicated IT projects for longer than one fiscal year.

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193. **Measures that may redress inherent imbalances** in the way different stakeholders are treated are: Russian educational institutions—possibly supported by the World Bank—should introduce more practical procurement topics (such as specification writing, negotiations, and organizational issues) into the curriculum of engineering and commercial training in order to speed up the “informatization” process.

194. **The government of the Russian Federation should establish a consulting service, free-of-charge, to assist foreign and non-Moscow companies to participate in tenders.** It should also activate use of an Internet procurement portal containing information on new tenders. Major tenders should appear both in Russian and in English simultaneously; the mechanism should also enable purchase transactions and electronic document circulation. The Ministry of Information and Communications should encourage competition in telecommunications to improve Internet access.

195. **Needed actions to reduce the likelihood of fraud or corruption** in World Bank or other public procurement processes include the following. Federal and municipal agencies should set high qualification requirements for executives who are responsible for purchases. Procuring government entities should coordinate with each other and make procedural rules, deadlines, the conduct of sales, and other purchasing events as specific as possible, including the announcement of a winning supplier. They should also increase the share of open tender to choose suppliers for governmental contracts.

196. The government of the Russian Federation should specifically charge the Accounts Chamber of the Russian Federation, or some other government entity, with the function of being an external auditor for the tenders and competitions, seeing to it that the preliminary choice of participants and mandatory requirements are fair. Wherever possible, the government of the Russian Federation should increase the risk of detection and stipulate punishments for any administrative malpractice and for criminal offences such as receiving and giving bribes and for abuses of authority.

197. Finally, more attention should be paid to the issue of competitions and procedures in the private sector in order to create obstacles to the widespread practice of graft in commercial procurement.

## **VI. World Bank Portfolio and Assessment of Procurement Risk**

### ***World Bank Portfolio***

198. Currently the World Bank portfolio in the Russian Federation comprises 21 active projects with total financing of US\$1.9 billion, of which US\$1.3 billion are still undisbursed. There are 11 new projects in the pipeline at different preparation stages.

199. **Slow procurement and low disbursement that prompted repeated extension of loan closing dates characterized the implementation of the World Bank’s portfolio in Russia during the period covered for this report.** According to

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the latest information, the disbursement ratio has improved to 14.9 percent. It is clear that the measures implemented by the World Bank to improve portfolio performance are only one side of the equation, and that achievement of higher levels would require full use of the potential for improvement by the Russian counterpart. This would include simplifying and streamlining existing regulations for preparation and implementation of World Bank projects in Russia, including Resolution No. 43 of the government of the Russian Federation, “On the Order of Work with the Projects Carried Out by the Russian Federation with Participation of International Financial Organizations,” of December 28, 2005.

200. **Currently preparation of a new Country Partnership Strategy (CPS) for Russia is under way, with approval aimed for in the last quarter of 2006.** The CPS takes into account that World Bank engagement in Russia tends increasingly be through the incorporation of projects into government programs financed mostly by the government, and to engaging with new clients such as the federation’s regions. This poses a real challenge to enforcement of World Bank fiduciary safeguards, including those for procurement.

### *Assessment of Procurement Risk*

201. Given the wide difference of approach between the new PPL and World Bank Procurement Guidelines, insufficient practical experience operating under the new legal and institutional framework, and reputedly widespread corruption in the country, the purchasing environment for implementing the World Bank’s Portfolio in the Russian Federation continues to be complex and high risk. As a consequence, intensive supervision of World Bank–financed projects is still needed.

202. Other risks to procurement in World Bank–financed projects in Russia are also present, among which are the following:

- Ø Attempts to apply some features in line with national procurement legislation allegedly because use of other procedures would not be understood by national control organs such as the Chamber of Accounts. These arguments are used despite the provision of national legislation giving precedence to the procurement procedures set forth in agreements with the International Financial Institutions (IFIs).
  - Ø There is a tendency to “recover” implementation delays by putting last-moment pressure on procurement procedures and cutting corners by reducing the time allotted for them in the guidelines.
  - Ø Overly restrictive qualification and evaluation criteria and technical specifications are formulated, particularly in the procurement of IT, which spurs increasing complaints from bidders and consultants and limits participation in bidding and selection processes.
  - Ø Attempts are made to dismiss World Bank comments on bidding documents with the excuse that matters should be left as they are since it would take too long to amend the issue due to the internal bureaucratic process.
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203. **Currently use of a country procurement system is not an option for World Bank operations in Russia**, and separate and very detailed analysis on a case-by-case basis will be required to determine the procurement arrangements for each specific operation. All procurement co-financed by the World Bank for active projects shall continue to be carried out following the World Bank Procurement and Consultants Guidelines, and the same is expected for projects in the pipeline.

204. **In these circumstances the World Bank's approach is to keep satisfactory fiduciary safeguards without discarding the possibility of adopting acceptable features of current or modified national procurement legislation in the future.** It is not excluded that, based on a positive evolution of the situation and for specific projects executed by experienced implementing agencies (or PIUs), the procurement risk may be ranked lower than high.

205. **Recommendations:**

- Ø To mitigate the high procurement risk for projects fully or partially financed by the World Bank in Russia, the World Bank's Procurement and Consultants Guidelines should apply fully, and project procurement shall be subject to intensive supervision. . The financial thresholds levels for procurement methods and the prior review levels, as well as the list on acceptability of national competitive bidding for Bank-financed operations in the Russian Federation are recommended as follows:

PROCUREMENT METHOD THRESHOLD					
ICB		NCB		SHOPPING	
Goods	Works	Goods	Works	Goods	Works
>\$1 Mil	>\$10 Mil	<\$1 Mil	<\$10 Mil	<\$100 k	<\$100 k

THRESHOLDS FOR PRIOR REVIEW BY THE BANK							
ICB		NCB		SHOPPING		CONSULTANTS	
Goods	Works	Goods	Works	Goods	Works	Firms	Indiv.
>\$1 Mil	>\$10 Mil	>\$500 k + 1 <sup>st</sup> two contracts	>\$5 Mill + 1 <sup>st</sup> two Contracts	None	None	>\$350 k	>\$350 k

- Ø At the same time the World Bank should continue its dialog with Russian authorities to spotlight the need for and convenience of aligning the national procurement system and regulations with the best internationally recognized practices.
- Ø To date, the World Bank does not accept auctions, closed competitive bidding request for quotations, procurement of commodities, and single source (direct) contracting under Russian law as national competitive bidding (NCB) on World Bank-financed projects. The following amendments will be required to the open competitive bidding procedure, as defined in the new PPL, to make it acceptable for NCB under World Bank-financed projects. The List of Conditions for Acceptability of National Competitive Bidding (open competitive bidding) Procedures enumerated below shall be included directly

or through a supplemental letter into the loan agreement for any new project financed by the World Bank in Russia:

1. There should be no restrictions on the participation of foreign bidders or on the sources of labor and materials.
  2. There should be no requirement that bidders must register as a prior condition of bidding; registration may be required only as a condition of contract award.
  3. Government-owned enterprises in the Russian Federation should be permitted to bid only if they are legally and financially autonomous and operate under commercial law.
  4. Prequalification should be conducted for large or specialized works, using prequalification documents acceptable to, and based on, the World Bank's Standard Prequalification Documents.
  5. The minimum applicable experience and technical and financial requirements should be stated clearly in the prequalification documents or, in the case of postqualification, in the bidding documents.
  6. The period allowed for bidders to prepare their bids should be no less than 30 days, measured from the date of appearance of the advertisement of the procurement in the local mass media or the date of issuance of the bidding documents to the bidders, whichever is later. Procuring entities should use NCB bidding documents agreed upon with the World Bank and with appropriate amendments as per this list.
  7. The opening of bids should follow immediately after the deadline for bid submission, and bidders' representatives should be permitted to attend. No bid should be rejected at the time of bid opening.
  8. There shall be an opportunity to prequalify for procurements involving large or complex contracts, which shall be advertised. Where prequalification has not been undertaken, postqualification should be conducted only for the lowest evaluated bidder; no bid should be rejected at the time of bid opening on qualification grounds.
  9. Minimum experience and technical and financial requirements (for pre- or postqualification) shall be explicitly stated in the bidding documents in the form of a pass or fail requirement relating to the bidder's capability and resources to successfully perform the contract. Only the criteria so specified shall be used to determine whether a bidder is qualified to bid. Bids by bidders that are deemed unqualified to bid shall not be further considered and shall be rejected.
  10. When bid security is requested, or requests are made for performance securities, bidders should be required to submit securities in an amount appropriate to the estimated value of the contract and in a form acceptable to the government.
  11. In cases in which only one bid is received, re-bidding should not occur automatically. Rather, if the single bid received is substantially responsive and the bid price reflects the market price in the Russian environment, a contract may be awarded to the single bidder.
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12. A contract should be awarded in accordance with predefined and disclosed evaluation criteria to the lowest evaluated, substantially responsive bidder who is determined to be qualified to perform.
  13. For contracts of long duration (more than 18 months), contracts should contain appropriate price adjustment provisions.
  14. No initial price should be established for the procured contract.
  15. Procuring entities should use NCB bidding documents which should be satisfactory to the World Bank prior to their issuance to bidders.
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